

## Consumer Credit Administration Amendment (Finance Brokers) Bill 2002

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

(a) to amend the *Consumer Credit Administration Act 1995* to make provision for the regulation of finance broking, including the regulation of contracts to act as a finance broker, the charging of commission, the action that may be taken by consumers to redress actions taken by finance brokers in certain circumstances and the keeping of records, and

(b) to repeal the *Credit (Finance Brokers) Act 1984*.

Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Consumer Credit Administration Act 1995* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the consequential amendments to the *Consumer, Trader and Tenancy Tribunal Act 2001* set out in Schedule 2.

**Clause 5** repeals the *Credit (Finance Brokers) Act 1984*.

**Schedule 1 Amendment of Consumer Credit Administration Act 1995**

### New definitions

**Schedule 1 [1]** inserts several definitions.

The definition of **client** makes it clear that the client of a finance broker is the person on behalf of whom consumer credit is to be obtained or is obtained by the finance broker, whether or not the person is to be charged any commission in relation to the finance broking.

The definition of **commission** covers any fee, charge, reward or other remuneration, however characterised, whether monetary or otherwise, chargeable for or with respect to finance broking, if the remuneration is paid or payable by the client and retained by the finance broker. The definition specifically includes any remuneration characterised as a termination fee.

**Finance broking contract** is defined to mean a contract between a finance broker and a client under which the finance broker agrees to engage in finance broking on behalf of the client.

**Schedule 1 [3]** omits certain definitions replaced by Schedule 1 [1].

**Schedule 1 [4]** explains what is meant by “engages in finance broking”, “repayment amount” and “repayment arrangement” and by “securing” consumer credit for a client.

### Regulation of finance broking

**Schedule 1 [5]** inserts a new Part 1A into the Act. Part 1A consists of the following provisions relating to the regulation of finance broking:

Proposed section 4A sets out the object of the proposed Part, which is to provide for the regulation of persons who engage in finance broking to ensure that the clients of finance brokers are given adequate information before entering into a finance broking contract, are protected from unfair practices by finance brokers and have access to a redress mechanism when finance brokers breach the terms of the finance broking contract, engage in unjust conduct or charge excessive commission.

Proposed section 4B provides that the proposed Part applies to a finance broker in so far as the credit to which the business of the finance broker relates is, or includes, credit to be provided under the *Consumer Credit (New South Wales) Code*, but does not apply to a finance broker of a class prescribed by the regulations.

Proposed section 4C requires a broking contract to be in writing and to contain certain matters.

The new section provides that a client of a finance broker must be given a copy of the finance broking contract before finance broking commences. The proposed section also prevents a finance broker from demanding, receiving or accepting any commission in respect of engaging in finance broking for a client if the finance broker has failed to comply with the proposed section.

Proposed section 4D prohibits up-front commissions, that is commissions that are payable before the credit is secured.

Proposed section 4E provides that the finance broker must not demand, receive or accept commission if the amount of credit secured is not the same as the amount specified in the contract, if the consumer credit is for a term that is not the same as any term specified in the contract, if the periodic repayments are more than the maximum repayments specified in the contract or if other repayment arrangements are not the same as those set out in the contract or if the consumer credit is at a rate of interest that is more than the maximum rate specified in the contract. The section also provides that the credit must be secured by the date that is specified in the contract. The section allows for a finance broking contract to be varied if the finance broker cannot secure credit on those terms and the client is still prepared to keep the contract on foot.

Proposed section 4F prevents a finance broker from obtaining more commission than that disclosed in the finance broking contract, or any commission that is greater than the amount calculated by the method specified in the contract. If the amount calculated by the method specified in the contract would result in an amount greater than the amount estimated in the contract, the proposed section prevents the finance broker from obtaining any commission that is greater than the amount estimated in the contract.

Proposed section 4G allows a finance broker to charge a fee if the client decides not to enter into a credit contract that the finance broker has secured in specified circumstances.

Proposed section 4H requires a finance broker to keep certain records.

Proposed section 4I provides that any valuation fee, credit application fee or credit establishment fee payable in relation to a finance broking contract should be paid directly to the valuer or credit provider and should not be paid to the finance broker. The section also provides that a finance broker may accept a valuation fee, credit application fee or credit establishment fee in certain circumstances.

Proposed section 4J provides for consumer access to the Consumer, Trader and Tenancy Tribunal if a finance broker breaches the finance broking contract, engages in unjust conduct or charges excessive commission.

Proposed section 4K provides for courts to make certain orders if they consider that a finance broker has breached the finance broking contract, has engaged in unjust conduct or charged excessive commission.

Proposed section 4L provides that in any proceedings for an offence arising under the Act, the court may, if it finds the finance broker guilty of the offence and whether or not it proceeds to conviction, order the finance broker to refund any amount received or accepted by the finance broker in contravention of the Act and interest on that amount.

#### **Other amendments**

**Schedule 1 [2]** is consequential on the repeal of the *Credit (Finance Brokers) Act 1984*.

**Schedule 1 [6]** corrects an error in a heading.

**Schedule 1 [7]** provides for the making of savings and transitional regulations.

**Schedule 1 [8]** makes savings and transitional provisions.

#### **Schedule 2 Amendment of Consumer, Trader and Tenancy Tribunal Act 2001**

**Schedule 2** omits references to the repealed Act.