

MORTGAGE BROKING
HOME LOANS
CREDIT CARDS
HOME INSURANCE

21 May 2009

The Manager
Consumer Credit Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL TO consumercredit@treasury.gov.au

Dear Manager

Submission on the National Consumer Credit Protection Bill and associated bills and regulations

Aussie thanks the government for the opportunity to comment on the National Consumer Credit Protection Bill and associated bills and regulations (Draft Legislation).

Executive Summary

Our key comments on the Draft Legislation are as follows:

- An intermediary's commissions are not ascertainable at the time of providing the credit guide; consequently the credit guide should provide a generic description of commissions, or alternatively show the intermediary's commissions in bands or within set ranges.
- The licensing requirements should not be overly onerous as significant barriers to entry into the industry might have unintended anti-competitive consequences.
- Penalties should not be imposed for arranging an unsuitable loan where this is an isolated, as opposed to a regular, occurrence.
- A copy of the credit assessment need only be provided if a loan is made and should only cover information provided by the consumer.
- The verification of the financial situation of the consumer by an intermediary should be limited to enquiries **of the consumer** as the broker is usually not in a position to make enquiry of third parties.

Information about Aussie

As you know, Aussie is a leading finance intermediary with over 800 trained and accredited mortgage advisers visiting customers throughout Australia.

That's confidence. That's Aussie.

Voted Best Mortgage Broker: Australian Banking & Finance Magazine Awards 2006.

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Aussie has always been a strong advocate of appropriate regulation for the finance industry. We welcome the licensing of credit intermediaries and lenders, and support the thrust of the proposals in the Draft Legislation.

We have been able to review a preliminary draft of the Mortgage and Finance Association of Australia (MFAA)'s submission and generally support the proposals in the submission.

As one of the largest finance intermediaries in Australia, Aussie takes compliance with all laws very seriously. We have extensive training processes and systems in place to ensure the highest compliance levels. Our comments should be read in that context, and trust you will appreciate that our submission is designed to create regulation which facilitates full compliance without unnecessary costs, complexity or risk.

Commission disclosures

R130 – Credit guide of credit assistance providers

R130 requires an intermediary to provide a credit guide soon after 'it is likely to provide credit assistance'.

Under R130(2)(e) the credit guide is required to provide:

- (i) commissions expressed in their dollar value; and
- (ii) the amounts of those commissions, or the range of those amounts; and
- (iii) the method for working out those amounts.

At the time a credit guide is provided, the loan product will usually not have been selected and as most intermediaries offer many loans it will be impractical to disclose commissions other than in very general terms. The credit guide should only give a **generic description** of how the intermediary is paid.

We understand the key intent of disclosure of commissions paid other than by the consumer is to assist the consumer identify whether a product is being favoured by the broker because the commission is higher. However, we wonder whether consumers can identify that issue. Even if the consumer does identify the issue, we suspect that brokers can present plausible explanations that dismiss any concern. We consider consumers are better protected by a broker's obligation to act honestly at all times. We submit that disclosure of specific amounts of commission payable other than by the consumer should be deleted from the proposals, and that a general disclosure of lender commissions is sufficient.

If despite our submission to the contrary, it is decided to require **specific commission disclosure**, it is important to recognise that it will seldom be possible to express commission in dollar terms because:

- trail commission is payable on the variable monthly balances of the loan account (so this amount is unascertainable); and
- many lenders pay bonuses having regard to factors such as service levels and performance of portfolio.

Instead, we suggest a regime under which commission is disclosed in bands or within set ranges, and specific commission disclosure is not required. Disclosure in bands is more useful to the consumer as it facilitates comparison. A suggested disclosure regime appears below. Under this proposal, the **exact** amount of commission does not need to be disclosed and so the opportunity for brokers to avoid disclosure on the basis that commission is unascertainable is removed.

Range	Lenders
Upfront commissions (% of loan amount)	
0.0% to 0.3%	[name each lender falling in each band]
Over 0.3% to 0.6%	
Over 0.6% to 1.0%	
Over 1.0%	
Trail commissions (%pa of loan balance)	
0.0% to 0.3%	
Over 0.3% to 0.6%	
Over 0.6% to 1.0%	
Over 1.0%	

Mortgage manager's commission

As you know, Aussie brought competition into the Australian mortgage market and this was achieved by selling our own Aussie branded loans. Aussie continues to stimulate competition by providing Aussie branded loans.

It is essential that there is a level playing field between balance sheet lenders (primarily banks) on the one hand, and non-bank lenders (including securitised programs) on the other hand.

If mortgage managers are obliged to disclose the margin they receive from the interest rate payable by the borrower (because margins fall within the definition of 'commission'), mortgage managers like Aussie will be significantly disadvantaged and as a result competition will be reduced. The mortgage manager's margin is analogous to the margin made by balance sheet lenders, which is currently not disclosed.

The Draft Legislation requires disclosure of 'commission' only by the entity which is dealing direct with the client. Accordingly, if the manager deals through a third party broker, the issue of disclosure of commission does not arise.

However, when the manager deals direct with the consumer, the margin and fees paid to the manager may be captured within the concept of 'commission' and so require disclosure to the consumer.

The definition of 'commission' should be amended to clearly exclude payments of this type.

Licence application

We understand that it is intended that the Australian Credit Licence (ACL) can be reasonably obtained by the majority of mortgage brokers who are members of professional associations such as the MFAA.

We note however that much of LIC170 is lifted from the Corporations Act and mirrors the requirements for obtaining an Australian Financial Services Licence (AFSL).

We are concerned that a regulator or a court, when faced with broadly identical language, will have difficulty in imposing different standards and this concern is shared by many within the industry.

If it is difficult to obtain an ACL, many finance brokers will instead have to become credit representatives. This is likely to significantly increase the cost of business and is a substantial change to the way in which the industry currently operates. In Western Australia it is usual for individual loan writers to be individually licensed, and this system works well for compliance and regulation.

If only large brokers and aggregators are able to obtain an ACL, there will be a substantial lessening of competition in the industry because small brokers will effectively be excluded.

It is important that the difference between the requirements for an AFSL and an ACL is embedded in the Draft Legislation to avoid misinterpretation by the courts or regulators.

Unsuitable credit

Aussie takes pride in the fact that loans arranged by Aussie have low default rates. Accordingly, for many years we have gone to considerable lengths to ensure that our customers can afford their loans and are not put into loans which are unsuitable for them.

Irrespective of any legislation, we will continue to observe these high standards because they are good for consumers, good for society, and good for our business.

However, we object to penalties applying for arranging a single unsuitable loan. We accept that a broker should be obliged not to arrange an unsuitable loan – and breach of this obligation on a regular basis should be grounds for disciplinary action. However for a compliant organisation like Aussie, the risks of being penalised for isolated errors (especially given that there is no clear line between a suitable loan and an unsuitable loan) is wholly inappropriate.

Consequently, we submit that an intermediary should not be penalised for arranging an unsuitable loan if the conduct is not systemic.

How does a broker assess whether a loan is unaffordable?

Aussie currently obtains information from consumers regarding their financial position, and in particular details of their income and expenses. Based on this information provided by the consumer, our representatives use Aussie's loan selection system to determine which loans meet their needs and their affordability. Our automated software then provides a selection of the best loans offered by Aussie and its panel lenders from which the customer can choose. We submit that calculation of serviceability in this fashion is a sufficient test of affordability. It would be good if this could be made clearer in the Draft Legislation.

Verification of financial position

Lenders' requirements and procedures for brokers vary significantly. Some lenders require brokers to obtain evidence of income and assets whereas others prefer to do the verification themselves.

In any case, brokers only ever conduct a **preliminary** verification as usually lenders make further enquiries. In many cases we have to rely on the information that the consumer gives us. It is often not possible to conduct any verification. The Draft Legislation should be changed to remove the requirement for brokers to verify financial information as that requirement does not conform with some business models and significantly limits the scope of online applications (an area which is expected to grow). The consumer is protected by the fact that the lender makes these enquiries and thus the information is verified at all times before the loan is made.

Without the unsuitable loan provisions, the Draft Legislation already provides significant consumer protection by ensuring that consumers have access to External Dispute Resolution (EDR) and that lenders and intermediaries need to be registered and subsequently licensed. The additional obligation of testing unsuitability in a formal way and being liable to a penalty if that job is not done properly is unwarranted from a commercial perspective (given the lenders have this obligation) and is not capable of being implemented within the short time allowed.

If our submission to remove the broker verification requirement is not accepted, we submit that:

- the type of verification should be described as a 'limited' verification; and
- the requirement should be delayed until Phase 2, as this will involve significant systems changes and training.

At the very least, the verification a broker is required to undertake should be limited to enquiries ***of the consumer*** as the broker is usually not in a position to make enquire of third parties.

Provision of credit assessment

R170 requires brokers to provide consumers with a written copy of the preliminary credit assessment made by the broker.

Provision of credit assessments should be abandoned or postponed to Phase 2

There are significant IT systems issues involved in arranging for consumers to be provided with a copy of the preliminary credit assessment. Some of the difficulties are discussed under the next two headings. We submit that this requirement should be deleted in full or at least postponed until Phase 2. If this submission is rejected, we press for the changes described under the next two headings.

Provide credit assessment only if credit is provided

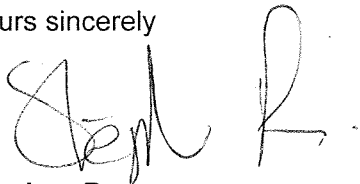
The note forming part of R170 states that the licensee is only required to provide a copy of the credit assessment if credit assistance is provided. Under DEF7, an intermediary can provide credit assistance even if a loan is not arranged. We submit that the obligation to provide the credit assessment should only apply if a loan is actually made. This recognises that the purpose of providing the credit assessment is to allow consumers who find themselves in financial difficulty a way to investigate whether the intermediary or the lender acted improperly in arranging or making the loan.

Specify what amounts to a credit assessment

Exactly what amounts to a copy of a credit assessment is unclear. Particularly for lenders, a credit assessment could be very lengthy and deal with things such as policies relating to geographic areas, socio-economic groups, and other sensitive commercial information that should not be disclosed. The Draft Legislation should make it clear that the copy of a credit assessment that must be provided is limited to a summary of the assets and liabilities obtained by the broker or lender and a worked serviceability ratio indicating the assumptions that the lender or intermediary used in order to determine whether the consumer could afford to repay the loan.

I am happy to meet to discuss the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Porges', written in a cursive style.

Stephen Porges
Chief Executive Officer