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**Geoff Rowles**

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Financial Services and Credit Reform Green Paper  
Corporations and Financial Services Division  
Treasury

Via Email:  
[financialservicesgreenpaper@treasury.gov.au](mailto:financialservicesgreenpaper@treasury.gov.au)

Dear Sir,

**FINANCIAL SERVICES AND CREDIT REFORM GREEN PAPER**

I refer to your request for comments from the public and stakeholders regarding the proposals set out in the Financial Services and Credit Reform Green Paper ("Green Paper").

I submit these comments only on Section 1 of the Green Paper.

**Financial Product Disclosure**

The proposal at page 15 of the Green Paper for the Commonwealth to "assume responsibility for mortgages as a financial product" gives no guidance on whether or not a mortgage would simply be added to the definition of financial products in Chapter 7 of the Corporations Act ("the Act").

There should be consideration of the specific needs of disclosure in relation to mortgages, rather than adopting the current disclosure requirements of the Act.

If mortgages were added to the definition of financial product without making any changes to the disclosure requirements of Chapter 7, then:

1. A Product Disclosure Statement ("PDS") would be required to be submitted to the recipient of the product prior to purchasing the product (Section 1012C). For those mortgages regulated by the Uniform Consumer Credit Code ("UCCC"), the additional cost of this requirement may not be significant. For those loans not currently regulated by the UCCC, this requirement will add substantial cost.
2. The PDS would be required to satisfy all the requirements of Part 7.9 of the Act, including:
  - 2.1 the benefits of the mortgage (Section 1013D(1)(b)) in dollar terms (Section 1013D(1)(m)). While a Lender can provide general benefits, it should not be asked to provide client specific benefits.

We consider it reasonable for a lender to make a prudential assessment as to whether the borrower can repay the loan, however identifying all of the client specific benefits of a mortgage is beyond the scope of a lender. It may also be beyond the scope of lenders' Professional Indemnity

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insurance policies (if applicable). This role is more appropriately undertaken by an independent financial planner or accountant.

If the lender is required to provide client specific benefits in the PDS, it will make mortgage lending significantly more expensive.

- 2.2 the risks of the product (Section 1013D(1)(c)) and the rights, terms, conditions and obligations of the product (Section 1013D(1)(f)).

When providing a mortgage, many lenders require the borrower to seek their own independent legal advice. Borrowers who have received poor advice in these circumstances have been able to take appropriate action against the legal advisor (see *The Commercial Bank of Australia Ltd v Amadio (1983) 151 CLR 447*). However, the lender should ensure all relevant information is disclosed so that this advice can be obtained.

If the lender is required to provide these details in the PDS, it will make mortgage lending significantly more expensive.

- 2.3 tax implications of the product (Section 1013D(1)(h)).

See 2.1 above.

3. The current differences in disclosure between a UCCC regulated loan and an unregulated loan have provided the market for business and investment loans with a significant cost saving. There are a number of lenders that specialise in providing loans for business or investment purposes and the reduced regulation has delivered this segment of the market reduced costs.

Significant increases in the disclosure and management requirements of business or investment loans will result in higher costs that will be passed on to those consumers. It is also likely to result in less competition as many lenders specialising in this part of the market

## Licensing

Lenders with existing AFS licenses that authorise them to deal in mortgage products (whether in named Managed Investment Schemes or otherwise) should not be required to change their existing license.

For all other participants, there should be a streamlined licensing process.

## Mortgage Brokers

The proposed regulation of Mortgage Brokers is positive for lenders, brokers and consumers because it should enable brokers to be better educated and enhance compliance. The proposal is expected to lead to increased costs for brokers, including applying for and maintaining their license, meeting enhanced education requirements and establishing and maintaining compliance systems.

Better quality broker firms will be able to adapt to this regime, while it may be more difficult to set up a new brokerage business. The remuneration of brokers may change dramatically, possibly moving away from commission based model to fee-for-service arrangements where the borrower pays the broker directly. This is likely to increase the cost to the consumer.

## **Enforcement**

Regulating the provision of mortgages will not reduce the significant cost burden lenders face when dealing with enforcement proceedings. Unless Treasury proposes to make radical changes to the law of land ownership in each of the states, the enforcement of a mortgage will be subject to the requirements of separate state based legislation.

Introducing a Commonwealth regulation system for the provision of mortgages, while retaining a state based system for the enforcement of entitlements under a mortgage, could increase the confusion and cost rather than make the regulation more consistent. The Commonwealth must consult widely to carefully consider the interaction of these two features of managing a mortgage funding business.

Yours faithfully  
**Geoff Rowles**