



*Australian Institute of
Professional Brokers*

Submission

Exposure Draft

*The National Consumer Credit
Protection Bill 2009*

We support the Concept

The Australian Institute of Professional Brokers supports National laws involving consumer credit and other credit.

We have concerns about:

- the language (terminology) used and the confusion that the use of that language creates
- the level of understanding about the credit industry and what the “players” and “products” do for whom
- the holes left unplugged

Disclosure for disclosure sake or
Disclosure that has meaning to the borrower

More disclosure is a poor substitute to relevant disclosure that enables a borrower to select a suitable advisor and a suitable credit product.

The proposed legislation is complicating the credit industry and confusing those who are engaged in it.

“National Consumer Credit Code”

If the consultative stakeholders that have been involved in the discussion and the formation of this draft bill are making statements such as:

“All finance brokers” are required to be licensed.

“The Australian Credit License operates Australia wide and include all parts of the credit industry.”

“This act applies to the whole credit industry and everyone who works in the credit industry”;

what hope does the everyday consumer of credit and /or consumer credit have of understanding the National Consumer Credit Protection Bill 2009?

The wording in much of the draft act and associated material is misleading as it does not speak consistently of consumer credit as defined in the National Consumer Credit Code Schedule 1 National Credit Code Part 1 Preliminary 6 Provision of credit to which this Code applies (this important information is not easy to find and is separate to the meaning of credit!)

The wording in much of the draft act and associated material suggests that all credit is involved when clearly this is not the intention of the legislation and regulation.

Some Individuals Not Protected - WHY?

<p>The credit provider assesses the ability to repay and the reputation of the borrower in the same way for all these borrowers.</p> <p>The majority of the risk is worn by the borrower not the credit provider. It is the borrower who loses their equity first and may owe a debt even if they no longer own the property or if the value of their property diminishes.</p> <p>The assumption made is that Chris and Wayne do not need protection as they will obtain advice or are more financially literate.</p> <p>This assumption leaves many individuals vulnerable to fringe operators</p>	Individual Borrower	Credit Purpose	NCCC	Loan Amount	Real Property Security Value
	Kevin	Porsche (image)	<input checked="" type="checkbox"/>	\$150,000	\$250,000
	Julie	Improve residential investment property	<input checked="" type="checkbox"/>	\$150,000	\$250,000
	Chris	Invest in debt and equities products	<input type="checkbox"/>	\$150,000	\$250,000
	Wayne	Porsche (business)	<input type="checkbox"/>	\$150,000	\$250,000
<p>If Kevin loses his job he may get assistance</p> <p>If Wayne loses his job he is treated differently</p>					

Credit Provider / Mortgage Manager / Aggregator / Finance Broker

Individual Borrower	Credit Purpose	Required to be licensed	Disclosure required	Prohibition on charging a fee	License and compliance costs	EDR Required
Kevin	Porsche (image)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Julie	Improve residential investment property	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Chris	Invest in debt and equities products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wayne	Porsche (business)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Money is a tool, a basic instrument of exchange.

Finance relates to managing money and money resources.

Wealth is a product of using resources wisely.

Savings underpin every program for wealth creation and are not money spent on assets or investment.

Debt may be viewed as a temporary transfer of ownership of money from the lender to the borrower; provided the debt is repaid within the terms of the loan agreement the lender relinquishes any claim of ownership to the amount owing.

Investment requires capital expenditure - every financial investment carries financial risk of a devaluation in the initial amount invested and risk of associated income fluctuating.

Financial Services Industry

- **Banking Services**
 - Includes savings and loan products
- **Investment Services**
 - Includes investment products
- **Insurance Services**
 - Includes risk products

Financial Services Products

- **Savings Products**

- Everyday cash transaction accounts
- Somewhere to keep cash “safe”
- Deposit and withdraw own money on demand
- Allows non-cash payment instruments

- **Investment Products**

- Designed to assist wealth creation over time
- Requires a money contribution
- All carry risk of loss of money contributed for the user of the product “specifically” the investor

- **Loan Products**

- Money made available for a person to spend now and repay later
- The borrower is assessed as “credit” worthy, a reliable payer
- Credit Products that require deposits of money to repay money previously advanced

- **Risk Products**

- A management tool that may decrease the financial impact associated with unexpected loss
- Only protect against “pure” risk not “speculative” risk

There is a Duty of Disclosure on both parties (the buyer and the seller) of a Financial Services product to advise the other party of all relevant information to ensure that both parties are willing participants in the consequent sale or purchase of a suitable for purpose financial product.

Direct Debits to Bank Accounts Consumer Protection?

direct debit, in relation to the payment by a debtor of an amount for a credit contract, means the debiting of the amount against an account with a financial institution, **as specified and authorised in writing by the debtor**, that is processed through the Bulk Electronic Clearing System.

FORM 8 Direct debit default notice

“Cancelling your direct debit. **If it is allowed under your contract, you can cancel a direct debit with your credit provider or with the bank or financial institution where your account is held.** However, you need to make sure you have made alternative payment arrangements with your credit provider so that you do not default on your payment. Your instruction to cancel a direct debit must be in writing. Contact your bank or financial institution a few days after you have sent your written notification to check that the direct debit has been cancelled.

Resolving a problem with your direct debit. If you have a problem with a direct debit you can make a complaint to your credit provider or the bank or financial institution where your account is held. You can also contact the credit provider’s external dispute resolution scheme for assistance in resolving the complaint.”

Direct Debit authorities are given in writing by an account holder of a bank account. A basic right of the account holder is to cancel, in writing, any authority that they have previously given. It is not the business of a financial institution to interfere with an account holder’s basic right of operation due to any third party arrangement.

Margin Loans are a Lending Product

A banana variety is not usually called fillet steak. Both a banana and a fillet steak are categories of food used for human consumption. A banana is categorised as fruit and a fillet steak is categorised as meat. A consumer of the fillet steak would not normally ask a fruiter how to cook the steak. They would normally seek the advice of someone trained in cooking.

A material fact is a Margin Loan is a Credit Product

To suggest that a margin loan is a financial services product under the Corporations Act and dealt with under FSRA regulation instead of being treated as a credit product **confuses** the basic underpinning concepts of Finance.

A person who owns an appropriate asset can use the funds advanced from a Margin Loan and many other credit products for personal, domestic or household purposes or to invest in real property or other property or business.

The product is generally used for investment purposes as it is generally the intention of the product seller to direct the borrower into an investment plan created by the seller of the financial product.

Investing in shares is what investors generally do with the money they obtain from a Margin Loan. Investing in shares which are highly geared is an investment strategy. A wise investor will obtain advice from an appropriately trained advisor in share trading.

Finance Brokers vs. Financial Planners

Finance brokers **source** all types of loan products

- Finance Brokers are a profession that assists all types of **borrowers** obtain all types of **credit** facilities that meet a borrowers specific credit requirements.

Financial Planners **sell** advice and certain types of investment and risk products deemed via the Chapter 7 of the Corporations Act, 2001 as Financial Products

- Financial planners are a profession that assist certain financial product **investors** to determine the risk and possible return of **investment vehicles** that they sell a financial planner may offer products that may mitigate other than speculative risk of financial loss through unexpected life events personal to the investor.

Finance Brokers Areas of Operation

Consumer Finance:

A finance broker who has accreditations with or introduces business or borrowers to commercial credit providers offering products designed to satisfy personal, domestic or household purposes. Credit products may include personal loans, leases, credit cards, margin loans and personal overdrafts (excluding real property mortgages products).

Real Property Residential and Commercial Mortgages Finance:

A finance broker who has accreditations with or introduces business or borrowers to commercial credit providers offering products that rely on real property used as security for the advance of funds. Credit products may include variable rate loans, fixed rate loans, construction loans, and lines of credit, reverse mortgages and bridging loans.

Commercial Asset Finance:

A finance broker who has accreditations with or introduces business or borrowers to commercial credit providers offering products that rely on liens, or property other than real property used as security for the advance of funds. Credit products may include leasing, commercial hire purchase, chattel mortgages, margin loans.

Commercial & Business Finance Small / Medium Enterprises:

A finance broker who has accreditations with or introduces business or borrowers to commercial credit providers that offer products designed to satisfy small to medium enterprises short-term and long-term funding requirements. Funds are used to support business activities, manage business cash flow needs and to take advantage of business opportunities as they present. Credit products may include business overdrafts, term loans, debtor finance, trade letters of credit, bank guarantees, commercial bills

Big Business Finance Specialist.

A finance broker who introduces business or borrowers to commercial credit providers that offers solutions to the corporate and institutional client sectors. Client and market insights, the industry dynamics within which the borrower operates in and in-depth risk analysis are utilised to understand the business and obtain required funding to manage cash flow and liquidity, fund expansion and growth, and manage risk in the foreign exchange, interest rate, commodities, derivatives and securities markets. Products may include Project Finance, Syndications and Agency.

Relationships between credit provider and credit service provider

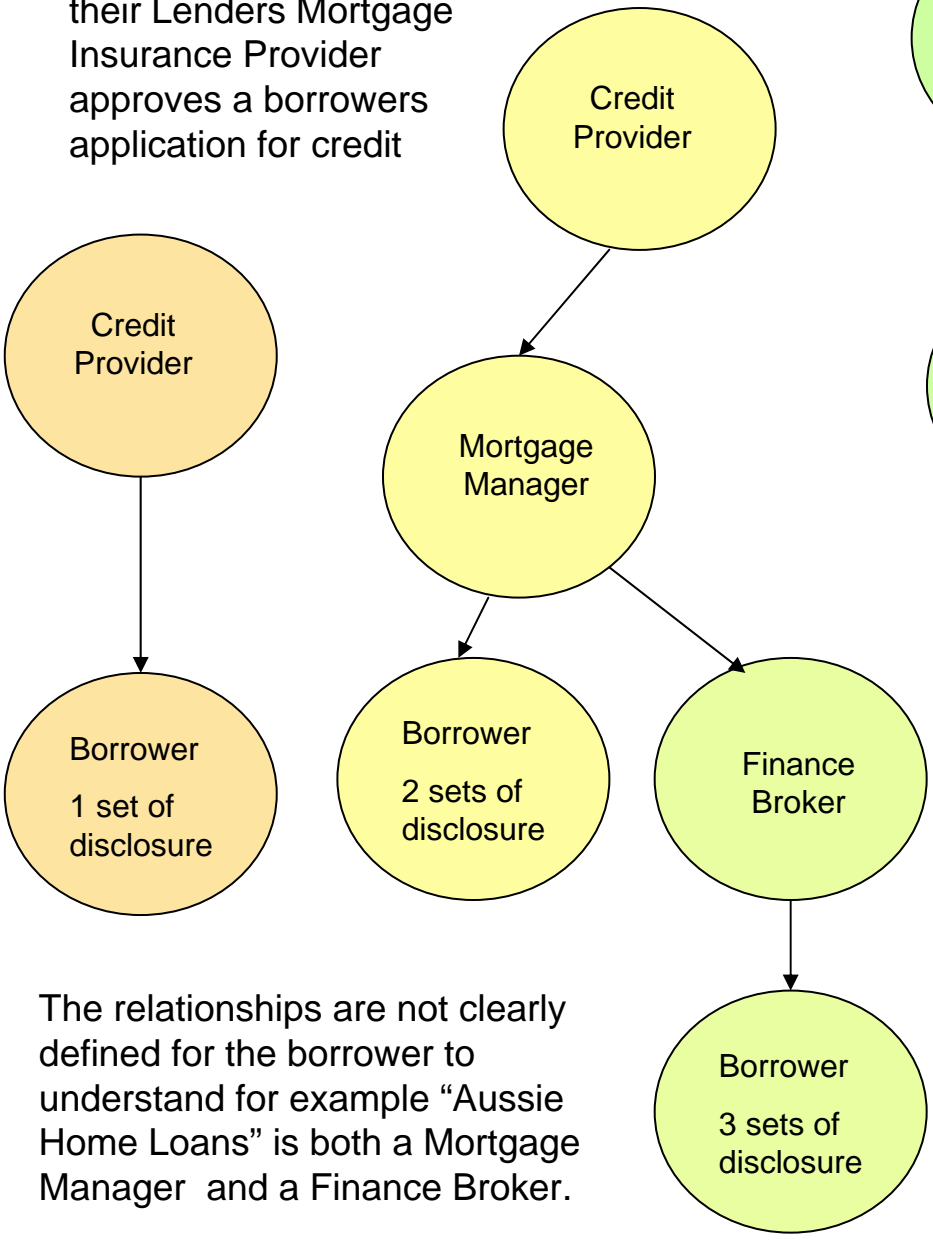
For the borrower the relationship between the credit service provider and the credit provider needs to be very clear;

- A Finance Broker is independent to the credit provider
- A Mortgage Manager is not independent to the credit provider
- An “Aggregator” does not usually provide credit assistance to a borrower; their members do

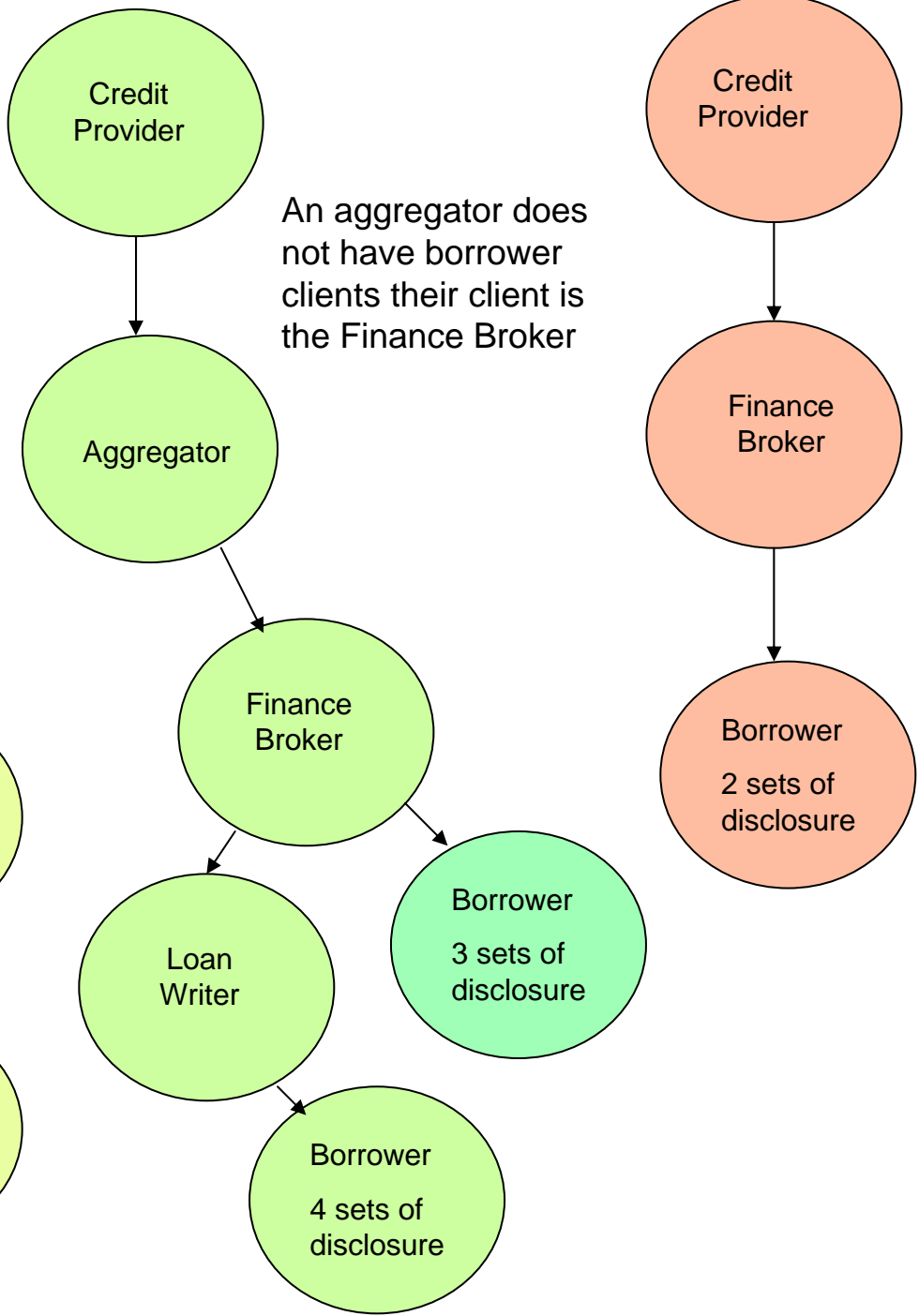
A finance broker is expected to reveal their remuneration however a mortgage manager is not as it is deemed to be “commercially sensitive”

A finance broker is expected to reveal their “commissions” however and exemption is given to employees of the credit provider (NCC Schedule 1 Section 15 (14))

The Credit Provider or their Lenders Mortgage Insurance Provider approves a borrowers application for credit



The relationships are not clearly defined for the borrower to understand for example "Aussie Home Loans" is both a Mortgage Manager and a Finance Broker.



An aggregator does not have borrower clients their client is the Finance Broker

Responsible Lending Conduct

- Panel of credit providers that the licensee conducts business with
 - The requirement to provide the 6 credit providers that the licensee conducts the most business with assumes that Finance Brokers are volume driven and keep specific statistics on the volume of loans given to each credit provider and that this volume is static. This assumption is incorrect and R130 2(d) needs to reflect that a panel of credit providers is used and that this may not reflect all credit providers in the market place that offer the kind of product suitable for the borrowers current situation.
- Information about remuneration (R130 2 (e))
 - The reality of Finance Broker remuneration is that the formulas, conditions and payment reliability makes a figure of remuneration “unascertainable” to the broker, nevertheless being able to provide a figure or simple calculation to the borrower at this point in the credit assistance process. (the following provides a couple of examples)

Finance Broker Credit Provider remuneration is complicated and uncertain

- **Example 1**
- **Upfront *:**

For loans submitted **from 1 November 2008**, upfront commission will move to a star rating quality system that is based on an individual broker results across three key measures: Application Quality, Portfolio Performance and Education and Professional Development attainments. The initial commission payable is as follows (GST exclusive):

 - 4 Stars: 0.65%
 - 3 Stars: 0.60%
 - 2 Stars: 0.55%
 - 1 or 0 Stars: 0.50%
- The ratings, and hence the relevant commission rate, will apply until 30 June 2009. Commission on business lodged after that date will be based on the ratings at the next assessment date, which is 31 May 2009.
- **Bridging** – no upfront payable. Trail payable on the resulting limit only.
- **Clawback**
 - **Upfront Clawback (Settlement from 1 Aug 2008):** Up-front commission – 100% clawback within 12 months, then 50% 12-24 months. Where client discharges loan within 12 months for reasons beyond broker's control (eg: death, divorce, overseas employment posting), Homeside will reinstate \$300 of the clawback.
 - **Utilisation Clawback (Settlement from 1 Aug 2008):** If, on the date that is 6 months after the Drawdown Date, the outstanding principal balance of a Term Loan is less than or equal to 80% of the principal balance of the Loan at the Drawdown Date, you must repay a pro rata amount of Upfront Commission. Refer to lender.
 - **(Settlement prior to 1 Aug 2008)** Up-front commission – 100% clawback if discharged within 9 months.
- **Trail Commission: ****
 - For loans settled from **1 Aug 2008**: 0% year 1, 0.165% year 2, 0.22% year 3, 0.275% for year 4, 0.33% for year 5 and 0.385% for years 6+.
 - For loans introduced on or after **1 July 2007 – 1 Aug 2008**: 0.275% for years 1-3, 0.33% for year 4 and 0.385% for years 5+.
- **Trail Commission on Loans with offset facilities:** Effective 1 Feb 2008, Commission will be calculated in accordance with the following formula:
- **C = TC x (A-B)**
- Where:
- C = Trail Commission; TC = Trail Commission rate
- A = average daily debit balance of the loan account, over the Trail commission period.
- B = average daily credit balance of any interest offset account to which the Loan is linked over the Trail commission period.
- **Lines of Credit** - Upfront is payable on 75% of the approved credit limit.

- **Example 2**

- **Upfront Commission***

- (For loans settled from **1 February 2009 to 30 April 2009.**)

- Upfront commission will be:

- a) Base rate - 0.50%
- b) Online Allowance 0.05%
- c) Submission Quality 0.05%
- d) Conversion Allowance 0.05%^

- Total 0.65% (0.715% incl GST)

- ^ Conversion Allowance is payable to individual members who have met or exceeded a conversion rate of 80% for applications submitted to CBA from 1 July to 30 September 2008 (as advised by CBA). Members who have achieved a conversion rate of 75% or over, but less than 80%, will receive an allowance of .025%.

- The next CBA commission review will be in April 2009, based on applications received in January, February & March (Online & Quality) and between October and December (Conversion). For the **April review** the bonus allowance targets are:

- Online Allowance > 75% .025%; > 90% .05%
- Submission quality > 80% .025%; >90% .05%
- Conversion ratio >75% .025%; >80% .05%

- Base rate unchanged at 0.50%.

- **Trail Commission ****

- (For loans settled on and after **1 July 2008.**)

- a) Year 1 - Nil

- b) Year 2 onwards – 0.22% (GST inclusive)

- (For loans settled **1 April 2005 – 30 June 2008.**) Trail commission is 0.22% for the first year after settlement. The rates increases to 0.275% after the first year of settlement except for the 3 year Special Rate Saver, which will increase to 0.275% after 3 years (effective: loans settled from 01/04/2005).

- (For loans settled before **1 April 2005.**) – 0.275% upfront (GST inclusive)

- **Trail** commission is calculated on the net balance outstanding at month end (Balance outstanding = Home Loan debt at month end (including additional advances) – month end credit balance on MISA accounts attached to the home loan).

- **Line of Credit Products** Upfront Commission will be paid on 75% of the approved Credit Limit. CBA reserves the right to negotiate the rate of commission where the New Money loan amount equals or exceeds \$3,000,000.00.

- **Clawback** applies to up-front commission if the loan is discharged or refinanced by another bank or by CBA at the client's request; 0-12 months = 100%, 13-18 months = 50%, except where facilities are repaid and CBA are satisfied that there has been a bona fide repayment (excluding refinancing with another financial institution) by the client. Application of this exception is at the absolute discretion of CBA.

- **Refinance** – where a facility is used in whole or in part to repay an existing borrowing, CBA deduct the amount required to repay the existing borrowing from the new facility to determine the balance outstanding on which commission is calculated.

- **Refinance/New Money** – where the new Home Loan or Line of Credit is used in whole or in part to repay an existing borrowing, secured by a mortgage over residential property, commission is calculated on the "new money" only i.e. the amount required to repay the existing borrowings is deducted from the total amount of the new loan or facility.

- **Minimum** loan amount to receive commission is \$50,000. Trail commission NOT payable on loan amounts less than the figures quoted above.

- **Reverse Mortgage** products: Loans under \$20K = nil commission; loans \$20K - \$39,999 = Flat rate of \$500; loans \$40K and over = Flat rate of \$1000. There is no trail commission payable.

- **Bridging Loans** – Upfront commission, including any allowances will not be paid on loans or facilities, wholly or partly of a bridging nature. However, commission will be paid on loans or facilities, partly of a bridging nature based on the estimated residual balance of the facility, after repayment of the bridging finance, where the residual balance exceeds \$50000. The total upfront amount is paid on the projected end debt not the original loan amount (i.e.: the loan amount after the sale of existing loan, which must be greater than \$50000 to receive upfront commission) and the trailer will be paid on the balance outstanding as at the end of each month.

- **Personal accounts** – CBA pay commission on personal accounts which form part of the loan application;

- Streamline (\$50 per acc)

- Credit Card (\$15 per acc)

- General Insurance (\$35)

- Loan Protection (\$100)

- Commission for these accounts is received upon approval of the loan. This is paid out separately & often ahead of the loan settlement.

Definitions

“Consumer” & “Credit”

For the purpose of this act “consumer means a natural person or a strata corporation.”

In plain English a consumer is one who buys, they are a user of a commodity.

Suggestion: to avoid confusion the definition needs clarification

“consumer means a natural person or a strata corporation engaging in the use of consumer credit as defined in the National Consumer Credit Code”

Suggestion: to avoid confusion wherever the word “credit” is used and it refers to “consumer credit” replace the word “credit” with the words “consumer credit”

In plain English double negatives create confusion

“not unsuitable” really means suitable or appropriate in plain terms

Declaration would be better if it guided a borrower in what to do rather than not what to do

IMPORTANT

You should **only sign** this declaration **if this loan is** wholly or predominantly for:

- business purposes; or
- investment purposes **other than** investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code.

Rather than

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