

Consumer Credit (Finance Brokers) Bill

EXPLANATORY MEMORANDUM

- Clause 1 sets out the main purposes of the Bill.
- Clause 2 provides for the commencement of the Act. The Bill comes into operation on 1 July 1999.
- Clause 3 provides that in the Bill the **Consumer Credit (Victoria) Act 1995** is called the Principal Act.
- Clause 4 provides for the insertion of a new Part 4A in the Principal Act, as follows:

Section 37A sets out the definitions for the purposes of Part 4A.

Section 37B provides that the Governor in Council may exempt persons or transactions from Part 4A or part thereof by Order published in the Government Gazette.

Section 37C prohibits certain persons, including disqualified persons who do not have permission from the Business Licensing Authority ("the Authority"), from engaging in finance broking.

Section 37D prohibits certain persons, including disqualified persons who do not have permission from the Authority, from acting as director of, or managing or controlling, corporations that engage in finance broking.

Section 37E sets out who or what is a disqualified person for the purposes of sections 37C and 37D. The section includes an exemption in relation to past conduct for persons who are licensed finance brokers at the time of commencement of the Bill. The section also provides for a stay on disqualification pending determination of an application to the Authority for permission to engage in or be involved in finance broking, where the application is made within 30 days of the disqualification arising.

Section 37F provides that disqualified persons may apply to the Authority for permission to engage in or be involved in finance broking.

Section 37G sets out when and how the Authority is to give its permission.

Section 37H provides that the Authority may impose, vary or revoke conditions on any permission it has given under section 37G. The section also provides that the Authority may revoke its permission in certain circumstances, and provides for the offence of breaching a condition.

Section 37I provides for applications for review of the Authority's decisions under sections 37G and 37H to the Victorian Civil and Administrative Tribunal ("the Tribunal").

Section 37J sets out requirements to be fulfilled before finance brokers may demand or accept fees.

Section 37K provides that notwithstanding section 37J, a fee representing fees, costs and expenses of a broker is payable by a client in certain circumstances.

Section 37L provides that a finance broker is not to demand, receive, accept or charge any fee they are not entitled to under Part 4A, or to take a deposit on account of fees for negotiating consumer credit.

Section 37M provides for the handling of valuation and credit application fees.

Section 37N provides for a right to recover fees demanded, received, accepted or charged in contravention of Part 4A and of deposits taken on account of fees for negotiating consumer credit in a court of competent jurisdiction or the Tribunal.

Section 37O provides for the jurisdiction of the Tribunal to order repayment of amounts to which a finance broker is not entitled and of deposits taken on account of fees for negotiating consumer credit.

Section 37P provides that the Magistrates' Court, on finding a finance broker guilty of an offence under section 37L, may also order the repayment of any amounts that the finance broker has received because of a contravention of section 37L.

Section 37Q provides that documents of appointment appointing a finance broker to negotiate consumer credit must be retained by the finance broker for 7 years from the time the client signs the document of appointment.

Section 37R provides for an offence of inducing or attempting to induce entry into a contract for or with respect to consumer credit by a misrepresentation or wilful concealment of a material fact.

Section 37S is a transitional provision dealing with the register maintained under the **Finance Brokers Act 1969**.

Section 37T is a transitional provision dealing with finance brokers' licences and agents' licences under the **Finance Brokers Act 1969**.

Section 37U provides that the Director of the Office of Fair Trading and Business Affairs ("the Director") can exercise and perform certain powers and duties that the Registrar exercised under the **Finance Brokers Act 1969**.

- Clause 5 provides for consequential amendments to sections 3(1) and 30(3)(h) of the Principal Act, which define and mention the concept of an externally administered body corporate. The clause also inserts the definition of "insolvent under administration".
- Clause 6 amends section 41 of the Principal Act to insert a power to make regulations prescribing fees for applications to the Authority.
- Clause 7 contains consequential amendments to sections 10A, 12, 13 and 14 of the **Credit (Administration) Act 1984**. These sections deal with certain powers of the Director in relation to consumer credit legislation.
- Clause 8 repeals the **Finance Brokers Act 1969**.

