



OFFICE OF **FAIR TRADING**

NSW Consumer Protection Agency

Department of Commerce

Regulation of finance broking in NSW

FT266

July 2004



Who is a broker under the legislation?

If you act as an intermediary to negotiate and obtain credit for a client, and the credit is covered by the *Consumer Credit (New South Wales) Code*, then the new finance broking provisions in the *Consumer Credit Administration Act 1995* and Regulation will apply to you from 1 August 2004.

The legislation applies whether you obtain commission or a financial benefit from the client, credit provider or any other person or body.

What are the broker's responsibilities under the law?

- A broker must not begin to negotiate to obtain credit until a finance broking contract is signed by the client and a copy given to the client.
- No commission is to be charged before the broker secures credit for the client that matches the client's requirements set out in the finance broking contract.
- The broker must keep records of the finance broking transaction for at least 7 years. This includes a requirement to keep a copy of the finance broking contract.

What must the finance broking contract contain?

Details of the client's credit requirements

In order that the broker has a clear understanding of the client's credit needs,

these must be set out in a written finance broking contract and signed by the client. The details include:

- the amount of credit to be obtained or if that cannot be ascertained, the maximum amount to be obtained
- if the credit is to be for a fixed term, the term of the loan
- if the credit is to be repaid at regular intervals, the maximum periodic repayment the client is prepared to make (this includes the repayment of any fee or charge)
- if the credit is not to be repaid at regular intervals, the repayment arrangements acceptable to the client (including repayment of any fees)
- the maximum interest rate that is acceptable to the client
- the date by which the credit is to be secured
- a description of any special loan features that are required by the client.

What the broker must disclose in the contract

The finance broking contract is not only a record of the consumer's credit needs, but also a document which contains information about the broker's lending panel, the commission charged by the broker and benefits received by the broker. The finance broking contract must include:

- a statement identifying each credit provider with whom the finance broker has entered into arrangements under

which the broker can obtain consumer credit for the client

- a statement to the effect that the credit providers identified do not necessarily represent all of the credit providers who offer consumer credit of the nature sought by the client
- a statement (where applicable) that the finance broker will receive a financial benefit or other benefit from a person other than the client
- a statement indicating the highest and the lowest amount of financial or other benefit the broker would receive from the credit providers on their panel if they were to provide credit to the client (this means just the range, not the highest and lowest from each credit provider)
- an undertaking that, after recommending a credit product and before the client enters into the credit contract, the broker will disclose the amount of commission that the broker is to obtain from the credit provider whose product is recommended to the client, along with the other matters outlined below
- the amount of commission (if any) to be paid by the client
- when and how that commission is to be paid
- whether commission will be charged if the client refuses the credit secured by the broker, and the amount or method of calculation and an estimate of the amount
- if the broker has, or will pay, a financial benefit to the person who has referred the

client to the broker, that fact, and the amount of the benefit.

A broker who does not comply with the requirements outlined above is not entitled to any commission from the client.

If the product secured does not match the client's requirements as set out in the finance broking contract, the broker can not charge the client commission.

Where commission is claimed from the client, it must not be greater than the amount disclosed or estimated in the contract.

The client can terminate the finance broking contract before any credit is secured and must not then be charged commission.

Commission may be charged if the credit is secured and matches the client's requirements in the finance broking contract, and the broker and client agreed in the finance broking contract that commission may be charged if the client refuses appropriate credit after it has been secured.

When a product is recommended to the client

Before the client enters into a credit contract, the broker must disclose to the client:

- the amount of financial or other benefit the finance broker will receive from the credit provider
- whether or not the broker can determine or recommend conditions of the credit contract (eg. interest rate, fees or term of the loan), and if so, the effect of any such

condition on the amount the broker will receive from the credit provider

- any financial or other benefit that a person other than the broker (eg. the broker's employer or company) will receive from the credit provider if that benefit is likely to influence the broker's recommendation of that product
- any other interests or relationships of the broker that may influence the broker's recommendation.

The broker must give undertakings in the finance broking contract to disclose the above information to the client.

The 'financial or other benefit' should be disclosed in dollar terms where this is known but otherwise the method of calculation must be disclosed.

Acceptance of fees by the broker

Valuation fees, credit application or credit establishment fees may generally only be accepted by the broker from a client if they are in the form of a cheque, money order or transfer made out to the valuer, credit provider, or a person authorised by the credit provider.

Where such fees are accepted by the broker they must be passed on by the broker to the other party as soon as practicable after receipt.

Consumer redress, penalties and disciplinary matters

If a client believes the finance broking contract has been breached by the broker or that the broker has charged an excessive commission or otherwise acted unjustly, the client can apply to the Consumer, Trader and Tenancy Tribunal for an order.

The Tribunal may order:

- the broker to pay a specified amount to the client
- that an amount is, or is not, owing to the broker
- the broker to take or refrain from specified actions.

Monetary penalties apply for non-compliance with the new finance broking provisions in addition to any action which may be taken by the client for redress and relief.

Brokers should be aware also that the disciplinary regime in the *Consumer Credit Administration Act 1995* continues to apply to broking transactions.



phone 13 32 20

For help on any fair trading issue call your nearest Fair Trading Centre or Government Access Centre or call the service listed below which is relevant to your inquiry.

Fair Trading Centres – call 13 32 20

Albury	Dubbo	Newcastle	Sydney
Armidale	Gosford	Orange	Tamworth
Bathurst	Grafton	Parramatta	Tweed Heads
Blacktown	Hurstville	Penrith	Wagga Wagga
Broken Hill	Lismore	Port Macquarie	Wollongong
Coffs Harbour	Liverpool	Queanbeyan	

Specialist services

Rental bond enquiries ..9377 9000 ..1800 422 021 (*outside Sydney*)

Tenancy enquiries9377 9100 ..1800 451 301 (*outside Sydney*)
.....9377 9099 (*TTY)

Strata schemes9338 7900 ..1800 451 431 (*outside Sydney*)

Aboriginal tenancy.....9377 9200 ..1800 500 330 (*outside Sydney*)

REVS9633 6333 ..1800 424 988 (*outside Sydney*)
.....1300 369 889 (*TTY)

Business licences.....9619 8722 ..1800 463 976 (*outside Sydney*)

Registry of Co-operatives and Associations
.....6333 1400 ..1800 502 042 (*outside Bathurst*)

Consumer, Trader and Tenancy Tribunal (CTTT)
.....1300 135 399

TTY9338 4943
(*telephone service for the hearing impaired*)

Language assistance ..13 14 50
(*ask for an interpreter in your language*)

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This brochure must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation.