Mortgage Brokers Best Interests Duty

4-10-2019

NATIONAL CONSUMER CREDIT PROTECTION AMENDMENT (MORTGAGE BROKERS) BILL 2019

1.21 By way of illustration, a consumer could be provided with credit assistance by a mortgage broker in a variety of ways. For example, the credit assistance could consist of a broker recommending one or more home loan products out of a selection of home loan products and then assisting the consumer to apply for the product the consumer selects. The content of the duty ultimately depends on the circumstances in which such credit assistance is provided and would include a failure to do certain things. Examples of such content that might arise under certain circumstances are:

* prior to recommending any home loan product or other credit contract to a consumer based on consideration of that consumer’s particular circumstances, it could be expected that the mortgage broker consider a range of such products (including the features of those products) and inform the consumer of that range and the options it contains;
* any recommendations made could be expected to be based on consumer benefits, rather than benefits that may be realised by the broker (such as commissions);
* in cases where critical information is not obtained when inquiring about a consumer’s circumstances, the broker could be expected to refrain from making a recommendation about a loan where there is a consequent risk that the loan will not be in the consumer’s best interests;

• a broker would not suggest a white label home loan that has the same features as a branded product from the same lender, but with a higher interest rate, because it would not be in the best interests of the consumer to pay more for an otherwise similar product; and

* during an annual review, a broker would not suggest that the consumer remain in a credit contract without considering whether this would be in the consumer’s best interests.

In relation to the last point as a mortgage broker if we were to adopt this approach would that then not mean that mortgage brokers who wrote loans for their customers and then review in 12 months’ time are ultimately “churning” that loan and against the perceived regulations in this area.

An example is that a client has his loan funded say 1st January and by end of that year is reviewed by their broker who will undoubtedly find a better product whether it be by interest rate or assigned benefits, that loan is refinanced to another lender. Then in the subsequent 12 months the broker reviews the client’s loan and yet again finds another more suitable loan, and on and on it goes.

The consequence of this whilst admirable will create possible resistance not only by the customer but the broker in that they will be forced to pay a claw back payment to the original lender and this could continue annually.

Subsequent to this as Scott Morrison and now Josh Frydenburg have come out and told clients if they are not happy with their current lender to shop around, what they don’t say to the public and will no doubt happen here it will cause multiple credit hits to their credit file, thus possibly affecting their credit score and ability to borrow and may in fact force them to pay a higher interest rate, an example is that ANZ have issues with customers with multiple credit enquiries in the previous 6 months.

I see this provision as detrimental to all parties especially consumers who may bear the brunt of their credit applications. I don’t believe anyone who drafted this legislation actually realises the end consequences of this provision