

Consumer Credit Administration Regulation 2002

[2002-582]



New South Wales

Status Information

Currency of version

Historical version for 21 January 2005 to 30 June 2008 (accessed 29 November 2024 at 18:11)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2008](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 5 June 2008

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Consumer Credit Administration Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

2A Definition

In this Regulation:

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

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.

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 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.

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,
 - (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.

Part 3 Miscellaneous

3 Witnesses expenses before Tribunal

For the purposes of section 32 (4) of the Act, a witness summoned under that section is entitled to be paid fees and allowances according to the scales of expenses allowable to witnesses in civil proceedings in the District Court.