

Accountant's letters, declarations and capacity to repay certificates

A toolkit for Members

May 2023

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Disclaimer

This guide has been prepared to assist members of Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants (“the Professional Bodies”) to better understand and assess the risks involved in responding to their clients’ requests for information to be provided to personal and business lenders. It is intended as general guidance only. The Professional Bodies do not accept any liability for any losses or liabilities a member may incur as a result of using this guide (including any of the resources referred to in it). Members should exercise their professional judgement and should seek their own independent legal advice if they have any concerns.

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1.0 What is an Accountant’s Letter?

An ‘Accountant’s Letter’ is a document prepared by an accountant at the request of their client for a bank, lender, or another party for the purposes of approving a loan, lease or rental agreement for a client. For the purposes of this toolkit, we have used the term ‘lender’ when referring to these different groups.

The actual format of the information requested may vary widely but, in essence, the lender’s request is for the accountant to provide or confirm information about a client’s historical, current or future financial affairs. Accountant’s letters are also commonly referred to as “Accountant’s Declarations” or “Capacity to Repay” Certificates.

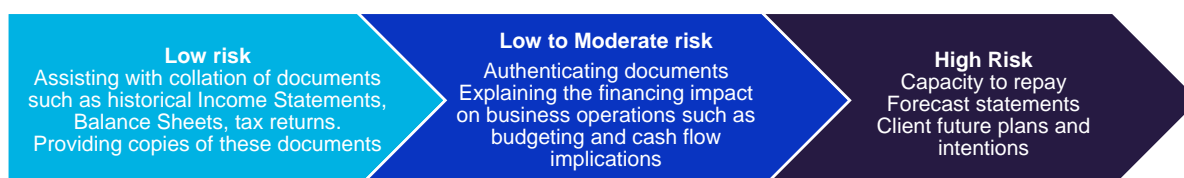
Importantly, you should never provide any client information to a third party without your client’s express written consent.

The Professional Bodies joint position on Accountant’s Letters is to decline to provide them because the credit assessment is the responsibility of the lender, and the lender has specific obligations under their credit licence when making such assessments. This toolkit includes a template that members may use to decline provision.

However, we also understand that our members may choose to support their clients when they are seeking credit - this toolkit provides information on how members may appropriately support their clients through this process without inadvertently breaching professional standards or indemnity requirements.

2.0 What are the risks associated with providing Accountant’s Letters?

Depending on the terms of the letter, providing an Accountant’s Letter may shift some or all risk of a credit assessment from the lender to the accountant. This means there are significant risks, including potential liability, attached to providing these documents.



Some engagements related to financing carry a lower level of risk that you **may** consider acceptable for your practice. Examples include engagements to assist your client prepare information for their lender, such as financial reports, current business plans or budgets. You should ensure that your engagement terms are clear, so that your client understands that no assurance is being provided on the documents, nor can any reliance be taken by the client or third parties on the information contained in the documents provided. In addition, ensure that appropriate disclaimers are included on any correspondence with your clients’ lenders.

Your client may request you to provide copies of documents to their lender. It is important that you ensure documents provided are current, accurate and bona fide. If the prepared documents are based on information provided by the client that you have not verified or audited, then you must disclose the limitations and assumptions on which the information is being provided.

This toolkit includes:

1. A letter to send with documents you are providing to your client’s lender;
2. An Accountant’s Letter Template; and

3. A letter advising your client of the documents provided to the lender.

Please note that, unless you hold or are appropriately authorised under an Australian credit licence (**ACL**), the Accountant's Letter Template can only be used to support a credit contract application that is not regulated under the *National Consumer Credit Protection Act 2009* (**National Credit Act**). Engagements to authenticate documents and explain the impact of a facility to your client carry a higher risk, discussed further below under Personal Consumer Credit.

Engagements which request a form of confirmation, assessment of capacity to repay, statements as to future income or expenses, or a request to explain information to your client in connection with the credit contract carry significant risk, including potential liability should your client default on the contract in the future. You are strongly recommended to decline these types of engagements. Please refer to Personal Consumer Credit and using Templates Provided by the Credit Provider below for further guidance.

2.1 Personal Consumer Credit

The National Credit Act regulates products including home loans, personal loans, credit cards, client leases, overdrafts and line of credit accounts, among other products and services provided to consumers¹. Importantly it also captures credit to purchase, renovate, improve or refinance a residential investment property. The National Credit Act requires people and organisations who provide credit activities to consumers to be appropriately licensed under an ACL. Credit activities include:

- providing credit under a credit contract;
- being a lessor under a consumer lease;
- benefiting from mortgages or guarantees relating to a credit contract;
- exercising the rights or performing the obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee;
- suggesting a consumer apply for a credit contract or consumer lease, or an increase to a credit limit;
- assisting a consumer to apply for a credit contract or consumer lease, or an increase to a credit limit;
- acting as an intermediary to secure provision of a credit contract or consumer lease for a consumer; and
- providing other prescribed credit activities.²

Advising clients about the merits of credit products and the provision of an opinion or statement about a client's ability to meet financial obligations to a lender are regulated activities (credit assistance). Accountants must not give such advice or provide an Accountant's Letter that contains any such statement or opinion for credit applications regulated by the National Credit Act, unless they are licensed.

The provision of purely factual information to a lender is not caught by the definition of credit assistance.

Importantly, it is common for personal lending to be used to support business purposes, especially for small businesses. It is therefore important to understand that it may not always be clear if the National Credit Act will apply.

¹ A "consumer" is defined in the National Credit Code as a Natural person or strata corporation.

² ASIC Regulatory Guide 203 - Do I need a Credit Licence?

This activity is also unlikely to be covered by your Professional Indemnity Insurance (PII), unless you are appropriately authorised under an ACL. We strongly recommend you consult with your insurer before considering undertaking such engagements.

If you are not sure about the requirements of the National Credit Act, please refer to the Australian Securities and Investments Commissions *Regulatory Guide 203 Do I need a credit licence?*

2.2 Templates Provided by the Credit Provider

A common clause in accountants' professional indemnity insurance policies operates to exclude cover if the accountant has agreed to an action or undertaking as part of a contract, that is, the accountant has taken on a contractual liability.

In the case of an Accountant's Letter this might be the accountant expressly or impliedly guaranteeing a certain outcome.

For this reason, you should exercise a high degree of caution when responding to these requests. Any specific request or provided template will have been designed to meet the lender's needs and risk management approach - not necessarily yours.

Examples we have seen could result in the accountant inadvertently adopting liability and risk associated with the related financing, as well as potential obligations and penalties associated with the National Credit Act and other relevant laws and regulations, including but not limited to, professional standards requirements.

We strongly recommend you only use the Accountant's Letter Template provided in this toolkit if you consider it appropriate to undertake the engagement.

3.0 Now I understand the risk, how do I decide whether to provide an Accountant's Letter?

The following questions have been developed to help you assess whether it is appropriate for you to agree to undertake this type of client engagement. This list is not exhaustive, so please remember to consider your firm's policies, procedures and risk management frameworks when making your assessment.

- Do you have the skills and competence necessary to complete this type of engagement, especially if it may be considered an assurance engagement?
- Is there sufficient time to complete the requested engagement properly?
- Is the credit regulated by the National Credit Act and might your engagement be considered provision of credit assistance? If yes to both, then you cannot accept the engagement unless you are appropriately authorised under an ACL.
- Is the service included in your PII policy? If not, then you will not have the benefit of being covered by the Professional Standards Scheme. It is also likely you will be in breach of your respective professional bodies' PII obligations.
- If the Accountant's Letter is to provide assurance, does it comply with auditing standards, including APES 210 Conformity with Auditing and Assurance Standards? Issuing a letter that does not comply would be a breach of this and other relevant auditing and professional standards.
- Is the request from the lender appropriate? Requests to estimate or confirm future earnings, expenses, solvency or ability to service a loan are near impossible to undertake with any certainty.

If after considering the above, you determine it is appropriate to undertake the engagement, consider the risk management tips provided above. You may also like to complete the working paper checklist (Attachment 4) included in this toolkit.

4.0 How can I tell my client?

It is important you are open and honest with your client. This toolkit will help you to describe the risk and/or regulatory reasons why you may need to decline or vary the terms of the engagement they are seeking.

Included in this toolkit is a template letter you can provide to your client if you decide to decline the engagement (please refer to 5. Accountant’s Letters, Templates and Resources) which also includes an information sheet you can provide to your client.

There is also a letter from the Chief Executive Officers of Chartered Accountants ANZ, CPA Australia and the Institute of Public Accountants that can be provided to the lender (please refer to section 5. Accountant’s Letters, Templates and Resources).

5.0 Accountant’s Letters Templates and Resources

Chartered Accountants ANZ, CPA Australia and the Institute of Public Accountants have jointly developed the following templates and resources to support professional accountants consistently respond to a request for an Accountant’s Letter.

Resources in the Accountant’s Letter Toolkit include the following attachments:

1. Letter to attach when sending client’s documents
2. Accountant’s Letter Template
3. Letter to client advising documents provided to lender
4. Working paper checklist
5. Letter declining client’s request, including an information sheet
6. Open letter to Lenders

1. Letter to attach when sending client’s documents

<date>

<bank name>

<bank contact person>

<bank address>

<bank address>

<bank email>

Dear <bank contact person>,

Re: Document request for <client name>

Thank you for your letter dated <date>.

[We/I] have enclosed the documents requested from <client name> file to the extent that these documents are in [our/my] possession (“**Documents**”).

[We/I] have not undertaken an audit of these Documents and do not make any representations (express or implied) as to the completeness or accuracy of these Documents or the information contained in them.

[We/I] do not accept a duty of care to you or any other person who may seek to rely on the Documents.

[We/I] provide this letter solely in the course of acting for our client in response to a request by you for the purposes of a <insert loan, etc> application (“**proposed transaction**”). This letter should not be relied upon for any other purpose.

We make no comment on the client's ability to perform its obligations, whether financial or otherwise, under or in relation to the proposed transaction.

In providing this letter:

- we make no representations or warranties as to the future income of the client;
- we have not considered the details of the proposed transaction, including the terms;
- we do not provide any assurance or opinion on the proposed transaction; and
- we accept no responsibility for any errors in the Documents that derive from information provided by the client, nor the effect of such errors on the proposed transaction.

This letter is intended solely for your use in relation to the proposed transaction and may not be used for any other purpose. We disclaim and do not accept any responsibility or liability to you or any other person for any reliance on this letter for any purpose.

<Optional: if documents are provided to a broker>

In the event that you provide the enclosed Documents to any third party, including lenders, you undertake to:

- Provide the third party with a copy of this letter; and
- Obtain agreement from the third party that it understands that *we / I* do not owe it any legal duty and *are / am* not making any representation to it.

Yours sincerely,

<name of accountant>

<name of accounting practice>

<phone number>

<email address>

2. Accountant’s letter template

This letter is prepared at the request of and is solely for the use of **[insert name of Lender]** ('You').

Client’s Name	[Add]
Client’s Business Address	[Add]
Trading Name	[Add]
ABN	[Add]

Period for which we have compiled the Client’s accounts	FROM	DD MM YYYY	TO	DD MM YYYY
Years for which the Client’s tax returns have been lodged	FROM	DD MM YYYY	TO	DD MM YYYY

Are the Client’s accounts audited?	No <input type="checkbox"/>	Yes <input type="checkbox"/>	If yes, by whom?	[Add]
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Principal source(s) of Client’s income for most recent year for which accounts compiled	Add
	Add

Gross taxable Client income after adding back non cash deductions (last 3 years, 5 if we compiled accounts)

\$	Year	\$	Year
\$	Year	\$	Year
\$	Year		

We have compiled the accounts based on information provided by the Client in accordance with APES 315 Compilation of Financial Information. We make no comment on the Client’s ability to perform any of its obligations, whether financial or otherwise. We have prepared this letter in good faith, but we accept no liability in connection with this letter, to You or to any other person.

I am a member of

- CPA Australia
 Chartered Accountants ANZ
 Institute of Public Accountants
 Other, please specify [Add]

[Insert signature]	Date	DD MM YYYY
Print Name	[Add]	Name of firm
Address	[Add]	
Email	[Add]	Phone number
		[Add]

3. Letter to client advising documents provided to lender

<date>

<client name>

<client contact person>

<client address>

<client address>

<client email>

Dear <client contact person>,

You have requested I/we provide information/issue a certificate to <insert name of financing institution> (“the lender”).

I/We have provided the lender with the information they have requested, to the extent that I/we are able to.

I/We are however unable to provide a declaration or certificate as to your ability to perform any of your obligations to the lender.

I/We regret that I/we are unable to assist you with this specific request but look forward to continuing to assist you with other matters relating to <you / your business> in the future.

A copy of our letter to the lender is enclosed for your records.

Yours sincerely,

<name of accountant>

<name of accounting practice>

<phone number>

<email address>

4. Working paper file checklist – Accountant’s letters

Receipt of Request for an Accountant’s Letter	Yes	No	Comments/Notes
1. Consult with your insurer to determine any potential exposures or liability.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
2. Include a copy of any correspondence and file notes of any discussions with your insurer on the Client’s file.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
3. Update your Risk Management Framework to document any changes to your risk in accordance with APES 325 Risk Management for Firms.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
4. Determine whether the credit contract is regulated by the National Credit Act. If yes, then ensure you hold an Australian Credit Licence (ACL) ³	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
5. Determine whether the Accountant’s Letter is providing assurance. If yes, then: <ul style="list-style-type: none"> Do you have the relevant experience and expertise to comply with these standards? Does your letter comply with Auditing and Assurance Standards? Does your letter comply with APES 210 Conformity with Auditing and Assurance Standards? 	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
6. Determine whether the request is to estimate or provide future earnings, expenses, solvency or the ongoing ability to service a loan. If yes, then: <ul style="list-style-type: none"> Decline to accept the engagement. Vary or reduce the scope of the engagement to historical information. Determine whether you intend to provide an ‘Accountant’s Letter’ for your client. 	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
Discussion with and Instructions from Client	Yes	No	Comments/Notes
1. Discuss the request for an ‘Accountant’s Letter’ with your client. Ensure that you explain what information you can and cannot provide to their lender based on your insurance coverage.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
2. Advise the client whether you intend to provide them with an ‘Accountant’s Letter’ or wish to decline the engagement.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
3. When agreeing to provide an ‘Accountant’s Letter’, review your engagement letter with the Client and be sure to adjust if necessary to reflect the change in scope of the engagement.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
4. Discuss with the client any additional fees that you may wish to charge for the provision of an ‘Accountant’s Letter’.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
5. Obtain and document your client’s consent to provide their confidential information to a third party.	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
6. Provide the Client with an Amended Engagement Letter and Fee advice ⁴ .	<input type="checkbox"/>	<input type="checkbox"/>	[Add]

3 You must hold an ACL to provide any information for a contract regulated by the National Credit Act. You cannot accept the engagement if you do not hold this licence.

4 While not required by APES 305 – Terms of Engagement, it is best practice to have your client sign amended engagement documentation.

Preparation of the ‘Accountant’s Letter’	Yes	No	Comments/Notes
1. Is the information you are providing in the letter limited to historical statement/s of fact?	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
2. Are you satisfied that source documents/information/evidence exists and is accurate in order to support historical facts included in your Accountant’s Letter’?	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
3. Have you confirmed that you are not executing an engagement under the Audit and Assurance Standards?	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
4. Have you included appropriate disclaimers and limitations on the information you are providing in accordance with your policies, procedures or advice from Insurers/Lawyers?	<input type="checkbox"/>	<input type="checkbox"/>	[Add]
Documentation	Yes	No	Comments/Notes
1. Ensure you retain a copy of all relevant documents on file including but not limited to: <ul style="list-style-type: none"> • Request from lender/client. • Correspondence/advice/file notes from discussions with Insurers. • File note detailing discussions with your client including your explanation of what you can and cannot provide. • An amended engagement letter and fee advice document. • Consent from client to provide confidential information to a third party. • Update your quality control and risk management manuals to reflect the firm’s policies for managing requests for ‘Accountant’s Letters’. 	<input type="checkbox"/>	<input type="checkbox"/>	[Add]

5. Letter declining client’s request

<date>

<client name>

<client contact person>

<client address>

<client address>

<client email>

Dear <client contact person>,

You have requested I/we provide information or issue a certificate to <insert name of financing institution> (“the lender”). I/We can assist you collect, collate or prepare information that you provide to the lender but are unable to provide information or certificates myself/ourselves.

I/We are unable to do this as I/we have assessed it as an unreasonable risk to our practice and it is contrary to my/our professional association’s regulations.

I/We regret that I/we are unable to assist you with this specific request but look forward to continuing to assist you/your business with other matters relating to <you / your business> in the future. Please find attached an information sheet that may assist you understand the reasons for my/our decision.

Yours sincerely,

<name of accountant>

<name of accounting practice>

<phone number>

<email address>

Information sheet for clients – Accountant's letters

Do you need a letter from your accountant for your loan?

Sometimes when seeking finance, your lender may request that you seek a letter from your accountant to help support your application. This may be because you are self-employed, may have incomplete financial records or your chosen lender has adopted this requirement as part of their standard lending process for some types of clients.

While your accountant can provide information to support your credit application, it is important to understand what information they can provide and in what circumstances.

What type of loan are you applying for?

If you are applying for a home loan, personal loan, personal lease or even credit purchase to renovate or refinance a residential investment property, your accountant will not be able to provide you with an accountant's letter, unless they hold an Australian Credit Licence.

This is because all consumer credit is regulated by the Australian Investments and Securities Commission and issuing an accountant's letter in these circumstances may be considered a licensed activity.

However, your accountant can prepare your financial statements to support your application.

What information can my accountant provide in an accountant's letter?

To support your credit application, your accountant can provide financial information that they have helped prepare or have direct access to. This may include:

- Your gross taxable income
- Principal sources of income
- Years your tax returns have been lodged, and
- Confirmation if your accounts have been audited.

What information can't my accountant provide in an accountant's letter?

Your accountant cannot provide information that they cannot factually verify. They also, cannot provide a service for which they do not have professional indemnity insurance. Both of these situations would be a breach of their professional obligations.

Examples may include, but are not limited to:

- Estimate or validate your future income or expenses
- If your business is solvent and will remain solvent
- Your ability to service a loan.

6. Open letter to Lenders

May 2023

To whom it may concern

Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA) represent nearly 240,000 professional accountants in Australia.

Our members have collectively made us aware that as part of your lending assessment, it is common for you to request the accountant of your potential customer to provide or sign an accountant’s letter, declaration, or certificate.

It is our position that the determination of capacity to repay must be made by the lender. The lender cannot ask applicants to engage third parties to determine their capacity to repay as part of the loan application.

Importantly, we note that the Independent Review of the Banking Code of Practice 2021 (November 2021) recommended that:

The Code should clarify that a bank’s approval of a small business loan will not be dependent on a third party (such as the small business’s accountant) certifying the capacity of the small business to repay the loan⁵.

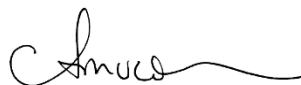
Further, where the finance is for consumer credit, the signing of such letters could be considered providing credit assistance and may be a breach the National Consumer Credit Protection Act 2009. It is also unlikely that these activities would be covered by the accountant’s professional indemnity insurance cover.

Our members can assist in the lending process by providing factually verified information, with the consent of their clients, such as prepared business financial statements, Business Activity Statements and completed Income Tax Assessments.

We have now released joint guidance, resources and a template accountant’s letter that can be used in specific circumstances only. We advise our members to only use this template when appropriate and not any document provided by lenders or other third parties.

Importantly, professional accountants cannot provide any assessment, assurance or guarantees that a client will have the ability to make the repayments should their loan be approved.

Yours sincerely



Ainslie van Onselen

Chief Executive Officer
Chartered Accountants Australia and
New Zealand



Andrew Hunter

Chief Executive Officer
CPA Australia



Andrew Conway

Chief Executive Officer
Institute of Public Accountants

⁵ <https://bankingcodereview.com.au/wp-content/uploads/2021/12/Final-Report-Banking-Code-of-Practice-Review-2021.pdf>
Recommendation 68 p.119