



21 May 2009

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

By email: consumercredit@treasury.gov.au

Re: National Consumer Credit Protection Bill

FirstMac thanks the government for the opportunity to comment on the National Consumer Credit Protection Bill and associated bills and regulations.

FirstMac is one of the few non-bank residential lenders still actively offering Australian consumers a competitive alternative to the banks. We fund our mortgages through securitisation and other funding techniques. We have been recognised by receiving funding through AOFM.

The benefits of competition that the non-bank sector brings to consumers and the economy generally have been recognised on many occasions. It is important that the new regulation does not in any way place non balance sheet lenders such as FirstMac at a competitive disadvantage compared to balance sheet lenders.

FirstMac has always been a strong supporter of appropriate regulation for the finance industry. We welcome the licensing of credit intermediaries and lenders, and support the thrust of the proposals.

We have been able to review a preliminary draft of the submissions to be made by the Mortgage and Finance Association of Australia (**MFAA**) and generally support the thrust of those submissions.

Securitisation structure

The structures used by non balance sheet lenders vary considerably, but in essence comprise the following.

Lender: Either a public trustee company or an SPV. This entity is designed to be bankruptcy remote to protect the interests of the bond holders. The loans will usually be owned by one or more trusts of which the trustee or SPV is the trustee.

Program manager: The entity which establishes the program and manages the trust. This entity is usually entitled to the profit after payment of the bond holders and all other expenses.

Servicer: The entity which manages the portfolio of loans.

Special Servicer: The entity which manages loans which are in default. May be the same entity as the Servicer:

Originator/mortgage manager: Markets the loans to consumers and may make credit decisions.



Commission disclosure

The Program Manager or the Originator/Mortgage Manager (all referred to as the manager in the following discussion) may be paid a margin for its work. This margin represents the difference between the delivery (wholesale) interest rate and the interest rate paid by borrowers. Some of the fees paid by the borrower may also be paid by the lender on to the manager

The new 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 borrower, the margin and fees paid to the manager may be captured within the concept of 'commission' and so require disclosure to the consumer.

Non balance sheet lenders would be placed at a competitive disadvantage if the manager is obliged to disclose its margin and fees, as balance sheet lenders do not disclose this information. Also, the disclosure of this information is commercially sensitive. The amount usually cannot be determined in advance.

We submit that the definition of 'commission' be amended to clearly exclude payments of this type.

Assessing whether a loan is unsuitable

Penalties are inappropriate

We object to penalties applying for arranging an unsuitable loan. The integrity of the lender of record as a bankruptcy remote vehicle will be compromised if the trustee or SPV is subject to penalties.

This risk can be partly addressed by providing that indemnities can be given for the penalties imposed by the legislation. However, we submit it is still inappropriate to have the risk of being penalised for isolated errors (especially given that there is no clear distinction between a suitable loan and an unsuitable loan).

If a loan is written which is unsuitable, the consumer will have adequate recourse by being able to vary or set aside the loan. If a lender is guilty of regularly making unsuitable loans, the appropriate remedy is censure or termination of its licence.

Provision of credit assessment

R170 and R270 require a written copy of the credit assessment to be provided to borrowers.

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

There are significant systems issues involved in arranging for borrowers to be provided with a copy of the 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 heading.

Specify what amounts to a credit assessment

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 made available. The legislation needs to 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 borrower could afford to repay the loan.

Yours sincerely

A handwritten signature in black ink, appearing to be "K Cannon", is written over a long, thin horizontal line that extends to the right.

Kim Cannon
Chief Executive Officer
FirstMac Limited