

BUSINESS PRACTICES – INVOLVING STAFF IN CREDIT ACTIVITIES

INTRODUCTION

If a person engages in credit activities regulated under the NCCP Act, they must hold an ACL or authorisation from a Licensee as their Credit Representative.

It is imperative that all staff and Credit Representatives of Licensees are familiar with the definition of regulated credit activities.

Engaging in credit activities without holding an ACL or as an appointed Credit Representative is a breach of the NCCP Act and carries civil and criminal penalties

LICENSEE POLICY

Where a Credit Representatives engages their own staff, they must not undertake credit activities unless they are appropriately authorised to do so.

NewCo/NLG will consider the authorising staff members of Credit Representatives only when they can sufficiently demonstrate that they have the necessary knowledge and qualifications to engage in credit activities. In some circumstances this may include mentoring of the staff member.

Those staff who are not authorised to engage in credit activities on behalf of NewCo/NLG can undertake clerks and cashier activities but must not undertake regulated credit activity (see below “Exempt Activities”).

Staff includes employees, sub-contractors, agents, consultants, advisers and directors or anyone authorised to act on behalf of the Credit Representative.

KEY INFORMATION

1. Engaging in credit activities without a licence

Section 29 of the NCCP Act states:

- 1) A person must not engage in a credit activity if the person does not hold a licence authorising the person to engage in the credit activity.
- 2) A person commits an offence if:
 - a. The person is subject to a requirement under subsection (1); and
 - b. The person engages in conduct; and
 - c. The conduct contravenes the requirement.
- 3) For the purposes of subsection (1) and (2), it is a defence if:
 - a. The person engages in the credit activity on behalf of another person (the principal); and
 - b. The person is:
 - i. An employee or director of the principal or of a related body corporate of the principal; or
 - ii. A credit representative of the principal; and
 - c. The person’s conduct in engaging in the credit activity is within the authority of the principal; and

- d. The principal holds a licence authorising the principal to engage in the credit activity.

2. What are “credit activities”?

“Credit activity” is defined in Section 6 of the NCCP Act. In relation to finance or credit broking, a person engages in a credit activity if they provide a “credit service”.

3. What is a “credit service”?

Defined in Section 7 of the Act, a person provides a “credit service” if the person:

- a) provides credit assistance to a consumer; or
- b) acts as an intermediary.

4. What is “credit assistance”?

Section 8 of the Act provides the meaning of “credit assistance”.

A person provides “credit assistance” to a consumer if, by dealing directly with the consumer or the consumer’s agent in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:

- a) suggests that the consumer apply for a particular credit contract with a particular credit provider; or
- b) suggests that the consumer apply for an increase to the credit limit of a particular credit contract with a particular credit provider; or
- c) suggests that the consumer remain in a particular credit contract with a particular credit provider; or
- d) assists the consumer to apply for a particular credit contract with a particular credit provider; or e) assists the consumer to apply for an increase to the credit limit of a particular credit contract with a particular credit provider; or
- f) suggests that the consumer apply for a particular consumer lease with a particular lessor; or
- g) suggests that the consumer remain in a particular consumer lease with a particular lessor; or
- h) assists the consumer to apply for a particular consumer lease with a particular lessor.

5. What is ‘acts as an intermediary’?

“Acts as an intermediary” is defined in Section 9.

A person “acts as an intermediary” if, in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:

- a) acts as an intermediary (whether directly or indirectly) between a credit provider and a consumer wholly or partly for the purposes of securing a provision of credit for the consumer under a credit contract for the consumer with the credit provider; or
- b) acts as an intermediary (whether directly or indirectly) between a lessor and a consumer wholly or partly for the purposes of securing a consumer lease for the consumer with the lessor.

It does not matter whether the person does so on the person's own behalf or for or on behalf of another person.

6. Exempt activities

Activities which are not credit activities include activity that:

- a) is engaged in by a clerk or cashier including passing on, publishing, distributing documents; or contracts;
- b) consists only of a person giving to another person, information about the cost of a credit contract or a consumer lease; or
- c) terms and conditions of a credit contract or a consumer lease offered by a licensee.

REFERENCES

Business Practices: Involving Staff in Credit Activities
Business Practices: Conducting other Business Activities
Business Practices: Inducements

LAST UPDATED

Oct, 2018