

Mortgage Brokers

Terms of Reference

In 1973 the Commission was asked to consider and report on the question whether legislation should be enacted to control the activities of mortgage brokers.

Background of Reference

A number of persons were carrying on the business of mortgage brokers in Western Australia either separately or in association with another business, such as a land agency. The most common function of a mortgage broker is to arrange, for a fee, loans on the security of mortgages over land; although some brokers arrange loans which are secured on personal property or are not secured at all. Some brokers also borrowed funds at fixed rates of interest from various persons for re-investment. They were not required to have sufficient financial resources to maintain a stable business nor were they required to lodge a fidelity bond. Further, they were not required to be of good character nor, even though they held themselves out as having certain expertise, were they required to understand the business of finance broking.

The reference was prompted by comments received on an earlier working paper published by the Commission: *Review of the Land Agents Act*¹. All commentators on the subject favoured the licensing of mortgage brokers. Indeed the Mortgage Brokers Association had for some years been making representations to government seeking the introduction of a system of licensing.

Nature and Extent of Consultation

The Commission issued a working paper in February 1974 which was circulated widely for comment to interested parties including judicial officers, the Law Society of Western Australia, the Citizens' Advice Bureau and finance and property organisations including the Mortgage Brokers Association of WA and associated Western Australian banks. The Commission received a number of submissions with most commentators agreeing that some statutory control of mortgage brokers was necessary.

The Commission delivered its final report on the subject in September 1974.² In the report the Commission defined a mortgage broker as a person who in the course of business as an agent negotiates or arranges loans of money for or on behalf of another for reward. The Commission appreciated that this definition may bring within the ambit of its report categories of persons who would not normally describe themselves as mortgage brokers but as finance brokers. Accordingly where the Commission made recommendations in its report with respect to mortgage brokers, such recommendations also extended to finance brokers.

Recommendations

The Commission recommended that a licensing regime be established for mortgage brokers where potential licensees are subject to a requirement of character fitness and are under the control of a supervisory authority. The Commission also recommended that mortgage brokers be required to maintain trust accounts which should be subject to audit and that they be required to contribute to a fidelity guarantee fund or to enter into a fidelity bond with an approved surety.

Legislative or Other Action Undertaken

The *Finance Brokers Control Act 1975 (WA)*³ implemented the Commission's recommendations.⁴

1 Law Reform Commission of Western Australia, *Review of the Land Agents Act*, Project No 37 (1974). The resulting legislative action was the *Real Estate and Business Agents Act 1983 (WA)*.

2 Law Reform Commission of Western Australia, *Mortgage Brokers*, Project No 45 (1974).

3 See also the *Finance Brokers Control (General) Regulations 1977 (WA)*.

4 Western Australia, *Parliamentary Debates*, Legislative Assembly, 29 April 1975, 1208 (Mr DH O'Neil, Minister for Works).