

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

PricewaterhouseCoopers
ABN 52 780 433 757

Freshwater Place
2 Southbank Boulevard
SOUTHBANK VIC 3006
GPO Box 1331L
MELBOURNE VIC 3001
DX 77
Telephone 61 3 8603 1000
Facsimile 61 3 8603 1999
Website:www.pwc.com/au

2 June 2009

Dear Sir/Madam

RE: National Consumer Credit Protection Bill 2009

I appreciate that the final date for submissions as part of the consultation process was 22 May 2009. I did not make a submission as some of the issues I thought particularly relevant, were communicated to the MFAA. I note the MFAA has made a submission to you and I have read that submission. Disappointingly, two significant matters were not raised by the MFAA. Accordingly, you are under no obligation to consider any further matters or submissions but I wanted to point out some issues with the drafting, which I believe are relevant.

1. Obligation of Licensee where credit activity undertaken by credit representative on behalf of licensee.

My concern is that the only statutory obligation on a credit representative is to provide a credit guide where he/she/it has provided to a consumer a licensee's credit guide when acting on behalf of the licensee under Part 3-1 or 3-2. The provisions of Part 3-1 apply only to a licensee providing credit assistance to a consumer. There is no reference in any of the proposed provisions of Part 3-1 to the licensee's credit representative. Is it intended that where a credit representative acts on behalf of a licensee and fails to comply with any of the provisions under Part 3-1, the civil and criminal penalties can be levied against the licensee?

LIC 305 and 310 of Part 2-3 relate to the responsibility of the licensee in regard to the conduct of a credit representative. Importantly, Division 4 of Part 2-3 imposes no criminal responsibility or civil liability that would "not otherwise be imposed on the licensee" (LIC 310(3)).

If it is intended that the various penalties for non compliance under Part 3-1 apply to a licensee where the credit assistance has been provided by a credit representative, this is a huge disincentive to the authorising of any credit representative. I do not believe that is

2 June 2009

the intention. In my view, the various provisions of Part 3-1 and 3-2 should be amended to apply to a credit representative as well as a licensee as there is sufficient ambiguity in the present drafting that could exculpate conduct in breach of any part of Part 3-1 where the credit assistance is provided by a credit representative on behalf of a licensee.

2. Exemption for referrers – regulation 6.3

Proposed regulation 6.3 is almost identical to regulation 7.6.01(e) of the Corporations Regulations 2001. The effect of the regulation is to exempt referrers from the licensing provisions where they refer a consumer to a licensee or credit representative of a licensee for credit assistance purposes and disclose any benefits/commissions they may receive.

My concern is that the exemption will not apply to the majority of referral cases in the mortgage industry and primarily due to the description of how information is conveyed.

The majority of mortgage brokers survive on referral sources. Most typically, these include real estate agents, financial planners and accountants. Financial arrangements are entered into for the provision of a “lead”. A “lead” is where a referrer provides, with the person’s consent, information about how the credit provider or broker can contact the person with the aim of providing or obtaining consumer credit on that person’s behalf. The referrer normally enters into an agreement with the credit provider or broker whereby commission is paid for every successful lead (i.e. a settled loan) or in some cases, an actual dollar amount regardless of whether the lead results in a settled loan.

There will be circumstances where a referrer simply directs a consumer to a credit provider or broker but these instances would be in the minority of cases.

My concern is that the exemption in proposed regulation 6.3 will not cover the majority of referrals in the mortgage industry. If that is the intention, then the result would be that many current referrers, who play no role or part in providing credit assistance, would need to be licensed. That may become a sufficient disincentive to referring leads at all and this may have an unintended detrimental effect, particularly on the mortgage broking community. Any significant reduction in mortgage broking numbers would further lessen competition in an industry where Australia’s four major banks now hold the vast majority of the market.

2 June 2009

I appreciate you have no obligation to take into account any of the above as the final date for a submission was missed. The MFAA chose not to include these matters in its submission. Had I known that would be the case, I would have submitted this letter to you before the final date.

Yours sincerely

Stephen Moulton
Partner