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IMPACT OF COAG REFORMS: BUSINESS REGULATION

CONSUMER CREDIT

RESPONSE BY MORTGAGE AND FINANCE ASSOCIATION OF AUSTRALIA

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12015sub-Consumer Credit resp

Mortgage and Finance Association of Australia (MFAA)

MFAA represents 11,500 mortgage and finance brokers, aggregators/broking groups and mortgage managers across Australia.

We make the following responses to Chapter 3 Consumer Credit of the Productivity Commission's paper on *Impacts of COAG Reforms: Business Regulation.*

Composition and Scale of the Transition and ongoing costs of meeting licence obligations

While MFAA members were well prepared for the introduction of NCCP (which we strongly supported) in that, as part of MFAA's membership requirements, they already were required to belong to an EDR scheme and hold PI cover and they already held, at least Certificate IV in Financial Services (Finance/Mortgage Broking), there were still significant transition and ongoing compliance costs.

While the licensing cost was clearly an additional (but expected) cost a further (unexpected and avoidable) cost felt by all brokers is the requirement to provide a Credit Guide, Credit Quote and Credit Proposal.

Each of these documents is required at a different stage in the transaction. The need to do these things at different times is a significant additional cost to brokers, and inconvenience and confusion to broker and customer alike. The cumulative effect of the disclosure is hardly different to the NSW/WA/VIC finance broking contract required under the previous state finance broker legislation, which provided much the same information in a consumer friendly single document. We are not aware of any problems with the previously required document. We recommend a return to the proven effective disclosure method of a finance broking contract, amplified to provide information about credit assessment and EDR. This will assist consumers' understanding as well as reducing compliance costs.

To demonstrate an example of the overall impact of NCCP, we include the comments of a mid-sized broker aggregation group:

> *… in terms of a dollar figure all up it costs us as a Licensee $150,000 per annum. This includes the cost to hold a licence, have in place a group PI policy covering over 85 Credit Reps and employ a Credit Representative Compliance Manager to ensure our representatives are complying with their obligations.*
>
> *Also the impact on broker productivity has increased dramatically due to the introduction of Credit Guides, Fact Find Documents, Verification Checklists, Preliminary Assessments, Quotes and Credit Proposal Disclosure Documents. Whilst a number of these documents replaced previous documentation and processes, the findings from our compliance audits indicate that it takes much more time for a broker to write a deal post the implementation of NCCP and responsible lending obligations versus before.*

Impact of NCCP on Competition

The Productivity Commission paper[1] acknowledges the dramatic impact of the GFC on the ability of non bank lenders to compete noting that their share of the mortgage market had 'fallen from around 12% in 2006 to 5 %." It has now fallen to 1.7%. While the NCCP cannot be blamed for the fall, it certainly has not improved competition in the lending sector. The ban on exit fees which became effective from 1 July 2011 has not led to any lessening of the market share held by banks compared with credit unions, building societies and non bank lenders. In June 2011, the respective market shares were: Banks 92.3%, Building Societies 1.9%, Credit Unions 4.3% and Non Bank lenders 1.4%[2]. By December 2011 those shares had barely changed. In fact Banks had increased their share to 92.5%, with Building Societies 1.7%, Credit Unions 4.1% and Non Bank Lenders 1.7%.

The ban on exit fees, which was introduced by the Government to increase competition, has a significant negative impact on competition. It makes it more expensive, if not impossible, for people to borrow bridging finance. Consumers now have to find money up front to pay establishment fees rather than being able to amortise the cost over some or all of the term of the loan. The purchase of mobile phones is a good analogy. If telcos were prevented from charging exit fees, consumers would have to pay over $500 upfront, and most consumers would not have a mobile phone. The removal of exit fees creates significant bias in favour of large lenders who can 'take the punt' across a large portfolio that the average life of loans will be acceptable. Smaller lenders cannot take this risk. Historically it has been the smaller lenders which have been the drivers of competitive pricing for mortgages. This was clearly demonstrated in the period between 1995 and 2007 when Building Societies, Credit Unions and Non Bank lenders held between 15 and 25% of the market, mainly driven by the innovative operations of non bank lenders. (see Table below)

Housing Finance Market Share

As at October	Banks %	Bldg Soc Credit U %	Non Banks %
1992	89.8	10.2	
1995	85.7	9.8	4.5
1997	81.6	8.0	9.7
1999	83.2	7.2	10.2
2001	77.6	8.3	14.1
2003	76.9	7.8	15.2
2005	79.5	6.9	13.6
2007	84.8	7.4	7.2
2009	91.4	5.6	3.0
2010	89.2	7.7	3.0
2011 (March)	91.5	7.4	1.2
2011 (April)	92.0	7.0	1.0
2011 (May)	92.5	6.3	1.2
2011(June)	92.3	6.2	1.4
2011 (July)	92.6	6.0	1.4
2011(Aug)	93.1	5.3	1.6
2011 (sept)	92.5	5.7	1.8

[1] P58
[2] ABS Housing Finance, Cat 5609.0, Table 3

2011 (Oct)	92.4	5.9	1.7
2011 (Nov)	91.7	6.9	1.8
2011 (Dec)	92.5	5.8	1.7

Source ABS Housing Finance 5609.0: Table prepared by Mortgage and Finance Association of Australia, Dec 2010

Updated February 2012

Increase disclosure and lending obligations

EDRs

There is significant concern about the cost to industry of consumers having unfettered free access to EDR schemes. It appears that even frivolous or vexatious complaints are entertained by the EDR costing industry EDR fees, internal costs dealing with the dispute, and financial loss when enforcement is delayed. It is appreciated that it is hard for EDRs to quickly dismiss frivolous or vexatious complaints because it takes time to make an assessment. The initial assessment is particularly hard given the difficulty many consumers have in expressing their concern. Industry considers the balance has swung too far in favour of consumers.

Vexatious complaints include complaints that are made simply to 'use the system'. The lender is forced to capitulate despite the claim having no merit in order to save time and cost. In a worse case scenario, a lender's power of sale can be frustrated and delayed or up to two years. If this trend escalates, it will flow through into increased costs for all borrowers, and a reduction in the high ratings currently afforded to Australian mortgage-backed securities. This delay often works against the borrower because the interest debt increases faster than the real estate value. One solution could be that if a matter is not resolved at EDR within a specified time that court proceedings can be recommenced.

Not Unsuitable

The mandatory requirement that a loan is 'not unsuitable' has deprived many people from credit. The restriction on Australians using their assets how they wish is a substantial inroad on freedom. This is particularly so in the case of investment properties, and there seems no reason to prevent a borrower from being able to use an investment asset to raise money on whatever terms the owner wishes. Many small businesses and self employed people are paying significantly more for credit or are unable to obtain credit because of this requirement, making it difficult (for example) to borrow money to pay lump sum payments such as income tax, health expenses, school fees etc.

Ongoing Regulatory Change in this area

In addition to the comments already made above, MFAA would simply refer back to its comments as reported in the Productivity Commission's paper, viz

> *'MFAA has been a strong supporter of enhanced regulation in the credit sector, but it is essential that the rate of change to regulation is now slowed to allow the market to have commercial certainty and for new businesses to plant green shoots.*[3]

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[3] Page 63