

Accordingly, you will need to impose the same requirements on your credit representatives as you do on your own employees. This requires monitoring and supervision of their activities and robust consequence management.

The next section of this Manual contains guidance on appointing, notifying and managing Credit Representatives.

Hamilton Locke has a template [Credit Representative Agreement](#) tailored for credit services providers available for separate purchase.

6.5 Temporary Staff and Locums

Temporary Staff¹⁵¹

A staff member is temporary if:

- They are used by a credit licensee or credit representative for less than 24 months (including any extension of their contract);
- They perform substantially the same duties as an employee;
- They are subject to the same or substantially the same control and direction as an employee when they are engaging in credit activities;
- They were not engaged because they possess particular skills or experience that would prevent the credit licensee exercising the control and supervision that they would normally exercise over employees engaging in credit activities;
- They are not remunerated primarily by way of commission; and
- They do not hold out to consumers to be anything other than an employee.

Temporary Staff do not need to be separate members of the EDR scheme, AFCA, do not need to be notified to ASIC and do not need to provide an individual Credit Guide.

Locums¹⁵²

A locum is a person who is engaged to replace an employee of a credit licence or credit representative who is absent from work and is reasonably expected to return to work, who performs substantially the same duties as the employee and is subject to substantially the same direction and control as the employee.

Credit licensees must treat locums as if they were employees, i.e. you are responsible for their conduct and must monitor and supervise their activities.

7. Appointment of Representatives and Credit Representatives

User Guide:

This section details the requirements for employed representatives and credit representatives including:

- Background checks;
- Appointment and authorisation (including sub-authorisation);
- Notifying them to ASIC; and

¹⁵¹ Reg 25H NCCP Regulations 2010 (Cth)

¹⁵² Reg 25I NCCP Regulations 2010 (Cth)

- Cross endorsements.

Remember that any person who provides credit services on your behalf is your representative. This includes employees.

It also includes contracted staff and other persons who are external to your business that you authorise to provide credit services – these external people are called credit representatives and a number of specific obligations apply when you appoint a credit representative.

TIP

Remember that the word “representative” can be used to refer to any employee or external credit representative that you have authorised to provide credit services on your behalf.

7.1 Pre-Conditions to Representative Appointment

Before appointing any representative, you will need to:

- Establish the person's identity;
- Be sure that the person is suitable to provide credit services. See the section below on Background Checks; and
- Ensure that the person is a member of AFCA.¹⁵³

If you are appointing a person as a credit representative, rather than an employee, then in addition to the above, you will need to make reasonable enquiries to:

- Ensure that the person is a member of the approved external dispute resolution scheme, AFCA.¹⁵⁴
- Check that the person has not already been appointed as a credit representative for another credit licensee.¹⁵⁵ You can do this by checking the Credit Representative Register on ASIC's website. It is also advisable to ask the person to sign an acknowledgement to this effect as part of the recruitment process; and
- If the person has already been appointed as a credit representative of another credit licensee, then:
 - any document lodged with ASIC must contain the credit representative's identification number; and
 - you will need to obtain the consent of the other credit licensee to your appointment.¹⁵⁶ See the section on Cross Endorsements.

7.2 Background Checks¹⁵⁷

To ensure that you do not appoint any 'bad apples', undertake the following checks before appointing representatives and credit representatives:

- Obtain a detailed resume;
- Obtain at least two business references;
- Check that they have the appropriate education and experience for their role e.g. if they will provide mortgage broking services, they must have a Certificate IV in

¹⁵³ s 64(5)(e) *NCCP Act 2009* (Cth). The authorisation is of no effect if they are not a member

¹⁵⁴ s 64(5)(c) *NCCP Act 2009* (Cth). The authorisation is of no effect if they are not a member

¹⁵⁵ Reg 9(5) *NCCP Regulations 2010* (Cth)

¹⁵⁶ s 66 *NCCP Act 2009* (Cth)

¹⁵⁷ RG 205.99 ASIC Regulatory Guide 205: Credit licensing – General conduct obligations, April 2020