

MY LOCAL BROKER

My Local Group Pty Ltd Australian Credit License Number 481374 Advertising Guidelines

MLB Compliance

MARKETING AND ADVERTISING

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Marketing and Advertising

Law and Legislation

The main sources of regulation that affect how a mortgage broker is allowed to market and advertise their services and their offerings available through their lender panel are the :

- Competition and Consumer Act 2010 (Cth) – (the CCA Act)
- Australian Securities and Investments Commission Act 2001 (Cth) – (the ASIC Act), and,
- National Consumer Credit Protection Act 2009 (Cth) – (the NCCP Act).

ASIC has also released guidance on what they expect for the financial and credit service industries on marketing and advertising in Regulatory Guide 234 - Advertising Financial Products and Services (Including Credit); Good Practice Guidance.

The Regulatory Guide covers actions by:

- Promoters of financial products;
- Financial advice services;
- Credit products and credit services; and
- Publishers of promotions about these products and services.

RG 234 provides examples on what should be included (or not included) in a number of different scenarios.

If your advertisements do not meet ASIC's good practice guidance, ASIC can take the following actions (which may form part of their specific 'enforceable undertaking':

- Request information e.g. issue a substantiation notice
- Issue a stop order or seek an injunction to stop continued advertising or an associated disclosure document
- Issue infringement notices
- Issue a public warning notice
- Cancel a promoters AFS licence or Credit Licence, or vary its conditions.

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Industry Guidance

The MFAA advertising guidelines states that members must ensure that their advertising is not false, misleading, deceptive, dishonest or likely to mislead or deceive.

The MFAA has listed some key obligations with regards to marketing and advertising. These points request members to ensure that advertisements:

- are not misleading or deceptive when read as a whole;
- show the relevant Australian Credit Licence number and ACN in printed advertisements (best practice is also to display ACLs and ACNs on web-sites);
- which state an interest rate or repayment in relation to a loan regulated by the National Credit Code contain a comparison rate displayed equally prominently and also show the prescribed warning. (For more details of this requirement see the MFAA's 'Comparison Rate' module);
- do not claim that the advertiser is 'independent', 'impartial', or 'unbiased' unless the advertiser receives no commissions or other benefits from lenders. Possible alternative descriptors might be 'professional' or 'MFAA-accredited'

The MFAA has issued a guidance table that is based on RG 234 as well as feedback from members. The table is directly populated from the MFAA Advertising guidelines and is displayed in the [appendix of this document](#).

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Media used for advertising

The Corporations Act indicates that a variety of media is used for advertising purposes. It is the intention that each type of media reflect the good practice guidance and has the same expectations on how products and services are promoted.

CORPORATIONS ACT 2001 - SECT 1018A

Meaning of **media**

(6) For the purposes of this section, the **media** consists of:

(a) newspapers and magazines; and

(b) radio and television broadcasting services; and

(c) electronic services (including services provided through the internet) that:

(i) are operated on a commercial basis; and

(ii) are similar to newspapers, magazines or radio or television broadcasts.

RG 234 offers specific information on some different types of media

Overview of media-specific guidance (from REGULATORY GUIDE 234)

Medium	Summary of guidance
Mass media	Promoters should consider the actual audience that is likely to see the advertisement and whether the advertisement is accurate, balanced and helpful for that audience. Advertising should be clearly distinguished from normal program or editorial content.
Audio advertisements	Warnings, disclaimers and qualifications should be read at a speed that is comprehensible to an average listener.
Film and video advertisements	Information about risks and any warnings should be easily understood by an average viewer on the first viewing of an advertisement and not undermined by distracting sounds or images.
Internet	Promoters should consider the overall impression created by an internet banner advertisement when viewed by itself for the first time. Promoters should consider the appropriateness of using new media channels for advertising if content limitations mean there is insufficient space to provide balanced information. Consumers should be able to keep a record of an advertisement, including any disclaimers or warnings.
Outdoor advertising	Promoters should take into account the conditions under which an advertisement will be viewed (e.g. from a distance or from a moving vehicle) when considering whether the overall impression of the advertisement is misleading or deceptive.

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Advertising and Mortgage Brokers

Essentially, any activity that is done for the purpose of promotion of yourself, your available products or your services may be regarded as advertising.

What to consider in advertising

In assessing the overall impression, the following factors are relevant:

- (a) the subject of the advertisement;
- (b) the content of the advertisement;
- (c) the format of the advertisement;
- (d) the audience that will view the advertisement;
- (e) the media used to communicate the information; and
- (f) the likely effect of the advertisement.

The following table summarises ASIC expectations with advertising

Issue	Summary of guidance
Returns, features, benefits and risks	Advertisements for financial products and credit products should give a balanced message about the returns, features, benefits and risks associated with the product. Benefits should not be given undue prominence compared with risks.
Warnings, disclaimers, qualifications and fine print	Warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims. Warnings, disclaimers and qualifications should have sufficient prominence to effectively convey key information to a reasonable member of the audience on first viewing the advertisement. Consumers should not need to go to another website (or other page of the website) or document to correct a misleading impression.
Fees and costs	Where a fee or cost is referred to in an advertisement, it should give a realistic impression of the overall level of fees and costs a consumer is likely to pay, including any indirect fees or costs.
Comparisons	Comparisons should only be made between products that have sufficiently similar features or, where an advertisement compares different products, the differences should be made clear in the advertisement. Comparisons should only be made about returns if the information used is current, complete and accurate. If an advertisement discloses a rating, the rating used should be properly explained either in the advertisement itself or by including details of where an investor can obtain further information about the meaning of the rating and the rating scale.
Past performance and forecasts	Past performance information should be accompanied by a warning that past performance is not indicative of future performance. Forecasts about the future performance of a financial product should be based on reasonable assumptions and should also state that the forecasts are not guaranteed to occur.

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Issue	Summary of guidance
Use of certain terms and phrases	Terms and phrases should not be used in a particular way by industry where these are not consistent with the ordinary meaning commonly recognised by consumers (e.g. 'free', 'secure' and 'guaranteed'). Industry concepts or jargon should be avoided unless the promoter is confident that these terms will be understood by the audience.
Target audience	Advertisements should be capable of being clearly understood by the audience that might reasonably be expected to see the advertisements. Advertisements should not state or imply that a product is suitable for particular types of consumers unless the promoter has assessed that the product is suitable for that class. Advertisements for complex products that are only appropriate for a limited group of people should not be targeted at a wider audience.
Consistency with disclosure documents	Where an advertisement draws attention to specific product features, the advertisement should be consistent with information contained in any disclosure document (such as a PDS or prospectus) or contract.
Photographs, diagrams, images and examples	Photographs and images should not contradict, detract from or reduce the prominence of any warnings, disclaimers or qualifications. Graphical presentations should not be ambiguous or overly complicated.
Nature and scope of financial advice and credit assistance	Advertisements for a financial advice service should not create unrealistic expectations about what the service can achieve. Advertisements about credit assistance should be clear about the scope of the service that will be provided to the customer.

Specific issues for Mortgage Brokers

- The terms independent, impartial and unbiased should not be used
- Avoid claims about best rate or cheapest rate
- If mentioning rate or repayment, be aware of the requirement for comparison rate consequences
- Ensure content is up to date
- Ensure all media use for advertising is treated with the same cautions
- Avoid claim about 'your' products (they are products of the lenders)
- Avoid claims about yields and investment returns

ACL disclosure and CR disclosure

Printed advertising relating to provision of credit under the code must contain the ACL details. CR details are able to be included, but are not mandatory.

Testing your advertisement

When testing your advertisement, ASIC encourages you to test that your advertisement: Is accurate and balanced; and that it does not create a misleading or deceptive impression in the mind of an ordinary and reasonable member of the advertisement's audience.

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Advertising triggers when constructing a campaign (via any media)

Content of the advertisement	This refers to words either spoken or written. Any advertisement must meet certain conditions with regards to appropriate content (balanced claims around features, benefits and risks, claims need to be supported, message cannot be misleading, message must be easy to understand by an unsophisticated audience)
ACL disclosure	Advertising a credit activity or credit service triggers the ACL requirement
Repayment and Annual percentage Rate	Mentioning a repayment amount In any advertising triggers the requirement for annual percentage rate disclosure. Note: the prominence of the repayment will need to reflect the prominence of the subsequent comparison rate (size, colour, font)
Annual Rate & Comparison Rate disclosure	Advertising an annual percentage rate will trigger the requirement for a comparison rate. Note: the prominence of the annual rate will need to reflect the prominence of the subsequent comparison rate (size, colour, font)
Fees and charges	Advertising an annual percentage rate will trigger the requirement to include information on fees / charges.
Comparison Rate calculation	The requirement for a Comparison Rate will trigger the need for an appropriate calculation based on specific variables
Comparison Rate prominence	Disclosure of the comparison rate triggers the requirement to ensure that it is displayed in the same manner as the Annual interest rate (and the repayment amount)
Comparison rate warning / statement	Disclosure of a Comparison rate triggers the requirement to disclose a Comparison rate warning (same prominence as annual rate)
Product Name	Disclosure of the Comparison Rate also triggers the requirement for listing the name of the product, loan term and ideally the loan amount
Secured or Unsecured lending	Disclosure of specific loan amounts will trigger the requirement to indicate whether a loan is secured or unsecured
Electronic advertising	Any advertising disclosure via an electronic medium needs to ensure it has similar consistencies with printed advertising regarding the use of false and misleading statements and with regards to the disclosure of the comparison rate.
Legibility	Any disclosure of ACN triggers a requirement for it to be legible

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Advertising mistakes to avoid

Common mistakes with Facebook and social media advertising

Headline claims and conditions / disclaimers / qualifications

ASIC recognise that an advertisement will not always include in its headline claim all information about the product that is relevant to the consumer's decision. However, the more that a qualification is required to balance the information contained in the headline claim, the more prominently placed the qualification should be. The headline claim must not itself be misleading (RG 234.47)

Example: Benefits not available to all customers

If a home loan provider promotes an attractive interest rate discount that is only available to a consumer who takes out a large loan, any restrictions on availability of the interest rate discount should be prominently displayed so consumers seeking smaller loans will understand that they cannot access the discount. Sometimes interest rate discounts are tiered (i.e. different interest rate discounts apply to different amounts borrowed and the discount will usually increase with larger loans), with the home loan provider promoting the most attractive discount.

In such cases, ASIC does not consider the home loan provider can rely on a statement such as 'up to X%' to describe the discount if in fact it is only available in limited circumstances and this is not prominently disclosed. The use of qualifying phrases such as 'up to' or 'from' should generally be approached with caution, because the overall impression created by an advertisement may still be that the maximum benefit is more widely or readily available than is in fact the case.

RG 234.48 If warnings, disclaimers and qualifications are required, they should not be inconsistent with other content in the advertisement, including any headline claims. They should also have sufficient prominence to effectively convey key information to a reasonable member of the audience on first viewing of the advertisement. Information is less likely to be noticed and understood if it is in fine print, contained within a dense block of text, only shown on television or a computer screen for a brief period, or placed where there is distracting content shown simultaneously.

RG 234.49 Statements referring the consumer to another website or webpage, or a document such as a PDS, prospectus or contract, will not be sufficient to correct a misleading or deceptive headline claim: see Australian Competition and Consumer Commission v TPG Internet Pty Ltd [2011] FCA 1254

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Case Study – Mortgage Point

The Australian Securities and Investments Commission (ASIC) has acted to protect consumers in the financial services industry, and ensure that claims by mortgage brokers in advertising material are factually correct, by accepting an enforceable undertaking from Mortgage Point Pty Ltd (Mortgage Point).

ASIC was concerned that since October 2001, Mortgage Point, a Melbourne-based mortgage originator, made potentially misleading and deceptive statements in its promotional brochures.

‘This case highlights the need for anyone operating in the financial services industry, including mortgage brokers, to ensure that all claims in advertising material are accurate,’ ASIC Executive Director of Consumer Protection, Mr Greg Tanzer said.

‘ASIC will continue to work with industry participants, as well as the Mortgage Industry Association of Australia to improve standards in this area.

‘This case also shows that claims of being ‘unbiased’ or providing ‘independent advice’ or ‘unbiased advice’ must be strictly correct or adequately qualified, if brokers are to avoid liability for misleading and deceptive conduct,’ added Mr Tanzer.

The advertisements

Since October 2001, Mortgage Point published various brochures in which it claimed to offer ‘independent’, ‘impartial’ and ‘unbiased’ advice about mortgages.

The brochures stated that Mortgage Point:

- offers an impartial and unbiased loan advisory service;
- gives free unbiased advice;
- acts as an independent mortgage broker; and
- provides independent advice.

ASIC formed the view that the claims were misleading and deceptive because Mortgage Point and its agents:

- only receive commission from, and provide advice in relation to lenders on its panel; and
- do not provide advice in relation to lenders who are not on its panel.

The enforceable undertaking

As part of the enforceable undertaking, which is provided under the consumer protection provisions of the *ASIC Act*, Mortgage Point has given an undertaking that:



- it will not make any of the above claims or use the words ‘unbiased’, ‘impartial’ or ‘independent’ in any future advertising or promotional material;
- it will provide compensation to any customer who has suffered loss as a result of relying on the claims Mortgage Point is ‘unbiased’, ‘impartial’ or ‘independent’;
- it will implement a compliance program; and
- it will make a financial contribution towards consumer education or similar programs.

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Appendix

Appendix 1 - Advertising example

 **AWESOME FINANCE** 

We can organise finance for all your personal and commercial needs

Product name

Repayments listed (same prominence) → Get the “Awesome Home Loan” and start owning your own home from **\$365 per week** (\$300,000 loan, 30 year term, weekly payments)

Comparison rate listed (same prominence) → Repayments are based on the “Awesome Home Loan” at **3.0% p/a.** (*Comparison Rate **3.55% p/a**) Fees and charges are payable.

Comparison rate calculations → *Comparison rate is calculated based on a loan amount of \$150,000 over 25 years with monthly payments. **WARNING: This comparison rate is true only for the example given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate.**

NCC regulated credit activities mentioned ‘personal’ or ‘residential’

Interest rate listed (same prominence as repayment or comparison rate)

Disclosure of Fees and Charges

Comparison Rate Warning

Mortgage consultant: **Amy Aardvaark** Email: amy@awesome.com.au

7 Awesome Ave, Topville. NT. 0988 Ph: 08 9999 0000; Mob: 0444 777 888

To check out our extensive services and how we’ve helped others find fantastic finance options, go to our website: www.awesome.com

ACN disclosure (if internal) → Australian Credit Licence number 345678 → ACN: 077 909 101

Licensee number (CR number can also be mentioned, but must have ACL)

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Appendix 2 - MFAA Advertising guidance Summary Table

Issue	Summary
Audience	<p>The target audience of an advertising campaign may be very different to the actual audience that receives the message. What matters is the understanding of the audience that actually receives the message.</p> <p>Members of that audience may be unsophisticated or have limited knowledge of the mortgage industry and its products and services. You must ensure that these people are not misled.</p>
Words to be careful of	<p><u>The 'best' deal</u> It is impossible to demonstrate, at any point of time, in the large and competitive mortgage market that a deal is the 'best' deal. Advertising should avoid such terminology and similar expressions like 'cheapest' or 'lowest rates'. Possible alternatives could be - 'We help you find a loan suited to your needs from our panel of lenders'.</p> <p><u>'Guaranteed'</u> You should not use the word 'guaranteed' unless you are making a contractually binding promise, and, if so, you must make the precise terms of that promise clear.</p> <p><u>'Free'</u> Is the service you are providing really free or are there other costs the consumer might incur or benefits they might be giving up? You may want to consider different terminology such as 'Our service to you is free but other fees may apply'.</p>
Use of Charts, graphs, images, online calculators	<p>Charts, graphs, images or on-line calculators, either by themselves or in combination with each other or with words, may create a misleading impression. You need to ensure that the likely audience will not obtain a misleading impression from the material as a whole. If a calculator or chart is based on assumptions, those assumptions should be stated, particularly if they differ from what the audience might assume.</p>
Subject to conditions	<p>Use of 'subject to conditions' and similar phrases is unlikely to protect you from misleading your audience if the terms and conditions of a loan being recommended are less favourable to the consumer than the advertising suggests. If an understanding of the terms and</p>

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	<p>conditions is likely to change the customer's perception of the product or service you are presenting, you probably need to reconsider your advertising strategy.</p> <p>Where an attractive offer is subject to conditions that are likely to be unattractive from the consumer's perspective, those conditions should be presented as prominently as the offer itself.</p>
Comparative Advertising	<p>If you use comparative advertising, always ensure the claims being made about competitors' products and services, as well as your own, are 100% accurate and that relevant information is not omitted. Extreme caution must be exercised as competitors are most likely to complain!</p> <p>If you are making comparisons, make sure you are comparing 'apples with apples'.</p> <p>For instance, it is misleading to say that a line of credit or offset account product can be paid off more quickly than a standard product if this result can only be achieved by making larger or more frequent payments. If you suggest otherwise, you are not comparing 'apples with apples', and may find you have breached the misleading and deceptive conduct provisions.</p>
Returns, features, benefits & risks	<p>Advertisements should:</p> <ul style="list-style-type: none"> • give balanced information to enable consumers to understand the nature of the product or service being advertised; • give balanced message about returns, features, benefits and risks associated with the product; • not overstate potential benefits; and • not create unrealistic expectations
Warnings, disclaimers, qualifications and fine print	<p>The contents of advertisements should not be inconsistent with warning, disclaimers, qualifications and any headline claims. Consumers should not need to go to another website or webpage to correct a misleading or deceptive headline claim.</p> <p>Warnings, disclaimers or qualifications are included in an advertisement should be in a form similar to the main body of the advertisement so that the consumer can understand the warning, disclaimer or qualification.</p>
Fees and Costs	<p>A realistic impression of overall level of fees and costs, including any direct fees or costs a consumer is likely to pay should be noted within the advertisement.</p>

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Issue	Summary
Endorsements and testimonials	Advertising should not falsely represent that a product or product issuer has an endorsement or approval that it does not have.
Responsible Lending	<p>Advertisements should not state or imply that a credit product is suitable for a particular class of consumers unless the credit provider has actually assessed the suitability of the particular consumers targeted by the advertisement.</p> <p>Where a product may be suitable for an identified class of consumers, the advertisement should make clear that a consumer within that class may, qualify or find the product suitable.</p> <p>Terms such as 'conditions apply' or 'find out if you qualify' may not always be sufficient to warn consumers that the advertised product may not be suitable for them.</p>
Credit assistance	Advertisements should be clear about the scope of credit assistance that will be provided to the consumer.
Internet advertising	Care should be taken about using a facility for a consumer to access additional information where an advertisement is on a third party site. Where a consumer views an advertisement on a third party site, the consumer will have less motivation to actually access additional information on the promoter's own website.