

# **EXPLANATORY MEMORANDUM**

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### **Overview of Bill**

The Bill amends the *Finance Brokers Control Act 1975* (the Act). In particular the Bill:

- Abolishes the Finance Brokers Supervisory Board (the Board) and makes the Commissioner for Fair Trading (the Commissioner) responsible for the licensing of finance brokers and the day to day administration of the Act;
- Provides for the Commissioner to suspend a broker's licence for up to 60 days pending disciplinary action by the State Administrative Tribunal (SAT), where the Commissioner reasonably believes the broker has engaged in conduct which contravenes the Act and there is a risk that persons may suffer loss or damage if immediate action is not taken;
- Provides increased investigations powers for the Commissioner and investigators;
- Amends the definition of 'finance broker' to remove uncertainty and make it clear that a person managing a loan negotiated or arranged by the person is still acting as a finance broker and subject to the requirements of the Act;
- Makes it an offence for a licensee to enter into an arrangement for the conduct of finance broking with a person who is required by the Act to hold, but does not hold a finance brokers licence;
- Allows the Minister to revoke vary or amend any exemption from the Act of a provision of the Act granted to a person;
- Makes it an offence for a licensee to be the licensed person in bona fide control of the finance broking business of more than one firm or body corporate at the same time;
- Simplifies licensing requirements by removing the requirement for a person to hold a business certificate in conjunction with a licence in order to carry on business as a finance broker;
- Provides for different classes of finance brokers licence to be prescribed and different qualifications to be prescribed for those classes;
- Allows for persons and classes of persons to be exempted by regulation from the requirement to lodge a bond or guarantee with the Commissioner;

- Allows for a supervisor appointed to a broker's business to apply to SAT for such orders or directions as the supervisor reasonably believes are necessary to protect the rights and interests of persons on whose behalf the brokers have received money; and
- Increases the maximum penalties for offences committed against the Act as well as the maximum monetary penalty which SAT can impose on a broker in disciplinary proceedings.

- Clause 1        Sets out the short title of the proposed Act.
- Clause 2        Provides for the proposed Act to commence on a day to be fixed by proclamation.
- Clause 3        Provides that the proposed Act amends the *Finance Brokers Control Act 1975* (the Act).
- Clause 4        Deletes several definitions in the Act and inserts new and amended definitions.

'finance broker' is defined to include a person who manages a loan negotiated or arranged by the person.

'Commissioner' is defined as the person who being an executive officer of the Department assisting the Minister is designated by the Minister as Commissioner.

'Department' is defined as the department of the public service principally assisting the Minister in the administration of the Act.

'Investigator' is defined as a person designated under section 15 as an investigator and includes a police officer.

'Condition' in relation to a licence or exemption is defined as including a restriction or limitation.

'Motor vehicle' has the meaning given in the *Road Traffic Act 1974*.

The definitions of 'board', 'business certificate', 'chairman', 'inspector', 'member' and 'Registrar' have been deleted from the section.

Clause 5      Subclause (1) makes minor consequential amendments to section 5(1) of the Act as a result of amendments to section 4 and section 5(2).

Section 5(1) excepts a number of bodies from the meaning of 'finance broker' which are regulated under other legislation.

Subclause (2) repeals and inserts a new section 5(2) of Act which allows the Minister by order published in the *Gazette* to exempt persons and classes of persons from the Act where satisfied adequate protection against defalcation exists apart from the Act subject to conditions. Subclause (2) also gives the Minister the power to revoke or vary an exemption previously granted.

Clause 6      Inserts a new heading to Part II of the Act as the Finance Brokers Supervisory Board is to be abolished.

Clause 7      Repeals sections 6,7,8,9,10,11 and 12 which:

- establish the Finance Brokers Supervisory Board and provide for its membership, appointment, terms of appointment and remuneration of members, procedure and validity of its act; and
- establish the office of Registrar, and provide for the appointment of other officers to assist the Board.

Inserts new sections as follows:

Section 6 – provides for the Minister to appoint a person who is an executive officer of the department assisting the Minister as Commissioner for the purposes of the Act and provides that the Commissioner shall be the licensing and supervisory authority for the purposes of the Act.

Section 7 –Sets out the functions of the Commissioner which include:

- deciding licence applications and administering the licensing scheme established under the Act;
- making recommendations to the Minister concerning the Act; and
- providing educational and advisory services to the public and licensees on matters relating to the Act and finance brokers.

Section 8 – Provides that the Commissioner may delegate powers or duties conferred on the Commissioner by the Act except the power of delegation.

Section 9 – Provides for judicial notice of the signature of the Commissioner and other persons.

Clause 8            Makes a consequential amendment to section 13 to give the Commissioner the power to make investigations under the Act for specified purposes:

Clause 9            Amends section 14 to give the Commissioner the power to request the Commissioner of Police to conduct an investigation.

Clause 10           Repeals section 15, 16 and 17 which sections relate to investigations conducted by the Registrar and inspectors and inserts new sections:

Section 15 - Provides for the Commissioner to designate officers of the Department as investigators who have the power to make an investigation under section 13 of the Act (a reference in section 13 to the Commissioner includes a reference to an investigator)

Section 16 - Provides that the Commissioner and each investigator is authorised to use the powers contained in Division 2A for the purpose of an investigation under section 13.

Section 17 - Provides that the Commissioner or an Inspector may enter a licensee's business premises without a warrant for the purpose of making a routine inspection.

Makes it an offence for a person to:

- prevent entry or obstruct the Commissioner or an Investigator in the exercise of a power under the section; and
- fail to give reasonable access to business premises or give reasonable assistance to the Commissioner or an investigator.

(Note: A warrant is required by the Commissioner or an investigator under proposed section 18A to enter premises other than the business premises of a licensee.)

Clause 11           Inserts a heading for new subdivision: 2A – 'Specific investigatory powers'.

Clause 12 Repeals section 18 and inserts the following sections into Division 2A:

Section 18 - Gives an investigator certain powers including the power to:

- require a person to answer questions, provide information and produce a document;
- enter premises or a motor vehicle named in a warrant ; and
- make copies or abstracts of documents produced or inspected.

The section also specifies the manner in which requirement may be made under the section.

Section 18A - Provides for an investigator to apply for a warrant from a magistrate or justice of the peace to enter premises or a motor vehicle where the investigator reasonably believes entry is necessary for the purpose of an investigation.

Section 18B - Provides that a magistrate of justice of the peace may grant a warrant if satisfied that the investigator has reasonable grounds for believing entry and search of premises or motor vehicle are necessary.

Section also sets out actions that are authorised by a warrant.

Section 18C - Details how a warrant is executed and imposes requirements on both the person executing the warrant and the person having control of the premises or motor vehicle which is the subject of the warrant.

Section 18D - Provides that an investigator executing a warrant may seize and retain a document or thing in certain circumstances subject to a requirement to provide a receipt for a document or thing seized.

Section 18E - Provides that a person who is subject to a requirement under section 18 to give information, answer a question or produce a document shall not refuse to comply with the requirement on the grounds of self incrimination, however the information or answer given or the document produced is not admissible in proceedings against the person other than in proceedings under section 18F(1)(b) for providing information or an answer that is false.

Section 18F - Provides that a person who fails to comply with a requirement made under section 18 commits an offence. Also makes it an offence to give information or provide an answer which is false.

Provides certain defences to a charge brought under the section.

Section 18G - Makes it an offence to prevent entry or obstruct an investigator in the exercise of his or her powers under section 18. Also makes failure to comply with section 18C(3) by failing to provide reasonable access to premises or a motor vehicle or reasonable assistance to a person executing a warrant an offence.

Section 18H - Provides that information obtained pursuant to the exercise of a power under Division 2A may be disclosed, recorded or used for the purposes of the Act. Also provides that a certified copy of a document produced under section 18(1)(d) or when executing a warrant is to be accepted by any court or tribunal as evidence of the original.

Clause 13 Amends the heading to Part II Division 3 of the Act by deleting 'Board' from the heading and inserting 'Commissioner'.

Clause 14 Subclauses (1) and (2) amend sections 23(1) and 23(2) of the Act to provide that a person aggrieved by a reviewable decision of the Commissioner may apply to the State Administrative Tribunal for a review of the decision.

Clause 15 Subclause (1) amends section 24(1) and the Act to provide that an application for a licence shall be in a manner prescribed and a form approved by the Commissioner.

Subclause (2) provides that an applicant for a licence shall provide the Commissioner with such other information as the Commissioner requires.

Clause 16 Subclause (1) amends section 25(1) of the Act to provide that a person may object to the renewal of a licence as well as the grant of a licence on the grounds that an applicant does not satisfy all the requirements of the Act.

Subclause (2) amends section 25(2) to provide that an objection must be in writing in a manner and form approved by the Commissioner.

Subclause 3 inserts subsections (4) and (5) into section 25 which provide that the Commissioner shall have regard to the rules of natural justice when determining an objection and may recover from an objector as a debt in a court, the costs of a frivolous or vexatious objection.

Clause 17 Amends section 26(1) by removing the requirement for a person to hold a business certificate in respect of a licence in order to be entitled to carry on business as, or hold himself or herself out as being, a finance broker.

Clause 18 Subclause (1) amends section 27(1) to replace the word 'Board' with 'Commissioner' and to change the requirement for the applicant to be 'a person of good character and repute and a fit and proper person to hold a licence' into two separate requirements, each of which must be satisfied by an applicant before a licence can be granted.

The subclause also removes the requirement for an applicant to be a resident of the State.

Subclause (2) repeals and replaces section 27(2) to provide that in addition to satisfying the requirements in section 27(2) an applicant must have such further qualifications and satisfy such other requirements as may be prescribed.

Clause 19 Amends section 28 to replace the word 'Board' with the word 'Commissioner' and to change the requirement 'for all natural persons who are members of a firm and all directors and persons involved in the management of a body corporate by which the firm is constituted to be of good character and repute and a fit and proper persons to be concerned in the management of a finance brokers business' into two separate requirements, each of which must be satisfied before the Commissioner may grant a licence to carry on business as a firm.

Also amends section 28 to insert paragraph (d) to provide that in addition to satisfying the other requirements in the section, the person in bona fide control of the business of a firm is required to satisfy the Commissioner that he or she has such other qualifications and such other requirements as may be prescribed.

Clause 20 Subclause (1) amends section 29(1) of the Act to replace the word 'Board' with the word 'Commissioner' and to change the requirement for 'all directors and persons involved in the management of a body corporate to be persons of good character and repute and fit and proper persons to be concerned in the management of a finance brokers business' into two separate requirements, each of which must be satisfied before the Commissioner may grant a licence to a body corporate.

Also amends section 29(1) of the Act to provide that in addition to satisfying the other requirements in the section, the person in bona fide control of the business of a body corporate shall have such other qualifications and such other requirements as may be prescribed.

Subclause (2) amends section 29(2) of the Act to provide that where he or she is satisfied that a finance broker's business is a minor component of a business conducted by a body corporate, the Commissioner may recommend to the Minister that the Minister make a declaration for the purpose of section 29(1)(c) of the Act.

Clause 21 Subclause (1) amends section 30(1) of the Act to provide that a licence may be granted for a period not exceeding three years or such other period as may be prescribed.

Subclause (2) repeals and replaces section 30(2) to provide that where different classes of licence are prescribed, different licence periods not exceeding three years may be prescribed for each class. Also repeals and replaces section 30(3) of the Act to provide that a person may surrender a licence at any time and shall do so in certain circumstances.

Also repeals section 30(4) of the Act which is no longer required because of the removal of the requirement in section 26(1) of the Act for a person to hold a business certificate in respect of a licence in order carry on business as a finance broker.

Subclause (3) amends section 30(5) of the Act to remove redundant reference in the section to a business certificate.

Clause 22 Subclauses (1) and (2) amend sections 31(1) and 31(2) of the Act to provide that subject to the Act, a licence entitles the holder to carry on business as a finance broker for the relevant period described in section 30 and that the licence may from time to time be renewed for the relevant period. Also removes the requirement for the Board to grant a business certificate to a person to whom a licence has been granted.

- Clause 23      Subclause (1) amends section 32(1) of the Act to provide that a person may apply for the renewal of a licence for the relevant period set out in section 30 of the Act.
- Subclause (2) amends section 32(1a) of the Act to provide that a renewal under subsection (1) applies from the day next following the day on which the previous licence expired.
- Subclause (3) amends section 32(2) to provide that an application for renewal shall be made in writing and in a manner prescribed and a form approved by the Commissioner.
- Subclause (4) amends section 32(4) to provide that an applicant for renewal of a licence shall provide the Commissioner with such further information as the Commissioner requires.
- Clause 24      Repeals section 33 and inserts a new section. Proposed section 33 provides that the Commissioner may refuse to renew a person's licence if the person is not able to satisfy all the requirements for the initial grant of a licence or if the applicant has not completed any prescribed further educational requirements. The amendment makes it clear renewal of a licence is not automatic.
- Clause 25      Subclause (1) amends section 34(2) of the Act to provide that the Commissioner may impose conditions on a licence granted or renewed.
- Subclause (2) amends section 34(3) by deleting the redundant terms 'special' and 'business certificate' therefrom.
- Clause 26      Repeals section 34A of the Act which is no longer required because the Board is to be abolished and the Commissioner is to become the licensing body.
- Clause 27      Subclause (1) amends section 35(1) of the Act to provide that the Commissioner may not grant a licence unless the applicant has lodged a bond or guarantee with the Commissioner. Also deletes a reference in the section to a repealed Commonwealth Act and inserts the *Insurance Act 1973*.
- Subclauses (2), (3) (4) and (5) amend sections 35(2), (3) (4) and (5) by deleting redundant references in those sections to 'business certificate' and 'Board' where they occur and replacing them with references to 'licence' and 'Commissioner'.

Clause 28 Inserts proposed section 35A which provides that persons and classes of persons may be exempted by regulation from the requirement in section 35 to lodge a bond or guarantee with the Commissioner before a licence may be granted or renewed.

Clause 29 Subclauses (1), (2) and (3) make consequential amendments to sections 36(1), (2) and (3) by replacing references in those sections to 'Registrar' with references to 'Commissioner'.

Clause 30 Subclause (1) amends section 37(1) of the Act by deleting the penalty at the foot of the subsection (this means that the general penalty in section 93 of the Act will apply to an offence against section 37(1)).

Subclause (2) replaces references in section 37(3) of the Act to 'Registrar' with references to 'Commissioner'.

Clause 31 Subclause (1) amends section 38(1) of the Act by replacing references in the subsection to 'Registrar' with a reference to 'Commissioner' and deletes the penalty at the foot of the subsection.

Subclause (2) amends section 38(2) to delete the penalty at the foot of the subsection.

(The general penalty in section 92 of the Act will now apply to offences against sections 38(1) and 38(2) of the Act).

Clause 32 Repeals section 39 which is no longer required because a licensee will no longer be required to hold a business certificate in conjunction with a licence.

Clause 33 Subclause 33(1) amends section 40(1) of the Act to delete the reference to 'business certificate' in the section and to increase the maximum penalty for the offences of holding more than one licence at the same time or operating more than one business under a single licence to \$50,000 (equivalent penalty to offence of carrying on business without a licence – section 26).

Subclause (2) inserts subsections 33(1a), 33(1b) and 33(1c) into the Act which subsections operate to prohibit a licensed person who is carrying on business on her or her account from, at the same, being the licensed person in bona fide of a business conducted under a firm's licence or the person in bona fide control of the business of a body corporate which holds a licence.

Subclause (2) also operates to prohibit a licensed person who is the person in bona fide control of a finance broker's business conducted by a firm or body corporate from, at the same time, being the licensed person of a business conducted by another firm or body corporate.

Subsections (1a), (1b) and (1c) each provide a maximum penalty of \$50,000 for a person who commits an offence against those provisions.

Subclause (4) increases the maximum penalty for licence lending from \$500 to \$50,000 consistent with the proposed increase in the maximum penalty in section 26(1) of the Act for unlicensed broking.

Clause 34 Inserts section 40A into the Act which makes it an offence for a licensee to enter into an arrangement for finance broking to be carried out by a person who is required by the Act to hold, but does not hold, a licence. Provides a maximum penalty of \$50,000 consistent with the maximum penalties provided by sections 26 and 40 for related offences.

Clause 35 Subclause (1) amends section 41(1) to replace the reference to the 'Board' with a reference to the 'Commissioner' and to remove the requirement to endorse a business certificate with any business name used by a licensee. The details and endorsements contained in a licence are to be prescribed by regulation.

Subclause (2) amends section 40(2) to require a licensee to give the Commissioner notice within 14 days of any change in the name, title, style or designation under which the business is operated.

Also increases the penalty for an offence against sections 41(1) and 41(2) from \$100 to \$1,000.

Clause 36 Subclause (1) amends section 43(1) to remove the requirement for a person to hold a business certificate as well as a licence in order to demand or receive payment for broking services rendered.

Subclause (2) amends section 43 (2) to increase the maximum penalty for demanding or receiving payment in contravention of section 43(1) from \$500 to \$5,000.

Clause 37 Subclause (1) amends section 44(1) to provide that after taking advice from the Commissioner, the Minister may fix the maximum amounts of remuneration which brokers may demand or receive for their services.

Subclause (2) amends section 44(6) by increasing the maximum penalty for a contravention of the subsection from \$500 to \$5,000.

Clause 38 Subclause (1) amends section 45(2) to provide that an advertisement in relation to the business of a licensee shall contain the licensee's licence number (as a minimum) and such other details as are prescribed.

Subclause (2) amends section 45(3) to exclude from the requirements of the section an advertisement for credit to which the *Consumer Credit (Western Australia) Code* applies in order to avoid inconsistency with the provisions of the Code regulating advertisements for credit.

Subclause 3 inserts section 45(5) to provide a definition for '*Consumer Credit (Western Australia) Code* which is inserted into section 45(3).

Clause 39 Amends section 49(5) of the Act to provide that the trust account requirements contained in subsections (1) to (4) do not apply to a licensee when the auditor certifies to the Commissioner that he/she is satisfied with the record keeping system used by the licensee.

Clause 40 Subclauses (1), (2), (3), (4), (5a), (6) and 7 make consequential amendments to subsections 50(2), (3)(a), (5), (6), (7), (8) and (9) of the Act by replacing references in those subsections to 'Board' with references to 'Commissioner'.

Subclause (5b) amends section 50(7) of the Act to provide that the cost of a further audit shall be paid by the chief executive officer where the Commissioner does not otherwise direct that it be paid by the licensee.

Clause 41 Subclauses (1), (2), (3), and (4) make consequential amendments to subsections 51(1), (2), (3), and (5) of the Act by replacing references to the 'Board' where those references occur with references to the 'Commissioner'.

- Clause 42      Subclauses (1) and (2) make consequential amendments to subsections 52(2) and (4) of the Act by replacing the references to the 'Board' in those subsections with references to the 'Commissioner'.
- Clause 43      Makes a consequential amendment to section 53(3) of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner'.
- Clause 44      Makes consequential amendments to section 54 of the Act by replacing the references in the section to the 'Board' with references to the 'Commissioner'.
- Clause 45      Makes consequential amendments to section 55 of the Act by replacing references in the section to the 'Board' with references to the 'Commissioner'.
- Clause 46      Makes a consequential amendment to section 59 of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner'.
- Clause 47      Amends section 61 of the Act to make it clear that an auditor is required to include in an audit report to the Commissioner details of any deficiency found in an individual trust ledger account even though there may not be an overall deficiency in the trust account.
- Clause 48      Subclauses (1) and (2) make consequential amendments to sections 63(1) and 63(2) of the Act by replacing references where they occur in those sections to the 'Board' with references to the 'Commissioner'.
- Clause 49      Amends section 64 of the Act to increase the maximum penalty for a contravention of a provision in Division 2 of Part IV of the Act from \$300 to \$10,000.
- Clause 50      Makes a consequential amendment to section 66 of the Act by replacing the reference in the section to the Board with a reference to the Commissioner.
- Clause 51      Makes consequential amendments to section 68 of the Act by replacing references where they occur in the section to the 'Board' with references to the Commissioner.
- Clause 52      Makes a consequential amendment to section 69(a) of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner'.

Clause 53 Makes consequential amendments to section 70 of the Act by replacing references to the 'Board' in the first two places in the section where the references occur with references to the 'Commissioner' and in the last place where the reference occurs with a reference to 'chief executive officer'.

Clause 54 Makes a consequential amendment to section 71 of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner'.

Clause 55 Makes a consequential amendment to section 72(1) of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner'.

Clause 56 Subclauses (1), (2), and (3)(a) make consequential amendments to sections 73(1), 73(2) and 73(3)(a) of the Act by replacing references in those sections to the 'Board' with references to the 'Commissioner'.

Subclause (3b) inserts paragraph (aa) into section 73(3) which gives the State Administrative Tribunal the power to make such orders and directions as it considers necessary to enable a supervisor appointed to a licensee's business to preserve the property or rights of a person on whose behalf the licensee has received monies.

Subclause (3)(c) amends section 73(3)(b) of the Act to replace references where they occur in the section to the 'Board', with references to the 'chief executive officer'. The subclause also deletes a redundant reference in the section to 'the Treasury'.

Subclause (4) amends section 73(4) of the Act to replace the reference in section 73(4)(a) to the 'Board' with a reference to the 'Commissioner'.

The subclause also amends section 73(4)(b) of the Act by replacing the reference to 'Board' in the first place in the section where it occurs with a reference to the Commissioner and in the second place where it occurs with a reference to the 'chief executive officer'.

Clause 57 Subclause (1) amends section 74(1)(a) of the Act by replacing the reference in the section to the 'Board' in the first three places where it occurs with a reference to the 'Commissioner'. The subclause also amends section 74(1)(c) of the Act to replace the reference in the section to 'Board' with a reference to 'chief executive officer'.

Subclause (2) amends section 74(2) by replacing the reference in the section to 'Board' with a reference to 'Commissioner'.

Clause 58 Amends section 75 by inserting section 75(3) to give a supervisor appointed to the business of a licensee or deceased broker under section 73 of the Act, the right to apply to the State Administrative Tribunal for such orders or directions as may be necessary to protect or preserve the property or rights of any person who has placed monies with the licensee or deceased broker.

Clause 59 Amends section 76 of the Act to increase the maximum penalty for hindering or obstructing a supervisor in the performance of his or her duties from \$400 to \$4,000.

Clause 60 Subclause (1) amends section 78(1) of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner.'

Subclause (2) amends section 78(2)(a) of the Act by removing a redundant reference to the 'Treasury' from the section.

Clause 61 Subclauses (1), (2) and (3) amend sections 79(1), 79(2)(b) and 79(3)(c) of the Act by replacing the reference in those sections to the 'Board' where they occur with references to the 'Commissioner'.

Subclause (4) amends section 79(5) of the Act by increasing the maximum penalty for failing to comply with an order made by the State Administrative Tribunal under sections 72, 73 or 78 of the Act from \$400 to \$4,000.

Clause 62 Amends section 80 of the Act by replacing references in the section to the 'Board' with references to the 'Commissioner'.

Clause 63 Amends section 81 of the Act to provide that the Governor may make regulations prescribing a code of conduct for finance brokers.

Clause 64 Amends section 82 to provide that the Commissioner may make an application to the State Administrative Tribunal alleging that there is proper cause for disciplinary action to be taken against a licensed finance broker or a person who was a licensed finance broker at the time the conduct in question occurred.

Clause 65 Inserts new section 82A into the Act which gives the Commissioner the power to serve a notice on a licensee suspending a licence for a period up to 60 days where the Commissioner has reasonable grounds for believing:

- the licensee has engaged in conduct that would provide for suspension or cancellation of the licence under the Act;
- that it is likely the licensee will continue to engage in that conduct; and
- there is a risk that a person or persons will suffer loss or damage if immediate action is not taken.

Proposed section 82A(2) provides that a suspension order made by the Commissioner has effect whether or not the licensee has been given the opportunity to make representation to the Commissioner.

Proposed section 82A(3) provides that the Commissioner must within 21 days of serving a suspension notice on a licensee either revoke the suspension or make an allegation to the State Administrative Tribunal under section 82.

Proposed section 82A(4) provides that upon receiving an allegation from the Commissioner the State Administrative Tribunal may affirm, vary or revoke the suspension order made by the Commissioner.

Proposed section 82A(5) provides that where the Commissioner or the State Administrative Tribunal revokes a suspension order made by the Commissioner the Commissioner shall ensure that the licence is returned to the licensee.

Clause 66 Subclause 1 amends section 83(1)(b) of the Act by increasing the maximum monetary penalty the State Administrative Tribunal may impose on a finance broker where it has found a proper cause for disciplinary action exists, from \$1,000 to \$10,000. Also amends section 83(1)(c) of the Act by removing redundant references in the section to a 'business certificate'.

Subclause 2 amends:

- section 83(2)(a) to delete a redundant reference to 'business certificate';

- section 83(2)(b) to make it clear that a proper cause for disciplinary action exists where the State Administrative Tribunal is satisfied that a finance broker has engaged in conduct which constitutes a breach of a law other than the Act and that prejudices the rights or interests of any borrower or lender; and
- section 83(2)(c)(i) to delete a redundant reference in the section to 'business certificate'.

Subclause 3 inserts new section 83(3) to provide that for the purposes of section 83, the expression 'finance broker' includes a person who was a licensed finance broker at the time the conduct giving rise to the allegation occurred. This allows the State Administrative Tribunal to make an order under section 83(1) in relation to a person who no longer holds a licence.

Clause 67 Repeals and replaces section 84 which deals with the register of licensees. The proposed section requires the Commissioner to record in a register of licensees such particulars as are prescribed and to make the register available for inspection upon payment by the person of the prescribed fee.

Clause 68 Subclause (1) repeals and replaces section 85(1) to provide that the Commissioner shall publish annually in a manner approved by the Commissioner the names and descriptions of all persons holding licences together with such other particulars in the register as the Commissioner thinks fit.

Subclause (2) amends section 85(2) by replacing references in the section to the 'Registrar' with a reference to 'Commissioner'.

Subclause (3) amends section 85(3) by replacing the reference in the section to 'Registrar' with a reference to 'Commissioner' and also by deleting the reference in the section to 'business certificate'.

Subclause (4) amends section 85(4) by replacing the reference in the section to 'Registrar' with a reference to 'Commissioner'.

- Clause 69 Repeals section 86 which section requires the Chairman of the Board to submit an annual report to the Minister as soon as practicable after 1 July each year. (Note the transitional provision in clause 6 of Schedule 1 which requires the Chairman to submit a final report of the Board's activities to the Minister as soon as practicable after the commencement day.)
- Clause 70 Makes consequential amendments to section 87 as a result of the abolition of the Board and repeal of provisions allowing for the appointment of a Registrar and other officers of the Board and provide protection from liability for any act or omission of a person done in good faith and in the exercise or purported exercise of a function under the Act.
- Clause 71 Repeals and replaces section 88 of the Act which imposes a confidentiality requirement on persons who have or have had functions under the Act. Also imposes a continuing confidentiality requirement on former Board members and officers.
- Clause 72 Amends section 92(2) of the Act to increase the general penalty which applies where no other penalty is provided for an offence against the Act from \$200 to \$2,000.
- Clause 73 Inserts new sections 92A and 92 B into the Act.
- Proposed section 92A makes provision for authorised officers to issue infringement notices for prescribed offences against the Act and for the payment by a person receiving an infringement notice of a modified penalty not exceeding 20% of the maximum penalty provided under the Act.
- Proposed section 92B allows the Commissioner to publish statements and issue warnings about:
- unsatisfactory services provided by a licensees and the licensees providing those services;
  - unfair business practices of licensees and the licensees engaging in those practices; and
  - other matters relating to the acquisition of goods and services from licensees which may be detrimental to interests of persons acquiring those services,
- where the Commissioner is of the opinion that it is in the public interest to publish such statements or warnings.
- Clause 74 Subclause (1) amends section 93(1) of the Act to provide that proceedings for an offence against the Act may be taken by the Commissioner.

Subclause (2) amends section 93(3) of the Act to delete a redundant reference to a person who holds a business certificate.

Clause 75 Amends section 94 of the Act by replacing the reference in the section to the 'Board' with a reference to the 'Commissioner'.

Clause 76 Amends section 95(2) of the Act by removing a redundant power to make regulations prescribing the procedures of the Board and inserting a power to make regulations prescribing:

- the form and content of a licence;
- particular classes of licence which may be granted or renewed under the Act;
- particular qualifications or requirements which must be satisfied for the grant or renewal of a particular class of licence; and
- offences for which infringement notices may be issued and the modified penalty for those offences not exceeding 20% of the maximum penalty provided under the Act.

The clause also amends section 92(2)(g) by increasing the maximum penalty which can be prescribed for a breach of a regulation from \$100 to \$1,000.

Clause 77 Repeals Part VI of the Act which contains redundant transitional provisions.

Clause 78 Inserts Schedule 1 into the Act containing savings and transitional provisions.

## **TRANSITIONAL AND SAVINGS PROVISIONS**

### Schedule 1

Clause 1 – defines terms used elsewhere in the Schedule.

Clause 2 – provides that the Schedule does not limit the operation of the *Interpretation Act 1984*.

Clause 3 – provides that subject to clause 6 the Board is dissolved and members of the Board cease to hold office.

Subclause 4(1) – provides that on and after the commencement day:

- the Commissioner is to take control of all documents and records held by the Board;
- all rights, obligations and liabilities of the Board existing immediately before the commencement day vest in the Commissioner acting for and on behalf of the State;
- all contracts and agreements made by or with the Board existing immediately before the commencement day have effect as contracts and agreements made with the Commissioner acting for and on behalf of the State;
- any legal or other proceedings or remedies which but for the operation of the *Finance Brokers Control Amendment Bill 2003* might have been commenced or continued against the Board may be commenced or continued against the Commissioner, as the case requires, acting for and on behalf of the State; and
- all fees, charges and moneys payable to the Board and outstanding immediately prior to the commencement day are payable to the chief executive officer.

Subclause 4(2) provides that a reference to the Board in a document existing immediately prior to the commencement day is to be taken to be a reference to the Commissioner unless the context precludes such a construction.

Clause 5 – Saves a certificate issued under the Act by the Registrar before the commencement day.

Subclause 6(1) – provides that the Chairman of the Board immediately before the commencement day shall as soon as practicable after that day prepare and submit to the Minister a report on the Board's activities for the period beginning on the day after the period for which the last report was submitted and ending on the commencement day.

Subclause 6(2) – provides that the requirements of section 86(2) apply to a report submitted under subclause 6(1).

Clause 7 – saves a bond or guarantee entered into under section 35 of the Act before the commencement day in relation to a licence held after that day by virtue of clause 8 of the Schedule.

Subclause 8(1) – saves a licence held by a person who immediately before the commencement day also held a business certificate in conjunction with the licence, for the period the business certificate would have been valid under the Act.

Subclause 8(2) – provides that a person who immediately before the commencement day was excepted from the meaning of the term ‘finance broker’ by order made by the Minister under section 5(2) of the Act is taken to have been exempted by the Minister under section 5(2) for a period of 90 days commencing on the commencement day (such a person carrying on business as a finance broker will have 90 days in which to obtain an exemption under section 5(2) of the Act or a finance broker’s licence).

Subclause 8(3) – provides that the Commissioner shall enter the name of a person to whom subclause (1) or (2) applies in the register of licensees maintained under section 84 of the Act.

Subclause 9(1) – Provides that a licence issued to a person within three years of the commencement day in respect of which no business certificate is held continues in force after the commencement day for the period the licence would have remained valid under the Act.

Subclause 9(2) – Provides that a licence in respect of which no business certificate is held and which is valid immediately before the commencement day because the licensee has paid a holding fee in accordance with section 30(4) of the Act continues in force after the commencement day for the period covered by the holding fee.

Subclause 9(3) – Provides that licences continuing after the commencement day by virtue of subclauses (2) and (3) are subject to the condition that the licensee is not entitled to carry on business in their own right. Maintains the status quo existing immediately before the commencement day because persons holding a licence but not a business certificate in conjunction with the licence are not entitled to carry on business on their own account as a finance broker.

Clause 10 – Provides that an application for a finance broker’s licence or an application for a business certificate or the renewal of a business certificate made but not determined by the Board before the commencement day is to be taken as being an application made under the Act for a licence.

Clause 11 – provides that the regulations may make provision for a transitional matter for which no sufficient provision has otherwise been made in the Schedule.

Clause 79 Inserts Schedule 2 into the Act which a makes consequential amendment to Schedule V Part 3 of the *Constitution Acts Amendment Act 1899* by deleting therefrom the item “The Finance Brokers Supervisory Board constituted under the *Finance Brokers Control Act 1975*”.