



Consumer Credit Administration Amendment (Finance Brokers) Regulation 2004

under the

Consumer Credit Administration Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Consumer Credit Administration Act 1995*.

REBA PAIGE MEAGHER, M.P.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is:

- (a) to provide that Part 1A (Regulation of finance broking) of the *Consumer Credit Administration Act 1995* (as inserted by the *Consumer Credit Administration Amendment (Finance Brokers) Act 2003*) does not apply to finance brokers who act as intermediaries for other finance brokers, and
- (b) to prescribe the matters that must be included in a contract entered into between a finance broker and a client, and
- (c) to prescribe the maximum rate of interest payable on any refund that a court may order a finance broker to pay if the broker is found guilty of an offence under the Act.

This Regulation is made under the *Consumer Credit Administration Act 1995* (as amended by the *Consumer Credit Administration Amendment (Finance Brokers) Act 2003*) including sections 4B (Application of Part), 4C (Finance broking contract must be in writing and must be given to client) and 48 (the general regulation-making power).

2004 No 205

Clause 1 Consumer Credit Administration Amendment (Finance Brokers) Regulation 2004

Consumer Credit Administration Amendment (Finance Brokers) Regulation 2004

under the

Consumer Credit Administration Act 1995

1 Name of Regulation

This Regulation is the *Consumer Credit Administration Amendment (Finance Brokers) Regulation 2004*.

2 Commencement

This Regulation commences on 1 August 2004.

3 Amendment of Consumer Credit Administration Regulation 2002

The *Consumer Credit Administration Regulation 2002* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Part 1, heading

Insert before clause 1:

Part 1 Preliminary

[2] Clause 2A

Insert after clause 2:

2A Definition

In this Regulation:

the Act means the *Consumer Credit Administration Act 1995*.

[3] Part 2

Insert after clause 2A (as inserted by item [2]):

Part 2 Regulation of finance broking

2B Classes of finance brokers to whom Part 1A (Regulation of finance broking) of the Act does not apply

For the purposes of section 4B (2) of the Act, finance brokers who act as intermediaries for other finance brokers and who:

- (a) do not deal directly with the persons for whom consumer credit is or is to be obtained, or
- (b) deal directly with such persons but only in relation to matters that are incidental or ancillary to the obtaining of consumer credit for such persons,

are prescribed as a class of finance brokers to whom Part 1A of the Act does not apply.

2C Finance broking contracts—statement in relation to potential lenders

For the purposes of section 4C (3) (g) of the Act, a written document that includes the following statements is prescribed:

- (a) a statement identifying each credit provider with whom the finance broker has entered into arrangements under which, subject to the client meeting the credit provider's lending criteria, the finance broker can obtain consumer credit for the client,
- (b) a statement to the effect that the credit providers identified in accordance with paragraph (a) do not necessarily represent all the credit providers who offer consumer credit of the nature sought by the client.

2D Finance broking contracts—statement in relation to financial or other benefit that will be received by finance broker

- (1) For the purposes of section 4C (3) (m) of the Act, the following terms are prescribed in relation to the statement that must be included in a finance broking contract if a financial or other benefit will be received by the finance broker from a person other than the client:
 - (a) a statement as to the fact that the finance broker will receive a financial or other benefit from a person or persons other than the client,
 - (b) a statement indicating the highest and the lowest amount of the financial or other benefit the finance broker would receive from different credit providers if they were to provide consumer credit to the client,
 - (c) an undertaking by the finance broker that the broker will, after recommending to the client a particular consumer credit product and before the client enters into any credit contract with the credit provider, disclose the following matters to the client:
 - (i) the amount of the financial or other benefit that the finance broker will receive from the credit provider,
 - (ii) whether or not the finance broker can determine or recommend conditions of the credit contract (for example, the interest rate, fees or the term of the loan) and, if so, the effect of any such condition on the amount that the finance broker will receive from the credit provider,

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- (iii) the amount of any financial or other benefit that a person other than the finance broker (such as the finance broker's employer or a company of which the finance broker is a director) will receive from the credit provider, but only if that financial or other benefit could reasonably be expected to influence the finance broker's recommendation,
 - (iv) any interests or relationships of the finance broker that could reasonably be expected to influence the finance broker's recommendation.
- (2) Any financial or other benefit referred to in this clause may be expressed as a dollar amount or, if the total amount or value of the benefit is not ascertainable at the time that the contract is provided to the client, may be expressed by a description of the method of calculating the benefit and, in either case, is to include any amount that represents the goods and services tax payable in respect of the benefit.
 - (3) Subclause (2) does not limit the requirement to disclose benefits that cannot be readily expressed in monetary terms (for example, benefits comprising tickets to sporting events, holiday offers or the provision of services).

2E Finance broking contracts—additional matters to be included

For the purposes of section 4C (3) (n) of the Act, the following matters are prescribed as matters that must be included in a finance broking contract:

- (a) a description of any special loan features (such as redraw facilities) that are required by the client,
- (b) if any financial or other benefit has been or will be paid by the finance broker to a person for referring potential clients to the finance broker—the amount of any such benefit and the name of the person.

2F Prescribed rate of interest

The rate of interest prescribed for the purposes of section 4L (2) of the Act is the rate for the time being prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt.

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2004

Schedule 1 Amendments

[4] Part 3, heading

Insert before clause 3:

Part 3 Miscellaneous

[5] Clause 3 Witnesses expenses before Tribunal

Omit "*Consumer Credit Administration Act 1995*". Insert instead "Act".

BY AUTHORITY
