

**ANNUAL REVIEW OF REGULATORY  
BURDENS ON BUSINESS**

- ***BUSINESS AND CONSUMER SERVICES***

**PRODUCTIVITY COMMISSION**

---

**SUBMISSION BY MORTGAGE AND FINANCE  
ASSOCIATION OF AUSTRALIA**

**21 JANUARY 2010**

## **MORTGAGE AND FINANCE ASSOCIATION OF AUSTRALIA (MFAA)**

The MFAA is the peak body of the mortgage and finance industry. Its 12,500 members comprise primarily mortgage and finance brokers, their aggregation groups and mortgage managers plus lenders which distribute their loan products through intermediaries.

The overwhelming majority of MFAA's members are either one person or very small (less than 5 person) businesses (98%).

Brokers currently write about 40% of all residential mortgage loans (and a comparable proportion of business (especially small business) finance in Australia.

MFAA's members are estimated to comprise about 75% of the brokers operating in Australia.

## **REGULATORY ENVIRONMENT**

Intermediaries providing or recommending credit, currently are covered by state/territory based legislation (WA, NSW, Victoria, ACT) or no legislation at all (SA, QLD, Tasmania, NT).

This patchwork pattern of legislation has been problematic for the industry and consumers alike, with different (or no) regulations and processes being required depending on the state in which the consumer resides. This problem is exacerbated by the fact that mortgage transactions bear no relationship to state/territory borders. Eg a broker in SA (where no regulation applies) could be dealing with a consumer in WA (where a licence is required). Another actual example is a broker in NSW (where some regulation exists) negotiating a loan for a consumer in WA (where a license is required) to purchase a property in Tasmania, (where no regulation applies). Furthermore where regulation exists it only applies to brokers (and mortgage managers) but not to other providers of credit (eg banks, credit unions and building societies).

MFAA members are bound by a Code of Practice and Disciplinary Rules governing their conduct.

Since 2002 MFAA has been lobbying state and territory governments to enact uniform legislation to ensure a 'national' standard.

To its credit the current Federal Government took the initiative soon after being elected in 2007 and put in train a process which has resulted in the states handing over their powers to regulate credit and the National Consumer Credit Protection Act was passed in late 2009 to commence partial operation in July 2010 and full operation in 2011.

MFAA worked closely with the Federal Government on this important piece of legislation and is very supportive of the content of the Act.

## IMPLEMENTATION OF THE NATIONAL CONSUMER CREDIT PROTECTION ACT

While the NCCP legislation and the consultation leading up to its enactment was the responsibility of Treasury, its implementation and enforcement falls to ASIC. Having two government departments involved in this process (with possibly differing drivers) would not seem to be conducive to a cohesive approach and a smooth implementation, but given the short time frame the result to date seems to be positive. This has been assisted by the establishment of a series of working parties comprising stakeholders and representatives of both government departments which have been closely involved on a regular basis.

However a concern that MFAA has repeatedly voiced with the federal government and the above working parties is that no assumption should be made by the regulators that the implementation and enforcement of the NCCP Act should be the same as for the Financial Services Reform Act (FSRA), another piece of legislation enforced by ASIC. While there are some larger operators, because of the wide range of their business operations, which may find it simpler to have their business regulated under the one 'template' as it were, the vast majority of businesses covered by the NCCP will be very small operators which have no relationship with the circumstances applying to those businesses covered by FSRA. The temptation by regulators to adopt a 'one-size-fits-all' approach will, if implemented, potentially create compliance costs and road blocks, perhaps worse than applying under the state based patchwork the NCCP was intended to eliminate.

Thankfully, the wording of the NCCP recognises the need to have 'scalable' compliance and the regulations and other implementation documentation released to date recognise this.

MFAA, however, makes this submission to highlight the need to ensure future regulators do not forget the basis on which this legislation was made and the nature and size of the businesses it covers. The warning: '*There shall be no one-size-fits-all*' should be writ large on all departmental instructions regarding the implementation and enforcement of the NCCP.

-----