



Consumer Credit Administration Amendment (Exemption of Certain Finance Brokers) Regulation 2005

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 to provide that Part 1A (Regulation of finance broking) of the *Consumer Credit Administration Act 1995* does not apply to certain finance brokers who have entered into certain exclusive or other arrangements with credit providers to provide credit that is advertised, promoted or offered under a single brand, trade mark or business name.

The exemption applies where a finance broker has an agreement with a credit provider to negotiate only credit that is advertised, promoted or offered in association with a single brand, trademark or business name (this is called an *exclusive arrangement*).

The finance broker who will have the benefit of the exemption will trade at premises or under circumstances, and in such a manner, that a client would assume that the only credit available from that finance broker is the credit associated with that finance broker's business, as described above. The fact that comparison rate schedules are available does not disqualify the finance broker from the exemption.

Finance brokers who have such an arrangement, and who trade in the circumstances described, may also have an agreement with their credit providers that they will first negotiate the branded product, but if the client does not qualify for that product they can broker loans with other approved lenders (this is called a *first-choice arrangement*). In these circumstances, the exemption applies only while the finance broker is negotiating on the client's behalf for the branded product. Once the negotiations on that product are

2005 No 14

Consumer Credit Administration Amendment (Exemption of Certain Finance Brokers)
Regulation 2005

Explanatory note

concluded and the finance broker offers to broker loans from other sources, that finance broker must then comply with Part 1A of 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) and 48 (the general regulation-making power).

**Consumer Credit Administration Amendment
(Exemption of Certain Finance Brokers) Regulation
2005**

under the

Consumer Credit Administration Act 1995

1 Name of Regulation

This Regulation is the *Consumer Credit Administration Amendment (Exemption of Certain Finance Brokers) Regulation 2005*.

2 Amendment of Consumer Credit Administration Regulation 2002

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

2005 No 14

Consumer Credit Administration Amendment (Exemption of Certain Finance Brokers) Regulation 2005

Schedule 1 Amendment

Schedule 1 Amendment

(Clause 2)

Clause 2BA

Insert after clause 2B:

2BA Further class of finance brokers to whom Part 1A (Regulation of finance broking) of the Act does not apply

- (1) For the purposes of section 4B (2) of the Act, finance brokers to whom this clause applies are prescribed as a class of finance brokers to whom Part 1A of the Act does not apply, but only to the extent that their actions fall within subclause (2).
- (2) This clause applies to finance brokers who:
 - (a) are currently party to an exclusive arrangement with, or in relation to, a credit provider, or a first-choice arrangement with, or in relation to, a credit provider to offer consumer credit advertised or promoted under a single brand, trademark or business name, and
 - (b) in the case of finance brokers who are currently party to an exclusive arrangement—negotiate or obtain consumer credit only from the credit provider with which, or in relation to which, they have the exclusive arrangement and that is of a class they are authorised to obtain, and
 - (c) in the case of finance brokers who are currently party to a first-choice arrangement—in relation to a particular client have negotiated consumer credit only from the credit provider with which, or in relation to which, they have the first-choice arrangement and that is of a class they are authorised to obtain and who:
 - (i) have not yet determined whether or not the client is eligible for any consumer credit offered by the credit provider, or
 - (ii) have determined that the client is eligible for consumer credit offered by the credit provider, or
 - (iii) have determined that the client is not eligible for any consumer credit offered by the credit provider but have not yet notified the client or

acted as an intermediary to negotiate and obtain consumer credit for the client from another credit provider, and

- (d) advertise or hold themselves out in such a way, and carry on business at premises or under circumstances in such a way, that clients or prospective clients are reasonably likely to assume that the only consumer credit that may be negotiated or obtained by them is consumer credit advertised or promoted under the brand, trademark or business name referred to in paragraph (a), and
 - (e) do not advertise or hold themselves out in such a way, or carry on business at premises or under circumstances in such a way, that, taken alone or with the conduct of any other person, suggests to a client or prospective client, or creates a possibility of a client or prospective client mistakenly thinking, that the finance broker may negotiate or obtain consumer credit provided by any credit provider other than the credit provider with which, or in relation to which, they have the exclusive arrangement or first-choice arrangement.
- (3) A finance broker who, in compliance with section 146K of the *Consumer Credit (New South Wales) Code*, displays or makes available for collection any relevant comparison rate schedule does not for that reason alone fail to fall within subclause (2) (d) or (e).
- (4) For the purposes of this clause:
- (a) if a finance broker has a first choice arrangement with one or more credit providers to provide consumer credit under a single brand and that consumer credit is advertised, marketed or offered only under that brand, the finance broker is to be treated as if the finance broker has an agreement with one credit provider, and
 - (b) if consumer credit is provided by a credit provider who acts as trustee of more than one trust created under a master trust arrangement, that person as trustee of each of those trusts is to be treated as the same credit provider, and
 - (c) if a group of credit providers have an agreement between them concerning the provision of consumer credit (such as an agreement entered into for the

2005 No 14

Consumer Credit Administration Amendment (Exemption of Certain Finance Brokers) Regulation 2005

Schedule 1 Amendment

purpose of, or as part of, a securitisation) those credit providers are to be treated as the same credit provider.

(5) In this clause:

exclusive arrangement means an agreement in respect of a class of consumer credit:

- (a) between a finance broker and:
 - (i) a credit provider, or
 - (ii) another person or persons authorised to act as intermediary to negotiate an exclusive arrangement on behalf of the credit provider, or
 - (iii) another person or persons authorised to negotiate consumer credit on behalf of the credit provider, and
- (b) under which it is agreed that the only consumer credit in relation to which the finance broker will act as an intermediary to negotiate and obtain for its clients is consumer credit provided by that credit provider, and
- (c) under which the finance broker has no discretion to choose between credit providers.

first-choice arrangement means an agreement in respect of a class of consumer credit:

- (a) between a finance broker and:
 - (i) a credit provider, or
 - (ii) another person or persons authorised to act as intermediary to negotiate a first-choice arrangement on behalf of the credit provider, or
 - (iii) another person or persons authorised to negotiate consumer credit on behalf of the credit provider, and
- (b) under which it is agreed that:
 - (i) the finance broker will first act as an intermediary to negotiate and obtain for its clients consumer credit provided by that credit provider, and
 - (ii) the finance broker may then act as an intermediary to negotiate and obtain consumer credit from other credit providers for any client but only if:

- (A) after proper consideration, the finance broker first determines that the client is not eligible for any consumer credit provided by the credit provider with which the finance broker has the first-choice arrangement of a type that the finance broker is authorised to negotiate and obtain, or
- (B) the client is eligible for such consumer credit but declines the credit.