**Response to Exposure Draft Regulations**

**National Consumer Credit Protection Amendment (Mortgage Brokers) Regulations 2019**

**Background**

For nearly a decade Independent Mortgage Planners Pty Ltd has been operating the only truly independent mortgage advice (mortgage broking) entity in Australia.

It is highly likely that we are Australia’s only independent mortgage broker as, narrowly, defined by s160B of the NCCP Act.

As provided for by s160B of the Act, one of the many things we do to ensure our independence is to rebate 100% of our entitlement to both upfront and trailing commissions to our Clients.

It should be noted that this means that this company is likely the only mortgage broker in Australia that has embraced all of the recommendations of the Royal Commission with regards to what is in a mortgage customer’s best interests. It should go without saying that we did so voluntarily and well ahead of the recommendations being made.

Without meaning to put too fine a point on it, our protocols with regards to remuneration (and elsewhere) put at us at the very forefront of being a consumer-centric organisation.

As such we largely commend the Government for the work flowing from the Royal Commission and the attempts to arrive at a best-interests obligation for mortgage brokers.

**Effect of Proposed Regulation 28VE (2)(c)**

However, we contend that an unintended consequence of the drafting of Regulation 28VE (Clawback requirements) would be to make our business model untenable and, perhaps more importantly for the public interest, dissuade any incumbents or new industry entrants from following our consumer-centric model.

We believe this Regulation as drafted will not only have a detrimental effect on our Clients – it will diminish, rather than enhance, the march to professionalism of the Mortgage Broking Industry.

The challenge is as follows:

1. We charge a flat fee for service of a few thousand dollars based on the work required by our Client - ostensibly the number of separate Analyses and Loan Applications required.
2. Following settlement of each loan we rebate 100% of our upfront commission entitlement back to our Clients (into their home loan account or offset facility at their discretion). Such upfront commission rebates can amount to tens of thousands of dollars.
3. A part of our (detailed and fully disclosed) Agreement with our Clients places the liability for clawback onto the Client – them having been the sole beneficiary of same. We are very clear about how clawbacks operate generally and disclose same ahead of Clients entering into an Agreement with us. We also provide specific information about the clawback schedule of any Lender we recommend to our Clients ahead of them making an Application with same.
4. In a situation, as contemplated by Regulation 28VE (2)(c) we would be prevented from passing on this liability and would either:  
   1. Have to cease operating a business model that is demonstrably in the best interests of our Clients; or
   2. Carry a contingent liability out of all proportion to the benefit we have derived and despite the fact that the actual beneficiary of the upfront commission has total control over whether a clawback is triggered or not.

Of course, we understand the rationale behind the Regulation as drafted and have no particular issue with mortgage brokers, as the business entity, carrying the liability for clawback **where the mortgage broker has retained same and had the benefit of same.**

**Suggested Remedy**

It seems to us that a remedy for the unintended ‘mischief’ created by the Regulation as drafted would simply be to add sub-paragraphs to Regulation 28VE (2)(c) allowing the clawback obligation to be passed to the consumer **only** in circumstances where they have received the benefit of same **and** where full disclosure has been made **and** only to the extent reasonable.

We further believe such amendment can be incorporated while simultaneously preserving all operative provisions as drafted and as they effect rank and file mortgage brokers and credit intermediaries.

An example would be:  
  
(c) the consumer must not be subject to an obligation to pay an amount as a result of an amount being required to be repaid under the repayment obligation except in circumstances where:

(i) the consumer has been rebated a part or all of the upfront commission payment; and

(ii) the broker or credit intermediary has made full, written, disclosure to the consumer with regards to the clawback obligation; and

(iii) the amount being recovered from the consumer is no greater than the amount being clawed back from the mortgage broker or credit intermediary; and

(iv) the amount being recovered from the consumer is the lesser of the amount in (2)(c)(iii) above and the amount of upfront commission rebated to the consumer

**Further Information**

For further information, or to discuss this submission, please contact Craig Morgan at [craigm@indmp.com.au](mailto:craigm@indmp.com.au) or on 0488 771 006.

Thank you for taking the time to review this submission.