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Senior Adviser
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The Treasury
Langton Crescent
PARKES ACT 2600

By email to: fsi@treasury.gov.au

Government consultation: Submission to Treasury on Financial System Inquiry Recommendations

The Mortgage and Finance Association of Australia (**MFAA**) appreciates the opportunity to respond to some of the recommendations made by the Financial Services Inquiry's (FSI) recommendations.

Established in 1982, the MFAA is focused on the representation of, and maintaining professional standards for, mortgage and finance credit advisers and intermediaries, namely mortgage brokers, finance brokers, mortgage management businesses and non-bank lenders.

Its membership profile also includes ADI lending institutions that distribute their products via intermediaries and businesses that provide support services to the mortgage and finance sector. The MFAA's current membership is in excess of 10,000 members.

Key points

The MFAA's submission addresses FSI recommendations on:

- A. Competition – FSI recommendations 1, 2, 3 and 30;
- B. Protecting Small Business Borrowers – FSI recommendation 34; and
- C. Ban on SMSF Borrowing – FSI recommendation 8.

Recommendation A - Competition

The MFAA has been a strong advocate of enhanced competition in the lending sector, a point made in our two submissions to the FSI.

Accordingly we support the thrust of the FSI Recommendations 1,2 and 3 regarding Capital Levels, Narrow Mortgage Risk Weighting Differences and Loss Absorbing and Recapitalisation Capacity.

We strongly support the Report's drive to enhance competition by recommending a “*review of the state of competition in the sector every three years, improve reporting of how regulators balance competition against their core objectives, identify barriers to cross-border provision of financial services and include consideration of competition in the Australian Securities and Investments Commission's mandate.*” [Recommendation 30]

Recommendation B – Protecting Small Business Borrowers

The MFAA supports some models, but not full implementation, of the Inquiry's Recommendation 34:

Unfair contract term provisions

Support Government's process to extend unfair contract term protections to small businesses.

The MFAA does not support extending these protections to contractual arrangements between small businesses. This applies in particular to the finance contracts established by small broker businesses. The MFAA holds the view that the regulatory burden on most small businesses, including broking businesses, is already too high; no systemic failure has been identified; and the imposition of such an extension contradicts the government's stated commitment to 'cut red tape'.

This, in particular, includes credit and finance contracts from small businesses, for example, mortgage and finance brokers. The imposition of additional statutory and/or regulatory obligations in respect of unfair terms upon business holders who are, in general terms, more sophisticated than average consumers is unnecessary and adds needless cost and compliance obligations.

Current evidence indicates few, if any, difficulties in small business finance arrangements established by finance brokers who are themselves, for the most part, small business owners.

Scope of legislation

However, the government may decide to introduce these protections to some transactions and not others. If the government decides to use one of the thresholds described in Treasury's Consultation Paper of May 2014 (clause 127) and expanded in Attachment A of that Paper, a threshold that protects small businesses from the additional impost and cost of amending their standard form contracts should be selected.

The MFAA supports imposing the extension of unfair contract terms protections to those contractual arrangements between large businesses and small businesses, particularly if a misuse of market power or behaviour likened to a monopolistic practice is suspected or identified or if a 'take it or leave it' stance is taken by the large business with few options

available to the small business holder. Large businesses, identified as representing three per cent of Australian businesses¹ in 2012-13, are often in a position to control contract negotiation and the outcomes of contractual arrangements between them and the small business person. In these circumstances, the small business holder should expect protection from unfair terms forced upon them by large businesses either through an appropriate transaction threshold; a business turnover threshold or an employee number threshold.

Recommendation C – Ban on SMSF Borrowing

The MFAA does not support the Inquiry's Recommendation 8:

Direct borrowing by superannuation funds

Remove the exception to the general prohibition on direct borrowing for limited recourse borrowing arrangements by superannuation funds.

See the separate submission which is a joint submission from:

- the Mortgage and Finance Association of Australia (**MFAA**); and
- the Commercial Asset Finance Brokers Association of Australia (**CAFBA**).

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¹ Australian Government, The Treasury, 'Extending Unfair Contract Term Protections to Small Businesses', Consultation Paper, May 2014, p. 63.