

Thursday, 14 May 2009

Manager
Consumer Credit Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
Parkes ACT 2600
BY EMAIL: consumercredit@treasury.gov.au

Dear Sir

DRAFT NATIONAL CONSUMER CREDIT REFORM LEGISLATION

Australian Loan Company Limited ("ALCo") currently provides mortgage origination and broking services throughout Australia. The proposed National Consumer Credit Reform legislation will certainly impact upon the day to day operation of the organisation. In relation to the exposure draft of the legislation ALCo wishes to put forward the following submissions:

1. LIC170 General Conduct Obligations of Licensees

ALCo endorses the obligations contained in this section.

2. LIC382 Trust Account of Credit Service Licensees

LIC382(b) provides that the obligation to maintain a trust account applies where a licensee in the course of providing the credit service receives money for or on behalf of another person.

We query whether this section is designed so it is intended to require licensees to hold a trust account where income is received by a licensee and then a proportion of this income is subsequently paid to a "credit representative" in accordance with their agreement with the licensee, and further whether money received on this basis is received "in the course of providing the credit service". It is submitted that this section should be qualified to provide that it will not apply in this instance. It would be grossly impractical and an unnecessary and unfair burden to require a licensee, acting as an intermediary to operate a trust account when a proportion of any money received is to be directed to the credit representatives of the licensee only.

3.R130 Credit Guide of Credit Assistance Providers.

Clause R130(2)(d)(ii) provides that disclosure is required in the licensee's credit guide as to the six credit providers with whom the licensee conducts the most business. In the circumstances of ALCo the six credit providers with whom the licensee conducts the most business can change over each month. It is the submission of ALCo that a precise period should be stipulated in this clause to enable compliance i.e. the names of the six credit providers with whom the licensee conducted the most business during the previous calendar year. Otherwise to ensure strict compliance, a licensee will be required to continually monitor credit provider usage and adjust the credit guide accordingly.

4.R135 Quote for Providing Credit Assistance

Clause R135(5) provides that "a licensee must not request or demand payment of an amount for a licensee's credit assistance before the licensee provides the assistance." The submission of ALCo is that this clause should be removed. The legislation imposes obligations on licensees/credit representatives to collect information and make reasonable inquiries about consumers (R160), to make a preliminary assessment of unsuitability of a credit contract (R150) and provide a consumer with a copy of the preliminary assessment (R170). A licensee should be able to be compensated for the effort, expertise and time that is required of a licensee/credit representative to follow the procedure required under the legislation and ultimately make a recommendation in relation to credit assistance.

The concern is also that this clause may allow consumers to take advantage of a licensee's/credit representative's expertise by requesting credit assistance and then going elsewhere to implement any recommendations given, thereby legally depriving the licensee/credit representative of any payment despite assistance and recommendations being provided to the consumer. The ramifications of this clause should be considered closely and qualified where necessary to ensure that this type of behavior by consumers is not permitted.

5. Streamlining of action required and documents to be provided.

The legislation requires numerous actions on behalf of licensees/credit representatives, and documents to be provided at various stages of the process of giving credit assistance.

The table below sets out the requirements that are proposed by the legislation.

Documents / Action Required	When Required
Credit Guide (R130)	As soon as practicable after it becomes likely that credit assistance will be required
Quote for Providing Credit Assistance (R135)	Before providing Credit Assistance
Preliminary Assessment of unsuitability of a Credit Contract (R150)	Before providing Credit Assistance
Make reasonable inquiries/collect consumer data and information (R160)	Before providing Preliminary assessment.
Client Proposal Disclosure Document (R180)	At same time as providing Credit Assistance

It is submitted that the process proposed for the giving of credit advice should be streamlined to simplify not only the documents issued to clients but also the need for various templates required by licensees/credit representatives. At present the proposed structure provides for a number of documents and inquiries to be conducted at various stages in the "credit advice" process. The requirement for giving a quote should be incorporated into the credit guide. Similarly, it may be appropriate for the preliminary assessment of unsuitability of a credit contract to be incorporated into the client proposal disclosure document (where applicable). The new process could be reflected as below.

Documents / Action Required	When Required
Quote for providing Credit Assistance and Credit Guide	Before providing credit assistance
Make reasonable inquiries/collect consumer data and information (R160)	Before providing Preliminary assessment.
Assessment of unsuitability of a Credit Contract and Client Proposal Disclosure Document	At same time as providing Credit Assistance

6.R185 No profiting from fees etc paid to third parties

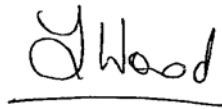
Currently it is very common for brokers to provide a full service to clients including services such as recommendations as to solicitors, referrals for contractors for the carrying out of building and pest reports, search services in relation to water and rates information etc. It is submitted that clause R185(1) is not appropriate and should be removed. Removing the

ability of credit representatives to obtain remuneration from other sources may in fact result in additional fees being built into other areas which are not prohibited.

7.R192 Suggestions to consumers to remain in unsuitable credit contracts

It is submitted that the use of the word "unsuitable" may not be appropriate in relation to clause R192(1). From a practical point of view situations could rise where although a credit contract is unsuitable for a consumer it may not be viable for a consumer to enter into a more favourable credit contract if the consumer will incur significant "exit fees" when transferring or paying out the unsuitable credit contract. It is submitted that it would be more appropriate for this clause to read "if the contract is not in the best interests of the consumer at that time".

Kind regards

A handwritten signature in black ink that reads "L Wood". The signature is written in a cursive style and is underlined with a single horizontal line.

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