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

Email: consumercredit@treasury.gov.au.

Dear Sir/Madam

SUBMISSION ON THE DRAFT NATIONAL CONSUMER CREDIT REFORM PACKAGE

Bank of Queensland Limited (**BOQ**) appreciates the opportunity to make a submission on the exposure draft of the National Consumer Credit Reform Package (**the Package**).

The Australian Bankers' Association Inc. (**ABA**) has made a detailed submission to Treasury (dated 22 May 2009) on the Package (**ABA submission**). The Bank has reviewed, and generally supports, the ABA's submission. Accordingly, this submission will focus on issues that are either particular to or exacerbated because of BOQ's unique 'owner-managed branch' (or **OMB**) distribution model, which have not been addressed in detail in the ABA submission.

Whilst we understand that there are certain pressures on the government to implement the Package expeditiously, we suggest that it would not be in the government's overall interest to implement what potentially is a significant paradigm shift in regulation of credit without proper and careful consideration of not only the direct but unintended consequences that may arise.

We are hopeful that the final form of the Package will be 'distribution model neutral' insofar as the obligations under the Package do not disproportionately burden BOQ's owner-managed branch model compared to other authorised deposit-taking institutions operating under a traditional branch structure. BOQ believes that this outcome can be achieved without lessening the consumer protection objectives of the Package.

Background to Bank of Queensland's Model

BOQ is an authorised deposit-taking institution (or **ADI**) under the *Banking Act 1959* (Cth).

BOQ currently provides lending products and services through a national branch network. Those branches include traditional branches owned and operated by BOQ (**Corporate branches**) and 'owner-managed branches' owned and operated by third parties not related to BOQ under an agency model (**OMB branches**). The OMB branch operator (**OMB operator**) and BOQ enter into contractual arrangements whereby BOQ appoints the OMB operator to operate the OMB branch, and promote and facilitate the provision of BOQ's

lending products and services. The OMB operator employs its own staff. In consideration for providing these services, BOQ pays the OMB operator a commission. The OMB operator is an agent of BOQ.

Recent experience with the FSR and AML/CTF regimes highlights the fact that legislation tends to overlook, or not adequately address, the subtleties of agency arrangements in the distribution of financial products and services. This submission highlights some difficulties in the Package in this regard.

Lastly, BOQ is only aware of one other bank, Bendigo and Adelaide Bank Limited, that operates a similar agency based distribution model. Therefore, we flag in advance that Treasury is unlikely to receive submissions on some of the issues raised in this submission from more than a couple of banks. Despite this, given the importance of this distribution model to BOQ, we ask that BOQ's submission, particularly in relation to the issues that are particular to BOQ's OMB branches, be given appropriate consideration.

1. Credit Representatives

We note that pursuant to LIC250(3) and LIC250(4)(b), an authorisation of an OMB operator as a credit representative of BOQ would be of no effect if that credit representative is not a member of an EDR scheme.

Further pursuant to LIC257(5) and LIC257(6)(c), any sub-authorisation provided to individual employees of OMB operators will similarly be of no effect where that individual employee is not a member of an EDR scheme.

Whilst we understand Treasury's rationale in wanting mortgage brokers who, instead of applying for a licence as a principal, operates as a credit representative of a bank, to be a member of an EDR scheme, we believe that there are unintended consequences that flow from the current provisions.

To facilitate the implementation of the Package within BOQ, it is likely that our OMB operators (which are corporations) will need to be appointed as credit representatives of BOQ. At the date of this submission, BOQ has approximately 200 OMB branches (representing approximately 75% of BOQ's branch network) operating throughout Australia that distribute BOQ's loan products. A typical OMB operator would have 5 or 6 employees working at an OMB branch. Clearly from these figures, OMB branches represent an important part of BOQ's distribution network.

The current provisions require each OMB operator to be members of an EDR scheme as well as each one of their employees that may be considered to provide "credit activity" (as defined) to also be a member of an EDR scheme. This will be unworkable for BOQ and has the capacity to result in a substantial shift in the operating model for an OMB branch. These provisions have the capacity to substantially hamstring BOQ's ability to effectively provide lending services to consumers to their detriment.

It is relevant to note that these provisions do not impact on the major banks in the same way, as their branches are corporate branches. We submit that if the credit representative provisions are passed in their current form, it will unfairly prejudice BOQ vis a vie the major banks and will create an unlevel playing field in favour of the major banks to the detriment of overall competition and consumers.

We note that the authorised representative provisions under Chapter 7 of the *Corporations Act 2001* do not contain similar requirements for an authorised representative to be a member of an EDR scheme.

Recommendation

We recommend that the following changes be made:

- the requirement in LIC250(4)(c) and LIC 257(6)(c) be deleted; and
- reference to provision of details of EDR schemes in LIC 275(3)(c) should also be deleted.

We submit that there is sufficient protection for the consumer already, given that a licensee has ultimate responsibility for all credit representatives and their sub-authorised representatives, and such licensee is required to be a member of an EDR scheme.

2. Disclosure requirements – provision of “Credit Guides”

We submit that the provisions requiring the provision of credit guides at various stages of the lending process is confusing and unnecessarily increases the amount of disclosure to consumers without necessarily enhancing their understanding of their loan.

This issue largely stems from the artificial break up of the lending process into parts that do not operate in a mutually exclusive fashion. For example the activities of a credit provider in advising on a loan can amount to credit assistance. This issue is further exacerbated by the concept of credit representatives which purport to provide credit assistance to consumers on behalf of a licensee.

Bearing in mind that the majority of BOQ's branches are OMBs, this causes a substantial amount of disclosure from essentially one contact point – ie the branch.

The proposed Package currently requires that:

- a licensee that is providing “credit assistance” to provide a credit guide (R130). As BOQ's activities in recommending loan products comes within the definition of “credit assistance”, BOQ will need to ensure that the consumer is provided with a credit guide.
- a licensee that is the credit provider is also required to provide a credit guide (R230). BOQ in its capacity as credit provider will also need to comply with this requirement.
- a credit representative that provides “credit assistance” on behalf of BOQ is also required to provide a credit guide (R330). As BOQ's OMB branches are likely to operate as a credit representative of BOQ, this credit guide will also need to be provided.

It is relevant to note that the content requirements of each of these credit guides are slightly different. Further there does not appear to be a method of combining all 3 credit guides.

We submit that it is nonsensical to have the obligation to provide 3 slightly different credit guides to consumers, when consumers are essentially dealing directly with BOQ through its agent and not using a finance or mortgage broker. This is likely to inundate consumers with unnecessary paperwork, be confusing and frustrate the efforts of consumers to better understand the proposed credit contract.

Recommendation

We recommend that the following changes be made:

- making the definition of “credit assistance” exclusive of the activities of the credit provider, its employees, directors, and credit representatives; and
- ensuring that the Package differentiates effectively between credit representatives that are branches/ agents of a bank and finance and mortgage brokers.

Please feel free to contact the writer should you wish to discuss any of our concerns further.

Yours faithfully

Bank of Queensland Limited



Stacey Hester
Head of Legal and Assistant Company Secretary