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THE FINANCE BROKERS ASSOCIATION OF AUSTRALIA (FBAA)

MAKES THIS SUBMISSION

TO THE

AUSTRALIAN GOVERNMENT PRODUCTIVITY COMMISSION DRAFT REPORT OF REVIEW OF AUSRALIA'S CONSUMER POLICY FRAMEWORK

Presiding Commissioner,
Mr Robert Fitzgerald,
Productivity Commission
P.O. Box 1428
Canberra City 2616

Prepared by: M.J. Unwin General Manager 8th February 2008

PREAMBLE

The Finance Brokers Association of Australia makes the following submission compiled and collated by their National Board, incorporating collectively their views and opinions along with inclusion of input received from our industry membership.

Recognising the enormity of the proposed regulation process, the FBAA reserves the right to pass further commentary should the path progress, and as always ask that given the direct impact on our industry/members together with consumers and businesses, you continue to consult us throughout the process.

It is acceptable that regulatory mechanisms must be proportionate to the identified objectives and consumers' finance needs.

The definition of financial products must include finance/credit products for not only the funding of investment property and property for residential use but also for commercial, plant and equipment and business finance and the like.

The concentration on advice and regulating the finance/mortgage broker is sound but must not be uncoupled from risk.

A 'one fit for all' solution, while good in theory, may not be appropriate for all finance and credit products, especially if there are risks that vary markedly from product to product and lender to lender.

THE FBAA SUPPORTS:

That Responsibility for regulating finance brokers and other credit providers should be transferred to the Australian Government, with the regulatory requirements encompassed within the regime for financial services administered by the Australian Securities and Investments Commission (ASIC).

About Finance Brokers Association of Australia

The Finance Brokers Association of Australia (FBAA) was formed in Queensland in 1992 in response to the growing incidents of bad publicity of the profession and in order to become a representative voice on behalf of finance/mortgage brokers.

A National Association representing over 9,500 finance and mortgage loan writers throughout Australia. The FBAA is an unlisted company, limited by guarantee, and is run by an elected Board of Directors supported by a National Executive comprising all States and Territory Presidents and a Secretariat. Its head office remains in Brisbane, Queensland.

Membership comprises practicing finance/mortgage brokers, senior individuals involved directly in the finance/mortgage broking industry and some lenders. Our organisation represents a range of companies and single operators throughout Australia and our main function is to represent both our members as well as the interests of their clients, primarily, the consumer.

Our members act for a range of different consumers/borrowers and provide representation for the total range of lending institutions throughout Australia, including:

- Banks;
- Building societies;
- Non-bank financial institutions;
- Mortgage managers;
- Finance companies;
- Institutional lenders; and
- Private lenders.

Our member's activities cover the total range of lending products ranging from both consumer and commercial transactions including:

- Personal loans and credit cards;
- Mortgage secured loans for house purchase, construction and re-finance;
- Lo-Documents and No-Documents loans
- Domestic banking facilities;
- Uniform consumer credit code regulated transactions;
- Plant, equipment, chattel leasing facilities and novated leases;
- Bill of sale and chattel mortgage facilities;
- Industrial, commercial mortgage secured loans;
- Banking facilities including overdraft, term loans, fully drawn advance, commercial bill facilities;
- Development finance;
- Business finance; and
- Debtor finance and Factoring

Currently it is unknown as to who or how many finance and mortgage brokers or intermediaries are operating in Australia in a broking role. The FBAA is of the belief there is somewhere between 15,000 and 18,000.

(i) The Profession itself:

The finance broking as a profession commenced in Sydney in the mid 1960s with finance brokers arranging lease and business finance for businesses and business clients in the equipment and chattel area. The specialist mortgage broker only came into existence approximately 10 years ago with the advent of low interest rates.

The finance/mortgage broking industry is generally unlicensed across the country, except for Western Australia, where licensing has existed since 1979. The Australian Capital Territory has a registration regime.

(ii) Professional Standards

The FBAA was formed to establish measurable standards of proper professional practice in sourcing domestic and commercial funding, in the best interests of its customers/consumers and, therefore the public at large, all of which are vital to the integrity and future wellbeing of the finance/mortgage broking industry.

The professional standards of the FBAA have been published within an industry recognised Code of Practice and have been adopted by an increasing number of industry professionals, totalling some 9,500 loan writers who act as finance/mortgage brokers, who offer domestic finance, commercial finance, lease and motor vehicle/chattel finance, business and debtor finance.

The FBAA has established complaints and disciplinary procedures designed to eliminate unacceptable working practices by its members by providing an Internal Dispute Resolution (IDR) process (specifically designed to meet Australian Standards). It is a free service to the consumer as is ASIC approved External Disputes Resolution (EDR) Schemes. The IDR has been instrumental in having many disputes settled before they had escalated to the level requiring the services of an EDR.

Though not yet mandatory many of our members are subscribers to an ASIC approved EDR as matter of good business practice.

The FBAA Board is presently in discussions with the management of an ASIC approved EDR scheme with the view to recommending all members join as a condition of membership.

There is clearly an example the industry being better serviced if the public, as consumers, can see more than one dispute resolution system is available within the industry which will definitely ensure greater margins of responsibility and comfort. Be it both an IDR and EDR

DRAFT RECOMMENDATION 9.2

THE FBAA OPPOSES ANY RECOMMENDATION THAT

encourages further integration of financial ADR services, which would involve: -consolidating the existing financial ADR services into a single umbrella dispute resolution scheme for consumers, but with the option for those services of retaining their independence as arms within it;

The operation of the existing individual schemes amply accommodates all the professions and there is no obvious evidence that an amalgamation into a one fits all service would be of any benefit.

Predominantly finance/mortgage broker operations are a small business operation of either a one man band or one or two operatives operating under the one banner. Quite a few are husband and wife teams are in operation. In regards to membership of an EDR I refer you to my previous comments.

It should be noted that Professional Indemnity Insurance is compulsory for all operatives in the industry.

DRAFT RECOMMENDATION 5.2

THE FBAA SUPPORTS THIS RECOMMENDATION THAT *Responsibility for regulating finance brokers and other credit providers should be transferred to the Australian Government, with the regulatory requirements encompassed within the regime for financial services administered by the Australian Securities and Investments Commission (ASIC).*

Positive steps have been made by State Governments to introduce legislation which would provide for uniform regulation of the industry. However, as States continue to develop and negotiate on a legislative approach to the industry it has become apparent to the FBAA that the only way a satisfactory uniform national regulatory regime can be established is through the Federal Government taking the lead and implementing a nationally consistent legislative framework.

Saying that we do not want finance/mortgage brokers to be aligned with the licensing requirements of the Financial Services Reform Act (FSRA) as the finance/mortgage brokers' role does not mirror in any way the role of the financial planner or financial advisor. The two roles are like chalk and cheese.

In December 2007 the NSW Government on behalf of The Ministerial Council on Consumer Affairs (MOCA) produced a draft bill for consultation of a proposed national state-based model for finance/mortgage brokers without any consultation with the FBAA.

The FBAA is totally opposed to what is on offer for many reasons which will be the subject of our submission due in by 15th February 2008.

The State Based model proposed is to be of what is known as template legislation, wherein in this case NSW will enact the initial legislation and all other states and territories will enact the same. On past performances with template legislation all the other jurisdictions enact the legislation at their leisure and invariably include other conditions of their own in the process. Thus the so-called uniformity across the country is dissipated.

For those around in 1996 when the UCCC was enacted in Queensland as template legislation it took the West Australian and Tasmanian governments three years to come to the party.

Another example is: We believe that if enacted in its present form the consumer ultimately will be disadvantaged by lack of choice. The reason being that Finance/mortgage brokers will be cut out of the industry for many day to day finance products such as the refinancing of existing loans together with taking and submitting applications for Lo-doc and No-doc loans.

Brokers will be at a competitive disadvantage against banks and bank branches and their mobile lenders as unlike the broker the bank staff will have unfettered access for those products thus restricting any choice available to consumers.

What is the actual role of a Finance/Mortgage Broker:

A finance/mortgage broker act as an intermediary between the consumer and the lender and advises consumers and or businesses about the suitability of a particular credit/loan product or to meet that business or consumers particular needs and desired outcomes. The advice element is about the loan or structure to facilitate the purchase or refinance of a property or equipment, whether it is a residential home, a farm, or an investment property or Plant and Equipment etc. It maybe for business or debtor finance

The Finance/mortgage broker is not advising about the merits, or otherwise, of investing in real property as opposed to any other form of property. Such investment advice, more often, comes from financial planners, accountants, tax advisers, lawyers, real estate agents and property developers/vendors.

The finance/mortgage broker comes late to the transaction, after the decision, to purchase or to invest in a property, to refinance or increase the debt on a property or purchase plant and equipment or arrange business finance or the like is made.

Their role is to choose the most appropriate loan product or structure of the loan facility to facilitate the funding

arrangements. The need for the product is not created by the finance/mortgage broker. The advice component is confined to the characteristics and attributes of a home loan or loan facility and its suitability for a particular individual or company and transaction, comparing it with similar products in the market.

Nevertheless, because there is generally a choice of loan facilities or loan products that could be suitable, the broker will make a clear recommendation as to the most suitable. This clearly puts finance/mortgage brokers within functional definition of giving advice on credit/loan products only.

They provide:

“advice on finance products and implicitly or explicitly advise the consumer or business owner or representative on the suitability or appropriateness for that consumer’s personal or business circumstances.

The FBAA recognises that finance products should be defined widely to include personal finance, investment and property finance, business/ debtor finance, plant and equipment and chattels and risk and credit products.

There is a danger in believing that the consumers and businesses’ exposure to financial liabilities, debt levels and debt management issues are factors that can be attributed solely to the role of finance/mortgage brokers and intermediaries. This is too simplistic a diagnosis. **Levels of debt and debt exposure are the responsibility of lenders and not the finance/mortgage brokers or intermediaries. Whether or not to lend or advance the loan funds is a decision for lenders alone.**

Ultimately it is the lender that approves and settles the loan. However, responsible finance/mortgage brokers will be helping clients understand the consequences of debt, over exposure and risk.

The rise of the Finance/Mortgage Broker:

The last five years has seen a drastic change in the housing market and a subsequent rise in the consumer decision to use a finance/mortgage broker when considering their lending options. Low interest rates, the first home buyers grant and a broader desire for the consumer to own their own home has resulted in a steady increase in where consumers look to for financial and lending advice. During this period there has been increased recognition at both a State and Federal level of the potential needs for finance and mortgage brokers to be covered by some form of regulatory regime.

There is overwhelming evidence that the consumer benefits greatly from the increasing range of borrowing opportunities that have been made accessible through the growing mortgage and finance broking sector. As consumers continue to turn toward mortgage and finance brokers to assist in their borrowing needs, the FBAA recognizes and is supportive of the need for a regulatory regime to be established which governs the activities of finance and mortgage brokers that has national consistency.

Positive steps have been made by State Governments to introduce legislation which would provide for uniform regulation of the industry. However, as States continue to develop and negotiate on a legislative approach to the industry it has become apparent to the FBAA that the only way national regulatory regime can be established is through the Federal Government taking the lead and implementing a nationally consistent legislative framework.

The FBAA is in the unique position to assist government with inside knowledge of how the mortgage/finance broker sector operates, the impact on the consumer and in turn the impact on government. It is for this reason that the FBAA is of the opinion it can assist government in the development of a national regulator framework and in the implementation of this framework through mechanisms such as an industry code of practice and comprehensive reporting regime.

This is why we welcomed the Productivity Commissions recommendation 5.2.

Development of a Licensing Regime

The FBAA is supportive of the development of a national licensing regime, administered federally through either the Australian Securities and Investment Commission (ASIC) or the Australian Competition and Consumer Commission (ACCC). For a licensing regime to work effectively, the FBAA advocates that all finance and mortgage brokers and intermediaries would be licensed and only a licensed practitioner would be able to offer finance/mortgage broking or intermediary services. To qualify for a license certain minimum standards would be required to be met with ongoing competency and conduct requirements assessed annually.

When recommending a licensing regime as a means to regulating the finance/mortgage broking industry, the FBAA would like to emphasise the following aspects which need to be taken into consideration when developing any licensing regime:

- The licensing regime should apply to individual finance/mortgage broking intermediaries only. This is the only way to ensure that an offending broker is accountable for the advice provided to the consumer. Enforcement would therefore be taken against the individual broker.
- The FBAA would prefer a regulatory regime where a government appointed body, for example ASIC or the ACCC, would be responsible for all aspects of the licensing regime, namely the initial authorization and enforcement.
- The FBAA recommends that the government body charged with regulating the finance/mortgage broking industry have prior knowledge and experience in the credit industry.

For regulation to deliver viable consumer protection that is consistent nation wide, any regulatory regime needs to be administered by the Federal Government. Regulation overseen by a Federal Government appointed body allows professional associations such as the FBAA to respond rapidly to changes in the market and to use its extensive and personalized knowledge of key market players to assist the industry to adapt.

It is paramount that any regulation carries with it an element of mandatory compulsion. Finance/mortgage brokers and intermediaries, currently operating on the margins or outside the scope of self-regulation must be compelled to meet industry standards. This is to ensure consumer protection and will allow the industry associations to provide the consumer with inexpensive, effective and fast redress when needed.

The devil is very much in the detail and we hope that you will encourage the regulators to work closely with industry groups to implement the detailed regime.