

29th February 2008

Senior Project Manager (Credit)
Policy & Strategy Division
NSW Office of Fair Trading
P.O.Box 972
PARRAMATTA NSW 2124

By Email- policy@oft.commerce.nsw.gov.au

Dear Sir or Madam,

Submission on the National Finance Broking Scheme Consultation Package

The Finance Brokers Association of Australia Ltd (FBAA) is a national finance/mortgage broker association, representing some nine thousand five hundred brokers who provide the full range of finance brokering services across the country for consumer and commercial purposes to individuals, partnerships, trusts, or corporate customers.

The National Finance Broking Scheme Consultation Package is relevant to our members' finance /mortgage broking businesses because of its potential impact on their relationships with their customers.

We therefore welcome the opportunity to provide comment on the Consultation Package and following is our submission that covers areas of particular concern.

We ask that our comments are taken into account in the context of any review and we take this opportunity in thanking you for the extension of time allowing us to undertake final consultation with our members thus enabling us to finalise this submission.

If you have any queries or wish to discuss this submission further, please contact Maurie Unwin, General Manager of the FBAA on 07 32520120.

Yours faithfully

Maurie Unwin
General Manager

Peter J White
National President

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INTRODUCTION

The Finance Brokers Association of Australia Ltd (FBAA) submits the following comments in relation to the Draft exposure Bill described as National Finance Broking Scheme Consultation package, compiled and collated by the National Board of Directors incorporating collectively their views and opinions along with inclusion of input received from our members and industry stakeholders-

The FBAA speaks on behalf of some 9,500 finance and mortgage brokers and loan writers throughout Australia. Members act for † consumers and business borrowers providing representation of lending institutions throughout Australia, covering lending products ranging from consumer and commercial transactions, credit cards, personal loans, housing finance, plant and equipment and debtor loans to name but a few.

The FBAA since its inception in 1992 has been a fervent advocate for a national licensing or regulatory regime for finance and mortgage brokers and as a major stakeholder in the industry is significantly disappointed that it was not consulted in any way during the preliminary process.

Recognising the enormity of any proposed regulation process the FBAA would expect in future to be consulted due to the direct impact on our members and the profession, together with consumers and businesses.

We are led to believe that the proposed legislative model was promulgated with the ultimate protection of consumer/borrowing public as its primary objective. If that is the case it has missed the mark.

Although in principle the FBAA agrees with the need for a national frame work that embellishes the protection of consumers, but what is proposed we believe is that in its present form it is cumbersome, unworkable and uncommercial in its application.

Many of the proposed requirements are unnecessary, anti-competitive, will add substantially to the costs of borrowing by home buyers and will in some cases limit the range of finance options currently available to the borrowers. It will in some cases result in some borrowers not being able to get access to finance at all.

From our perusal of the proposed bill it is obvious that it has singularly addressed domestic mortgage broking, that being Uniform Consumer Credit Code (UCCC) consumer lending basically relating to a single finance product, the residential mortgage.

With this single approach, little or no investigations or consideration was made in regards to the negative impact it will have on all other broker services and lending products and those brokers who operate in those areas of finance and the clients who rely on their services.

A 'one fit for all' solution, while good in theory is not appropriate for all finance and credit products, especially as there are risks that vary markedly from product to product and lender to lender and consumer to consumer.

As with any draft legislation, however, there are aspects raised in the proposed bill that, if introduced in their current form would have a negative impact not only on the finance brokers and lending community and those people and institutions that operate within it, but also over the entire consumer and business community.

As an Association we support the general thrust of any proposed Legislation and in fact it realises on the aims of this Association. There will, unfortunately, always be individuals in any pursuit who will flaunt not only the letter but also the spirit of any legislation, but to draft legislation with those individuals as the base is to penalise the majority of individuals and institutions who operate ethically and subsequently disenfranchise the consumer.

The consumer at the end of the day will set the standard. It must be pointed out that all institutions do not provide all the products and services the market demands. There are specialist financiers and finance brokers covering different finance products for both the domestic and commercial consumer.

The introduction to the package once again mentions the research paper prepared by the Consumer Credit Legal Centre for ASIC in 2003. Though thought to be relevant then any reference to it now is irrelevant as the industry and profession has grown substantially across all sectors of finance, and professional brokers now are generally subject to codes of practice, external disputes resolution schemes, professional indemnity insurance cover and industry standards that are now normal practice.

Proposed National legislation SURVEY (Attachment ANNEXURE "A")

The concern generated by the Draft Finance Brokers Bill amongst our members was such that the FBAA surveyed our members with the results being that 91% of brokers do not believe the Bill would clean up the profession and a significant number have grave doubts it would safeguard consumers. They feared that the states may administer laws inconsistently and they favour one a national licensing scheme without variation administered by ASIC.

The Profession itself:

Finance Broking as a profession commenced in Sydney in the mid 1960s with finance brokers arranging lease and business finance for businesses and business clients in the equipment and chattel area. The specialist mortgage broker only came into existence approximately 15 years ago with the advent of low housing interest rates.

The finance/mortgage broking industry is generally unlicensed across the country, except for Western Australia, where licensing has existed since 1979. The Australian Capital Territory has a registration regime and New South Wales and Victoria operate a negative licensing system.

The rise of the Finance/Mortgage Broker:

The last decade has seen a drastic change in the housing market and a subsequent rise in the consumer decision to use a finance/mortgage broker when considering their lending options. Low interest rates, the first home buyers grant and a broader desire for the consumer to own their own home has resulted in a steady increase in where and who consumers look to for financial and lending advice.

There is overwhelming evidence that the consumer benefits greatly from the increasing range of borrowing opportunities that have been made accessible through the growing mortgage and finance broking sector (commonly referred to by the lenders as the Third Party Channel). As consumers continue to turn toward mortgage and finance brokers to assist in their borrowing needs, the FBAA recognizes and is supportive of the need for a regulatory regime to be established which governs the activities of finance and mortgage brokers that has national consistency.

We do not believe that the proposed State Based model allowing State variations, to be template legislation and would be uniform across the country. On past performances with template legislation all the other jurisdictions enact the legislation at their leisure and invariably include other conditions of their own in the process that has a different slant than the other jurisdictions.

This is telegraphed in the package by the quote taken from the discussion notes. "each jurisdiction will have slightly different application processes". Thus the so-called uniformity across the country is dissipated from the beginning.

It has always been obvious to the FBAA that the only way a national regulatory regime can be established with total uniformity is through the Federal Government taking the lead and implementing a nationally consistent legislative framework as advocated by The Australian Government's Productivity Commission Report, "A Review of Australia's Consumer Framework" released early in December 2007.

The report advocated the following. Quote:

" In two areas of current State and Territory responsibility- consumer credit provision (including finance broking), the case for a national approach is well established. Hence the transfer of responsibility to the national level should occur without further review". end quote.

The FBAA is supportive of the development of a national licensing regime, administered federally through the Australian Securities and Investment Commission (ASIC).

About Finance Brokers Association of Australia

The Finance Brokers Association of Australia (FBAA) was formed in Queensland in 1992 in response to the growing incidents of bad publicity of the profession and in order to become a representative voice on behalf of finance/mortgage brokers.

A National Association representing over 9,500 finance and mortgage loan writers throughout Australia, the FBAA is an unlisted company, limited by guarantee, and is run by an elected Board of Directors supported by a National Executive comprising all States and Territory Presidents and a Secretariat. Its' head office remains in Brisbane, Queensland.

Membership comprises practicing finance/mortgage brokers, senior individuals involved directly in the finance/mortgage broking industry and some lenders. Our organisation represents a range of companies and single operators throughout Australia and our main function is to represent both our members as well as the interests of their clients, primarily, the consumer.

Our members act for a range of different consumers/borrowers and provide representation for the total range of lending institutions throughout Australia, including:

- Banks; Building societies; Non-bank financial institutions; Mortgage managers; Finance companies; Institutional lenders; and Private lenders.

Our member's activities cover the total range of lending products ranging from both consumer and commercial transactions including:

- Personal loans and credit cards; Mortgage secured loans for house purchase, construction and re-finance;
- Lo-Documents and No-Documents loans; Domestic banking facilities; Uniform consumer credit code regulated transactions;
- Plant, equipment, chattel leasing facilities and novated-leases; Bill of sale and chattel mortgage facilities;
- Industrial, commercial mortgage secured loans; Banking facilities including overdraft, term loans, fully drawn advance, commercial bill facilities;
- Development finance; Business finance; and Debtor finance and Factoring
- International Property and Instrument Funding

Currently it is not accurately quantifiable as to how many finance and mortgage brokers or intermediaries are operating in Australia in a finance broking role. The FBAA is of the belief there is somewhere between 15,000 and 18,000.

Professional Standards

The FBAA was formed to establish measurable standards of proper professional practice in sourcing domestic and commercial funding, in the best interests of its customers/consumers and, therefore the public at large, all of which are vital to the integrity and future wellbeing of the finance/mortgage broking industry.

The professional standards of the FBAA have been published within an industry recognised Code of Practice and have been adopted by an increasing number of industry professionals totalling some 9,500 loan writers who act as finance/mortgage brokers, who offer domestic finance, commercial finance, lease and motor vehicle/chattel finance, business and debtor finance.

The FBAA has established complaints and disciplinary procedures designed to eliminate unacceptable working practices by its members by providing an Internal Dispute Resolution (IDR) process (specifically designed to meet Australian Standards) as historically EDRs did not cover all of our diverse membership base. It is a free service to the consumer as is ASIC approved External Disputes Resolution (EDR) Schemes. The IDR has been instrumental in having many disputes settled before they had escalated to the level requiring the services of an EDR. Many of our members are already subscribers to an ASIC approved EDR as a lender requirement and as matter of good business practice and as a mandatory requirement by most Lenders for residential mortgage financing. The FBAA Board recently completed discussions with the management of an ASIC approved EDR scheme and to be a condition of membership.

PART 2 FBAA SUBMISSION:

SUMMARY of some points in the package

The FBAA has chosen to outline some of the most pertinent parts of the proposed Bill that we believe are either unnecessary unworkable and erroneous and will do little to achieve the aims that the proposed Bill was produced to do.

Uniformity Sub clause (3)

This clause in its' own words spells out there **will not be uniformity** across jurisdictions and can only create confusion. We have had the problem of the crossing of state/territory borders creating confusion and problems particularly when some State Offices of Fair Trading currently have a different outlook as to how a finance broker operates. NSW, VIC. and WA have varying types of finance broker contracts that are not uniform.

If, under this model an individual or firm applies for a license in one jurisdiction, how will that individual or finance broking business operating in multiple jurisdictions know which compliance regime he will answer to?

Where will there be uniformity if each jurisdiction has its own rules and educational requirements?

N.B. One must ask the question " West Australia has its own Act and Code operating basically since 1979. Will the West Australian government accept this model and repeal its' own?

We do not believe that the proposed State Based variable model on offer, to be template legislation will be uniform across the country. On past performances with template legislation all the other jurisdictions enact the legislation at their leisure and invariably include other conditions of their own in the process. This is telegraphed by the quote from the discussion notes “**each jurisdiction will have slightly different application processes**”.

The FBAA’s recommendation is that there be one National Licensing and regulatory regime without any State variations

Acting as Agent

The proposed legislation confirms that the broker is acting as the AGENT of the consumer. This gives rise to additional fiduciary obligations not specified in the proposed legislation. The most important is the duty of the broker to act in the best interest of the client and not take on conflicting interests.

This requirement is contrary to the new Federal Anti- Money Laundering and Counter Terrorism Terrorist Finance Legislation, which makes the Broker an Agent of the Lender. Does not Federal Law override state laws?

This begs the question as to who does the Broker act for. Does not Federal Laws override State Laws?

The FBAA’s recommendation is that the broker is an Agent of the Lender and not of the borrower in line with the AML/CTF federal legislation.

Mandatory educational requirement for licensing

Not accepting industry experience will simply drive long term proven good honest operators out of the industry.

Prior experience in the industry must be acceptable and we suggest the following: All applicants for a license must provide evidence to have completed Certificate IV or equivalent or have proven industry experience by recognition of prior learning (RPL).

The FBAA’s recommendation is that the requirement of applicants for a license to have five (5) years of experience in the finance/mortgage industry in the eight (8) years immediately preceding the time of application At least one managing partner, director, executive officer or other individual occupying a similar position or performing similar functions for the licensee must, at all times during the term of the license, satisfy the experience requirements.

The licensing should also include grandfather provisions so that existing brokers who can evidence their skill set are not required to undertake formal courses where it is demonstrable that they have competence in the area they are seeking to be licensed in.

Continuing Professional Development (CPD)

All licensees shall complete an annual continuing educational requirement of a minimum of twenty five (25) hours in line with those established by approved professional associations.

Clause 12 Granting of licences to a corporation

This clause mirrors clause 11 but attaches the requirements to a person nominated in the licence application, who may be a director or employee of the corporation, and requires that the corporation has its head office in the jurisdiction in which it is applying for a licence. In the case of a corporation each of the directors must be a fit and proper person and not a disqualified person. The application may be refused on any of the grounds outlined in clause 11 (2).

The FBAA’s recommendation is that there is a workable system already operating in West Australia under the Financing Brokers Act, a Director of a company not located in a particular state can apply for a D C lass Licence and have a Licensed person operate that Licence in the State in question.

Clause 27 Licensing authority to be notified of reportable acts

In this clause the reportable acts are: the appointment of a broker's representative; variation of the terms of that appointment; if the licensee revokes the representative's appointment. Subsection (2) requires the licensee to notify the regulatory authority and the credit providers with which the licensee transacts of these reportable acts. In the case of a variation, the terms of the variation must be notified, and, in the event of revocation, the reasons for the revocation.

The FBAA's recommendation is to make this work effectively the lenders must also be made to report to the regulatory authority and the licensee if they have suspended a broker's accreditation with themselves. This should then not be relied upon the lender informing the licensee and then they notify the regulators. It is clear that does not happen today and lenders must also be held accountable.

Clause 33. Consumers Credit requirements and capacity to repay credit.

It is unreasonable to expect finance brokers to assess a customer's credit history and capacity to repay beyond what they already do and usurp the role of the lender. This has always been the realm of the bank/lender as they have the staff and access to more information than the broker are far more capable of doing this than the broker and cannot be expected to take on such a responsibility of having to ascertain "consumer's capacity to repay".

The draft legislation states "the broker will have to establish that the consumer can afford the credit..." What is the role of the bank here? Brokers never have the power to "approve" a loan. If a client does not service according to the relevant bank's serviceability calculator, a broker will not make an application with that lender. So are brokers now deciding what the bank's lending criteria should be?

N.B. Not all lenders are the same when it comes to credit decisions.

The proposed legislation expects brokers to do the job of a lender in that assess capacity to service the loan and make sure the loan can be afforded without 'undue hardship' (which comes from U.S. predatory LENDING legislation). It should not be the principal 'responsibility' of a broker.

Lenders must take responsibility for the final approval as is the case now as they hold the power to "offer" the loan. The lender should not be allowed to contract out of their responsibility unless they empower the Broker to approve loans.

For example a proposal to restructure a loan may not be more affordable or suitable than the existing loan product whereby:

- 1) Client may be on fixed rates and may not qualify for further funding under the existing lender's policy however another lender may see it differently.
- 2) The client may be in an arrears situation with his current lender and both the borrower and the lender would seek a move to another lender with conditions not as favorable as the current loan.

However the new lenders assess the client to be credit worthy and an acceptable risk for a new loan.

In the above instances the new lenders satisfied themselves of the client capability and if the broker is held to the letter of the law he would not be able to assist those clients.

The provisions require a broker to satisfy themselves that a borrower is able to service a loan and a proposal to restructure must only be put forward by a broker where it is more suitable and affordable than the consumer's existing product.

However in all instances above, the clients if they knew where to go can be accommodated by a lender without fear or favour as the lender will not be the subject of the requirements meted out to brokers under this provision.

Unfortunately these clients exemplified herein either stay with their current lenders who will not help

them and where they are or may become an arrears situation and maybe a mortgagee sale as they could not use a broker to help them with their plight based on the proposed Bill.

Under this Act it appears that Credit history will become a requirement of the Broker to administer, not the lender and more information than the normal income & expense confirmation will be required under the new legislation. But what is required is not clear.

Scenario: A young couple are seeking a home loan. The broker looks at their payslips and occupations, applies the typical lender formula for the personal expenses of two adults, and estimates their Uncommitted Monthly Income, and confirms their maximum loan available.

But now the broker has to make allowance for their “future prospects”.

Should the broker allow for the likelihood that they will have children? If so, how many? Would the answer be different if the broker knew they are devout Catholics? Should he ask them about that? Is it reasonably foreseeable that the children will go to the private school that is nearby to their proposed house?

“What is the actual role of a Finance/Mortgage Broker”:

Definition of a broker:

We are told in the package that the definition of a Broker is similar to that in the Consumer Credit Code (UCCC).

A finance/mortgage broker act as an intermediary between the consumer and the lender and advises consumers and or businesses about the suitability of a particular credit/loan product or to meet that business or consumers particular needs and desired outcomes. The advice element is about the loan or structure to facilitate the purchase or refinance of a property or equipment, whether it is a residential home, a farm, or an investment property or Plant and Equipment etc. It maybe for business or debtor finance

The Finance/mortgage broker is not advising about the merits, or otherwise, of investing in real property as opposed to any other form of property. Such investment advice, more often, comes from financial planners, accountants, tax advisers, lawyers, real estate agents and property developers/vendors.

The finance/mortgage broker comes late to the transaction, after the decision, to purchase or to invest in a property, to refinance or increase the debt on a property or purchase plant and equipment or arrange business finance or the like is made.

Their role is to choose the most appropriate loan product or structure of the loan facility to facilitate the funding arrangements. The need for the product is not created by the finance/mortgage broker. The advice component is confined to the characteristics and attributes of a home loan or loan facility and its suitability for a particular individual or company and transaction, comparing it with similar products in the market.

Nevertheless, because there is generally a choice of loan facilities or loan products that could be suitable, the broker will make a clear recommendation as to the most suitable. This clearly puts finance/mortgage brokers within functional definition of giving advice on credit/loan products only.

They provide:

“advice on finance products and implicitly or explicitly advise the consumer or business owner or representative on the suitability or appropriateness for that consumer’s personal or business circumstances.

The FBAA recognises that finance products should be defined widely to include personal finance, investment and property finance, business/ debtor finance, plant and equipment and chattels and risk and credit products.

There is a danger in believing that the consumers and businesses' exposure to financial liabilities, debt levels and debt management issues are factors that can be attributed solely to the role of finance/mortgage brokers and intermediaries. This is too simplistic a diagnosis. **Levels of debt and debt exposure are the responsibility of lenders and not the finance/mortgage brokers or intermediaries. Whether or not to lend or advance the loan funds is a decision for lenders alone.**

Ultimately it is the lender that approves and settles the loan. However, responsible finance/mortgage brokers will be helping clients understand the consequences of debt, over exposure and risk.

The FBAA's recommendation is for baseline standards to be consistently applied across finance/mortgage broker and intermediaries performing similar functions. The FBAA believes this would make a positive contribution to increasing overall quality of finance product service and information for consumers, and facilitating more effective management of conflicts. Some standards will vary depending on the finance/mortgage broker and intermediary's function. Different disclosure provisions and timing of disclosure may occur for differing finance products and services. For example, a consumer loan covered by the UCCC may well need full disclosure of relevant details in advance of the loan submission to a lender or prior to acceptance, than that of a commercial loan/lease which until settlement the final commissions and costs are generally unascertainable.

It is not uncommon that some major commercial transactions including plant and equipment from time of application to settlement may take some months to complete with the eventual interest rate and payment structure and commissions unknown or may vary up and until actual settlement.

In the case of a motor vehicle purchase or of small plant and equipment being financed by way of Commercial Hire Purchase (CHP or Lease) in many instances the client is an existing client of the finance broker and settlement is required within twenty-four hours of the enquiry. With this time impediment the disclosure of fees etc in advance of the settlement is unworkable.

Clause 42 Fees Charges and Commission

The FBAA continues to believe that the disclosure of the exact dollar value (as opposed to the percentage being received) of any commission is logistically difficult and is not necessary for the following reasons

The Western Australian Finance Broker Legislation allows for a Broker to provide a matrix showing the brokers lenders panel together with the current interest rates and commission percentages.

(Attachment ANNEXURE " B)

The determination, of which lender's product is most appropriate for the clients' circumstances, is

often difficult to determine at the initial client interview. Yet it is at this point in time the act proposes that personal disclosure should be made if a broker's credibility and the exact nature of the relationship are to be assessed by the client.

Particular client circumstances can result in multiple lending product solutions that are lending policy related, rather than just a pricing issue. Research is, more often than not, required and applications may have to be made to more than one lender. Disclosure of all the exact dollar values of all the options, at this stage, would seem unnecessarily cumbersome and complicated for consumers to digest easily. **A case of too much irrelevant information.**

As the commission payments generally can vary from lender to lender, disclosure of the dollar commission at the time of initial personal disclosure is neither a commercial or viable option.

If disclosure of the dollar commission has to be made, it would need to be upon finalisation, prior to acceptance of a lender's offer of finance. It is only then when all the fees related to the loan are known. This would eliminate the need for a second disclosure that would have to then take place to cover this aspect of the process. This is unrealistic.

In addition, many finance/mortgage brokers now work within other entities that provide management/marketing support (Aggregators) and the broker is required to pay for this support. As disclosure is taking place on a personal basis, should deductions therefore be made, for the payment to the large entity, in determining the dollar commission that is disclosed?

It must be noted that with mainstream lenders, the commission payment to the finance/mortgage broker is not directly reflected in the cost to the consumer, nor do substantial soft commissions apply. Competitive pressures in this mainstream market ensure this. The finance/mortgage broking channel is seen as another marketing/distribution channel by most lenders and whilst the broker commission is a variable cost, **it is not factored directly into the pricing that the consumer pays. Therefore, the price to the consumer is not loaded to pay for the broker commission.**

The FBAA's recommendation is that the dollar commission payment is irrelevant to the consumer as there is **no direct and negative affect** on the consumer and would suggest the use of the matrix as is used in Western Australia.

Except in many instances where the consumer has to pay an application/value fee up front payable to a particular lender the consumer is aware that they do not have to pay the broker directly for his services. They know that they do pay the broker indirectly because the remuneration does not come from the loan funds made available to them. They know it is not deducted from the total loan. They know it is not added to the total debt. Hence they do not perceive that there is a conflict of interest.

The FBAA believes that the eventual regulator should be seeking a simple, one-stop method of disclosure that is not overly prescriptive and costly. However, in the case of mortgage loans, this has timing difficulties that do not perhaps attach to other aspects of the finance services industry.

A possible solution is a more robust disclosure of commission rates in the initial personal disclosure. Rather than just disclosing the nature of the commission payment on any one particular transaction, it would be possible to disclose the specific percent commissions (upfront and trails, if applicable) for each lender. We note that some finance/mortgage brokers are already doing this. This would overcome the difficulties we perceive with other loan products. (Refer to W.A. Finance Broker Code of Practice)

Under this enhanced disclosure requirements, redress and minimum legal standards would be set out in industry specific legislation. There is an element of compulsion and finance/mortgage brokers and intermediaries cannot contract out of requirements.

Advice is advice and the method of remuneration should not be an issue if there is clear and adequate disclosure to consumers.

Clause 43 Up-front fee prohibited

As previously stated previously little or no investigations or consideration was made in regards to the negative impact it will have on all other broker services and lending products and those brokers who operate in that area of finance and the clients who rely on that service.

In regards to commercial property loans, business loans, chattel and plant and equipment funding and debtor finance where a fee for service is commonplace and is negotiated in advance of the loan application being prepared by the broker. The fee amount is negotiated as either a flat fee or a percentage of the eventual loan amount.

On large and complicated commercial and or business funding transactions there are instances where an **advance or upfront fee** for preparation of the application is paid by the client, with the amount of that fee to be deducted from the eventual service fee at settlement.

The terms of engagement between the broker and the client are generally set out in a mandate or service agreement and payment of fees are payable either by the client himself or from the loan proceeds on settlement.

Fee for service is commonplace for Accountants, Solicitors and Doctors to mention a few professions and in some instances a payment in advance is required.

Fee for service and advance payments should not be restricted or barred from the finance broking profession as there is a proven need.

Clause 47 Finance broker not to profit from fees paid to third parties

Does this mean the broker can not charge any more for the transaction than what is being given to the 3rd party, if this is the case then the broker would normally only pay a very small amount to a referrer and generally from their own commission from the funder. **The FBAA's recommendation is that this section be removed -**

Clause 50 Adverse credit reports

This clause prohibits brokers from listing consumers with a credit reference agency for non-payment of fees.

The FBAA's recommendation is that a finance broker is running a business he must have the right to collect fees and lodge default payment only under the appropriate rulings for such, as would any other business.

Clause 52 Court may grant certain relief

Subclause (1) plus (2,3,4,5) provides that a consumer can apply to the Court in relation to any finance broking service or any transaction entered into by the consumer following the provision of the service

“In circumstances where a lender has made application to the court for possession of the consumer’s family home, and there are proceedings under way against a broker either in a court or in the external dispute resolution process which could result in compensation sufficient to pay the consumer’s arrears, the court will be empowered to order a stay of proceedings until the dispute with the broker is settled.”

In other words if the consumer can’t pay their mortgage they can sue the broker (not the lender) for their arrears.

What happened to the Professional Indemnity Cover and the EDR Scheme. Have they gone out of the window?

The FBAA’s recommendation is that this clause be deleted. Any lender must be able to recover the debt under the terms of his mortgage as is his right now. The action against the broker should have no bearing on the case. The Broker is not a party to the loan contract as that is between the lender and the borrower/s.

Finance broking for big business

This clause exempts broking for credit which is to be provided to a business where the amount of credit sought exceeds \$2,000,000, or the number of people employed in the business exceeds 100 if it is a manufacturing business or 20 in any other type of business.

Clause 2(a) provides that a broking service provided in relation to the provision of credit to purchase a single dwelling for investment purposes is not considered to be a business transaction, and would therefore be subject to all provisions of the Finance Broking Act.

Clause 2(b) provides a definition of “manufacturing business”.

This is the sophisticated borrower and these proposals -did not work in the West Australian legislative model so why should it nationally?

The FBAA’s recommendation is to delete any reference completely.

Finance broking under exclusive arrangements

Subclause (1) provides a description of a broker to whom this exemption applies. The exemption is based on the fact that the broker deals with only one credit provider and offers only one brand of credit. That broker would not in the circumstances described charge a broking fee and would not in any way infer that they are able to access credit other than the single brand they promote.

The FBAA’s recommendation is this is restrictive, and a broker still should have the right to charge the clients a fee if the loan is approved and they fail to go through with it.

Compensation Fund:

The FBAA concern in this instance is how is the fund/s to be established and what is it going to cost the finance broker. Licensing will come at a cost. Will a levy be included in the initial fee structure?

The actual amount required to be paid by a broker by way of levy should have formed part of the Draft Bill for industry consideration to enable industry participants to accurately assess costs of compliance, surely this is an area in which the regulator is demanding feedback as part of industry submissions.

Additionally, the regulators are still proposing state based regulatory authorities rather than one national authority which we believe will be very inefficient.

Does this mean that each jurisdiction will have their own compensation fund?

The FBAA recommends a cap be put on contributions a broker must make to the fund from time to time.

COMMENT

There is an emphasis throughout the paper, either direct or indirect through the use of working examples, on the lending and risk side of the finance/mortgage broking business. It is important that the proposed regulators consider the impact of the options and outcomes on the credit side carefully as well or else there will be distortions in the eventual regulatory regime.

What appears to be forgotten in all this is the other stakeholders in the finance lending cycle and that is the ultimate provider of the loan funds to the consumer, the Lender.

As stated previously it is the lender that approves and settles the loan? "NOT THE BROKER"

No lender or their staff will be subject to the disclosure provisions that finance and mortgage brokers will be required to provide prior to completing a finance application.

A client going to a broker will be required to enter into a contract to have the broker start acting for them, yet the same client could walk into any bank branch and have a casual bank employee that works 4 hrs/day 3 days a week just have them sign the loan forms without any ado. How is this keeping the healthy spirit of competition alive, let alone doing the right thing for the consumer? Isn't this what the draft is trying to prevent? Yet banks will be exempt!

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FBAA NATIONAL LICENSING SUBMISSION Feb 2008
ANNEXURE 'B'

IMPORTANT NOTICE: This document has been prepared by The Finance Brokers Association of Australia as a guide only it is up to the user to arrange the content and formatting as the user sees fit.

So and SO Finance
Lender List and Commission Scales

The Finance Brokers Control Act 1957 and Finance Brokers Control (Code of Conduct) regulations 2007

As at: (insert date)

Residential and Commercial Property, Personal and Equipment rates etc

	Residential Upfront	Residential Trail	Commercial Upfront	Commercial Trail
Lenders				
Adelaide Bank (Retail – SA/NT)	0.66%	0.275%		
Adelaide Bank (Wholesale – Non SA/NT)	0.66%	0.275%		
AMP Banking	0.66%	0.275%		
ANZ	0.66%	0.275%	0.66%	0.275%
Bank QLD	N/A	N/A	50% of lenders fee	0.275%
Bank SA	0.66%	0.275%		
Bank West	0.66%	0.275%	50% of lenders fee	0.275%
Benchmark Debtor Finance	N/A	N/A	\$500-\$4000	.50%-1%
Bluestone	1.20%	0.33%		
Citibank	0.69%	0.275%	0.66%	0.275%
Collins securities	0.66%	0.275%		
Colonial/Commonwealth Bank	0.66%	0.275%	0.50% App Fee	0.275%
Colonial/Commonwealth Bank			(CBA) 50% of lenders fee	Nil
GE Mortgage Solutions	0.66%	0.275%		
Homeside Lending	0.66%	0.275%		
Challenger (formally Howard) Finance – commercial only	N/A	N/A	Share of Fee	Max 0.55%

HSBC	0.66%	0.275%		
ING Mercantile Mutual**	0.66%	0.275%	0.55%	0.275%
IMB Commercial	N/A	N/A	0.66%	0.275%
Integris	0.55%	0.34%		
La Trobe	Full Doc \$300	0.40%	0.50%	0.275%
	Low Doc 50% of Fee	0.40%		
Macquarie Residential	0.66%	0.275%		
Maxis Home Loans (previously AXA)	0.66%	0.275%		
National Australia Bank***	0.44	Nil	0.50%	Nil
Pepper Home Loans Option 1	0.66%	0.275%		

Pepper Home Loans Option 2	1.20%	NIL		
Pioneer Mortgage	0.66	0.275%		
PMP	0.66%	0.33%		
RAMS	0.66%	0.275%		
St George Bank	0.66%	0.275%		
Suncorp Small Business	0.66%	0.275%	0.66%	0.275%
Suncorp Commercial	Nil	Nil	0.50% App Fee	0.275%
Westpac, (Bank of Melbourne)	0.66%	0.275%	0.66%	0.275

Personal Loans, Equipment and HP

ANZ	Nil	Nil	.66	Nil
CBFC	Nil	Nil	negotiable	Nil
GE Money	2.75%	Nil		
NAB	0.50	nil		
St George Bank			1.30%	.52%

Commission rates are excluding GST and are the maximum payable by the relevant lender

- These rates are indicative as at the date shown on the document.
Some lenders have claw back where loan is discharged early. Increases to existing loans may not attract up-front or trail.
- * Trail commission is calculated on the outstanding loan balance and is paid monthly in arrears provided the loan is not in default.
- * Brokerage fee may be either a percentage of the loan amount or a flat fee.
- The rates have been prepared from information supplied by the lenders and hence are subject to change.
- The above rates are GST inclusive.
- While every attempt has been made to provide you with the correct information “The Broker”, its employees, contractors and Directors accept no responsibility or liability for the above information.

I/we acknowledge that we have been shown the Lender list and the commission’s payable by each lender.

Signature- Borrower 1.....

Date / /

Signature- Borrower 2.....

Date / /

N.B. This Lenders List and Commission Scales must be read in conjunction with

The Letter of Appointment and Disclosure:

and

The Finance Broker Profile Guide:

Important Notice

This document and associated documents have been produced as a guide only by the Finance Brokers Association of Australia Limited. Users of this document should satisfy themselves as to the application of the Finance Brokers Control Act 1957 and Finance Brokers Control (Code of Conduct) regulations 2007 of the Credit (Administration Act) 1996 and the Consumer Credit Code (Western Australia) Act 1996 and the correctness and suitability of this document for their particular requirements, procedures and systems. If Brokers fail to comply with the law substantial penalties apply. Independent legal advice should be sought before using this document.

