



CreditWise

legal and compliance services

POINT OF SALE EXEMPTION - REPEAL

Retailer Options & Costs



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Please note:

This e-book is intended to assist Point of Sale (POS) exempt retailers consider the options available to enable them to continue to introduce consumer finance should the proposed POS exemption repeal proceed. It is a high level overview only and cannot be taken as legal advice.

1

OVERVIEW

Retailers will be aware the Hayne Royal Commission into Banking sector misconduct recommended the repeal of the Point of Sale (POS) exemption. This exemption has allowed retailers to introduce consumer finance without holding their own Australian Credit Licence (ACL). This situation will change if the repeal proceeds.

At this point, the Commonwealth government committed to repealing the POS exemption, possibly from 1 July 2020. Treasury, however, is currently consulting on the impacts of the repeal and whether any changes should be made to the existing Authorised Credit Representative (ACR) option.

While the position remains unclear about the timing of the POS exemption repeal and possible changes to the ACR requirements, retailers need to consider their own positions now, assess the options available to them for the introduction of consumer finance and start preparations for their preferred approach.

If the POS exemption is repealed, then retailers have three (3) options for the continued introduction of finance to financiers. Those options are:

- 1. Obtain an Australian Credit Licence (ACL) as a broker/intermediary**
- 2. Become an Authorised Credit Representative (ACR) of one or more financiers**
- 3. Become a referrer**

A short summary of each of those options follows so retailers, and their current financiers, can consider the commercial and operational implications of each and plan for the POS repeal.

2

NCCP AUSTRALIAN CREDIT LICENCE

A retailer may choose to obtain their own Australian Credit Licence (ACL) which will enable them to introduce finance to any credit provider they choose either through their own commercial relationships or through an aggregator if volumes are too low. They can also choose to introduce finance to other brokers should they wish.

If retailers seek to obtain their own ACL, they must have the resources to obtain and maintain it, both from a governance and operational perspective.

Table 1 below sets out what is required to obtain an ACL.

Table 1 – ACL application process/requirements

ACL Application Requirements	Explanation / Comments
1. Business details	<ul style="list-style-type: none"> • Ensure business details are correct on ASIC's register – directors, address etc. • Register any business names to be used
2. Business summary	<ul style="list-style-type: none"> • Mandatory part of the application process • Must set out details of the business model and how the licensing obligations will be met • Business model & responsible lending policies/procedures must be explained • Details of directors, company secretary and responsible managers (RMs) required • Details of Australian Financial Complaints Authority (AFCA) membership and professional indemnity insurances required

ACL Application Requirements	Explanation / Comments
3. Licensing obligation policies and procedures - documented	<ul style="list-style-type: none"> • Must be in place before ACL granted • Must cover: <ul style="list-style-type: none"> » Competency » Conflicts of interest » Compensation arrangements » Financial resources adequacy » Human resources adequacy » IT resources adequacy » Compliance systems – policies & procedures » Responsible lending » Dispute resolution – internal & external
4. Responsible Managers – appointment	<ul style="list-style-type: none"> • Must be appointed prior to lodging ACL application • RMs must hold relevant qualifications in the finance sector and have a minimum of 2 years' experience & be responsible for the day to day broking / intermediary functions • Challenge: ASIC's approach to accepting Business Managers and Finance/Insurance Managers as RMs is variable
5. Directors, company secretary & responsible managers – due diligence	<ul style="list-style-type: none"> • CVs required for all • Police checks covering the past 10 years, regardless of geographical location, required for all • Bankruptcy checks required for all • Verification no one is subject to disqualification or banning on any register
6. AFCA membership	<ul style="list-style-type: none"> • Must be taken out prior to lodging the application
7. Professional Indemnity Insurance	<p>Proposed insurance should be known</p> <p>Policy must be taken out prior to ACL approval and meet ASIC criteria</p>
8. Application lodged with ASIC	Online process
9. Application fee	Application payment required within 48 hours
10. ASIC assessment	<p>Currently taking 5 – 8 months</p> <p>If additional information required, must be provided quickly – generally 2 -3 days allowed</p>
11. ASIC indicative approval	<p>Directors to sign confirmation of ACL acceptance</p> <p>Insurance details required</p> <p>Any special conditions noted (e.g. key person obligations)</p>
12. Licence granted	Broking / intermediary functions commence

The ACL holder is required to undertake a preliminary credit assessment, independent of financier criteria, and make a decision the chosen product meets the customer's requirements and objective is not unsuitable prior to submitting an application to a financier.

Table 2 below sets out what is required operationally to provide broking / intermediary services.

Table 2 - Broking / intermediary operational requirements

ACL Application Requirements	Explanation / Comments
1. Documentation	Documents required include: <ul style="list-style-type: none"> • Privacy statement & consent • Credit Guide • Quote if fees are to be charged • Proposal about finance to be applied for before the application is submitted • Operational policies & procedures – documented • Preliminary Credit Assessment, should the customer ask for it
2. Responsible lending assessment	<ul style="list-style-type: none"> • Application process – capturing requirements, objectives, income and financial position • Verification of financial position methodology • Application of financial buffer • Suitability assessment – products & insurances to be financed • Preliminary credit decision – accept or reject application
3. Systems	<ul style="list-style-type: none"> • Information capture • Document management • Verification methodology • Variations to the requirements and /or objectives • Financial methodology, including buffer • Preliminary credit decision basis • Production of preliminary credit assessment on request



Table 3 sets out the ongoing governance requirements for an ACL holder.

Table 3 – Governance requirements

Governance obligations	Explanation / Comments
1. Annual compliance certificate	<ul style="list-style-type: none"> • Reporting on key compliance obligations • Must be lodged with ASIC no more than 45 days after ACL renewal
2. ASIC fees - ACL	<ul style="list-style-type: none"> • Payable annually
3. Training – credit legislation related	<ul style="list-style-type: none"> • RMs – 20 hours per annum • Broking staff – minimum of 12 hours
4. AFCA membership	<ul style="list-style-type: none"> • Must be maintained
5. Professional indemnity	<ul style="list-style-type: none"> • Must be maintained – for 12 months post cancellation of ACL and termination of broking / intermediary services
6. Compliance reviews	<ul style="list-style-type: none"> • Internal or external to ensure obligations are being maintained

Summary

In effect, the ACL holder undertakes exactly the same application and credit assessment processes as the lender. Those processes are to be based on the ACL holder's own responsible lending criteria, not that of the financiers to whom they introduce.

The licensing application costs are largely the same for all applicants, somewhere in the vicinity of \$8,000 - \$12,000, depending on who, if anyone, is engaged to assist with the ACL application and prepare the licensing obligations policies and procedures. This includes ASIC's application fee, which was \$2,055 in January 2020.

The ongoing operational costs involved will vary depending on:

- Systems used
- Staff involved in the broking /intermediary service
 - » AFCA membership costs
 - » Insurance costs
 - » Training costs
- AFCA complaints
- ASIC surveys or investigations

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AUTHORISED CREDIT REPRESENTATIVES

Both licensed financiers and brokers can appoint retailers as their Authorised Credit Representatives (ACR) to act on their behalf. Retailers can choose to be a representative of both a financier and a broker – they are not limited to being an ACR of financiers only.

In effect, the retailer becomes the financier or broker's agent and must comply with the financier/broker's policies and procedures in the same way as they do under the POS exemption. The only financial obligation on the retailer is to be member of AFCA.

If the retailer wishes to introduce finance to more than one financier or broker, then the financiers/brokers involved must agree, otherwise the retailer is limited to introducing finance to the first financier/broker to appoint them as an ACR.

For those who choose to become an ACR of a financier, the position will be similar to that under the POS Exemption. However, there will be additional costs and administrative processes to manage.

If the retailer chooses to become an ACR of a broker, then there may be a requirement to carry out a responsible lending assessment if the broker expects the retailer to do that assessment on its behalf. Broker requirements vary so retailers should be very clear about scope of the assistance a broker requires them to undertake on its behalf before agreeing to an ACR appointment.

Different obligations and operational requirements will apply to the financier/broker and their ACRs.

Under the ACR regimen, financier/broker obligations are to:

- Appoint the retailer as its ACR in writing, with authority to sub-appoint staff
- Register the retailer with ASIC
- Undertake police and ASIC checks on the retailer, including directors and company secretary
- Ensure the ACRs undertake appropriate credit related training each year

- Ensure they provide the ACR with clear policies and procedures about managing consumer finance applications and loan documentation
- Undertake reviews of ACR compliance with their policies and procedures

The retailer's ACR obligations are to:

- Only sub-authorise staff with appropriate training and experience to undertake the ACL holder's credit activities
- Undertake police and ASIC checks on all staff to be authorised, unless the financier/broker agree to do that on the ACR's behalf
- Register authorised staff with ASIC, unless the financier/broker agrees to do that on the ACR's behalf
- Provide consumer customers with their own Credit Guide, although this can be combined with the financier/broker's guide
- Comply with the financier/broker's policies and procedures
- Undertake whatever training is requested
- Seek the financier/broker's approval to being appointed as an ACR of another financier/broker
- Take out, and maintain, AFCA membership for the company – external dispute resolution
- Advise the financier/broker immediately an authorised staff member leaves
- Update ASIC's register when an authorised staff member leaves, unless the financier/broker agrees to do that on their ACR's behalf

If a retailer chooses this option, please be aware the government may make some minor changes to the current ACR obligations before the POS exemption is repealed so monitor any announcements from Treasury or your peak body.



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REFERRERS

If a retailer is to be a referrer only, then they cannot assist with any part of a finance application or provide any information about the finance options available. They are limited to either provide the customer with the financier's/broker's contact details or providing the financier/broker with the customer's contact details. They cannot provide a finance quote or discuss finance any in way.

If acting as a referrer, then the retailer must advise the customer of any referral fee the financier/broker will pay them.



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SUMMARY

All retailers should consider their preferred approach now and obtain their own legal, and possibly accounting, advice on the implications for their businesses.

Those wishing to obtain their own ACL should start that process immediately as ASIC is taking at least five (5) months to approve an ACL application, provided everything is in place at the time of the application.

There is a significant financial commitment involved for retailers who choose to obtain their own ACL and undertake broking activities. This includes the initial application process, the establishment of the operational infrastructure and the ongoing costs associated with meeting ACL obligations.

In addition, if a retailer seeks their own ACL, significant costs are incurred before ASIC's licensing decision is known. These costs include AFCA membership and Responsible Manager employment costs, as both must be done prior to lodging the application.

While Authorised Credit Representative appointment involves minimal costs and is more closely aligned with the current Point of Sale exemption processes, retailers can be restricted to one financier or broker only if other financiers/brokers are unwilling to consent to multiple appointments. This can be viewed as a competition issue. Retailers should decide if one or more ACR appointments are required so discussions can be held now with the preferred financiers/brokers, particularly if cross consents are required.

The referrer arrangement has no costs for the retailer, but this arrangement excludes the retailer from providing the customer with any information about the finance options available and from providing any assistance at all with the loan application and contract formation processes.



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