

Finance Solutions (WA) Pty Ltd

A.C.N. 009 299 183

Licensed Finance Broker 2451

Email : ray@financesolutionswa.com.au

Member Australian Finance Group

PO Box 1110 West Perth WA 6872

17/795 Beaufort Street Mt Lawley

Tel: 9271 4466 Fax: 9271 4411 Mobile: 0411 123 721

MEMORANDUM

TO : Alix Gallo
COMPANY : Department of Treasury
FROM : Ray Weir
DATE : 22/05/09
SUBJECT : Comment on Exposure Draft - National Consumer Credit Protection Bill 2009

Dear Alix,

I've overviewed the 11 documents released by Treasury and offer the following comments and observations.

- Firstly it is comforting to note that loans for any purpose taken out in the name of a company, in its own right or as trustee for a discretionary or unit trust, will not be regulated (unless perhaps the "Guarantors" occupy a residential property to be financed?). Most of my high net worth investor clients that trade in residential property on a frequent basis do so via companies and trusts. Many of these clients would fit a definition of "Sophisticated Investors/Borrowers" with net worth in excess of \$2.5m.
- Suitability or Unsuitability of credit may not always be based on pure financial considerations. Occasionally other factors come into play when ascertaining if it meets the consumer's objectives, highlighting the need for an intermediary in particular to retain "reason for recommendations" and possibly get them signed by the consumer. For example, a consumer may select a credit provider that they have felt comfortable dealing with previously, despite the product from that provider not being the "most suitable" option available to them.
- Ability to service a loan (general comment): Take the case of a recently unemployed professional person, owns a home worth \$1,500,000 and has a \$200,000 mortgage. To support his family's lifestyle and provide a cash buffer for ongoing expenses, he seeks a further line of credit facility of \$200,000 to tide him over until he returns to employment. According to the proposed laws that person would possibly not meet the Government's definition of a qualified borrower (no ability to service current and proposed loans from "income").

The proposed legislation would likely prevent that consumer from using the substantial equity in his family home to work through the temporary unemployment. The consumer would be forced to sell the property to access the equity, depending on the credit provider and ASIC's interpretation of the circumstances.

- R192 states "a licensee must not provide credit assistance by suggesting that a consumer remain in a particular credit contract with a particular credit provider if the contract is unsuitable for the consumer at the time". What if the contract is no longer suitable, but the consumer's circumstances prevent any chance of refinance? The only advice an intermediary could give is "I can't refinance you because your circumstances are not good enough, looks like you'll have to stay where you are. You are of course recommended to seek further advice from another broker of financial advisor".
- The Bill should contain a provision that "a credit provider cannot unreasonably withhold consent to the registration of a subsequent mortgage and must execute a Deed of Priority where required and produce the title at the Land Titles Office in a timely manner to enable registration of a subsequent mortgage". Reason: Some credit providers may take weeks to deal with urgent requests for production of title and preparation and execution of a Deed of Priority.
- Section 75: It may be difficult to provide a partial refund of any mortgage insurance premium as a credit toward a loan payout figure. Normally any applicable refund can only be calculated and arranged AFTER payout of the loan.
- Section R270 "Giving the consumer the assessment". I see no reason for giving a consumer a copy of an "assessment" prior to a consumer entering the contract. So long as they obtain finance approval the consumer has no interest in receiving a copy of the assessment, perhaps only when credit is denied. Most banks at present refuse to give reasons when denying credit and the consumer is left to wonder if the bank has relied on incorrect information provided by an intermediary, or perhaps incorrect information on a credit reference data base.

However, I suggest the credit provider be required to give the consumer a copy of any internal or external valuation obtained in respect to the property or asset to be mortgaged, where the result of the valuation differs from what was anticipated by the consumer (valuation lower than purchase price). In most cases the consumer is either directly or indirectly (via bank establishment fees) paying for the valuation and they should be entitled to receive a copy.

Reason: This will avoid a repeat of the historical circumstance whereby an "out of town consumer" with no local knowledge contracted to purchase a Gold Coast property for say \$600,000 and applied to a bank for a \$300,000 loan. The valuation arranged by the bank valued the property at say \$500,000 but the bank did not inform the consumer of the result and proceeded with the loan. The consumer subsequently ascertained they had "been had" by the developer/vendor and challenged the bank when they found out the valuation obtained by the bank was considerably lower than purchase price.

- Re Explanatory Notes: How is the term "providing credit in the course of a business of providing credit" defined? I am thinking of a private lender that provides credit occasionally and "not part of or incidentally to any other business". It will be interpreted by private lenders that, by investing in a private mortgage loan once or twice a year, they are not "carrying on business" and they will regard themselves as exempt from the Bill. Or is this left to Common Law and the Court's to rule on after the event?
- I am very relieved to note that it will no longer be necessary for lenders and intermediaries to give consumers Comparison Rates Schedules, which no one paid any notice to. I agree it is sufficient that credit providers simply state Comparison Rates in any advertising or product information, either directly or via an intermediary.
- Reasonable Inquiries about the consumer: Item 3.48 suggests that it is appropriate to include all contracted expenses in an assessment by a credit provider or intermediary, such as internet or mobile telephone service (not to mention insurance premiums etc). As all such contracts are normally able to be cancelled and at short notice with minimal termination cost, I suggest these variable expenses need not be specifically considered. They should be included under a reasonable allowance for "living expenses" as determined by credit providers.
- While there is a requirement to maintain financial records, there appears to be no obligation on an intermediary to maintain a "loan application register" or data base of loans arranged. The absence of such records would surely impede a compliance audit and ability to provide statistics for PI insurer's proposals or Government use. This should be covered in the Regulations. While many brokers have banking and accounting record of commission or brokerage received on loans, connecting that information to client records would be difficult. Every intermediary should maintain a record of all settled loans in a readily accessible format for a period stipulated by law (7 years in WA).

- I believe the Bill should establish a formula by which lenders and borrowers calculate economic break costs (which can be incorporated into a ready reckoner for ease of calculation). At present credit providers are free to calculate such economic break costs without nominating the base rate upon which such calculations are based, leaving them free to profiteer from such calculations at the consumer's expense. A formula, stipulating the method of calculating the credit provider's cost of funds that can be readily ascertained at any time in the future, should be incorporated in all credit contracts.
- I've picked up on a few noteworthy issues arising from The Mortgage Reform and Anti-Predatory Lending Act recently debated on the floor of the House of Representatives in the USA and comment on them briefly as follows;
- The USA intend setting maximum early payout penalties (not to be confused with economic break costs on fixed rate loans) to stamp out disincentives to consumers seeking more suitable finance as their financial circumstances improve and they qualify for a better loan than originally obtained.
- Maximum late payment penalties, so consumers are not hit with unreasonably high penalties for late payment when faced with financial difficulties, such as unemployment.
- Maximum period in which lenders must provide loan payout figures and discharges of securities, so lenders can't drag out the refinance by another lender for unreasonably long period (suggest maximum 7 days be considered).
- Maximum period in which consent to subsequent mortgages must be processed (already covered in my earlier comments).

Raymond John WEIR
Director/Licensee
Finance Solutions (WA) Pty Ltd
WA LFB 2451

Employment History

- 1984 - Current **Finance Solutions (WA) Pty Ltd**
Director – Residential and Commercial Finance Broker
Licensed Finance Broker 2451
- 2005 - Current **National Finance Institute Pty Ltd**
Commercial Lending Course Lecturer (Part Time)
- 2003 - 2004 **Finance Brokers Association of Australia Ltd**
Chief Executive Officer
- 1974 - 1984 **Beneficial Finance Corporation Ltd**
Lending Officer – Commercial Property Finance
- 1969 - 1973 **Bond Corporation Pty Ltd**
Trainee Accountant and Assistant to Group
Financial Controller

Other Voluntary Positions

- 2004 - 2007 **Mortgage & Finance Association of Australia Ltd**
WA State Council Member
- 1998 - 2003 **Finance Brokers Association of Australia Ltd.**
President – WA State Branch
- 2003 - 2004 **National Finance Industry Training Advisory Body**
Member of advisory panel to set competency standards for Certificate
IV & Diploma in Finance/Mortgage Broking Course
- Various periods **WA Finance Brokers Supervisory Board**
Deputy Member: 1986 – 1990
Member: 1990-1992
Deputy Member: 1995 – 1999
Member: 1999 - 2000
- 1992 - 1998 **Perth Campus T.A.F.E.**
T.A.F.E. Lecturer and Correspondence Tutor
Finance Broking Practice 1 and 11
- 1989 - 1990 **Institute of Finance Brokers WA Inc.**
Member 1986 – 1992, President 1989 & 1990
- 1979 - 1986 **Real Estate Institute of WA**
Finance Lecturer – Salesperson's Registration Course

Professional Qualifications

- 1974 Certificate in Accounting (Perth TAFE)
- 1985 Certificate in Finance Broking (Perth TAFE)
- 1986 Finance Brokers Licence No. 498 (W.A.)
- 2004 MFAA Compliance Pack
- 2008 MFAA Anti Money Laundering Course
- 2009 Certificate IV in Financial Services (Finance/Mortgage Broking)