

# **Inquiry Submission**

## **National Consumer Credit Protection Bill 2009 and related bills**

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FRSA 2001 Financial Advisors are **product sellers** for particular financial product makers and need to find investors that are suitable purchasers of those particular financial products. Due to the complexity and risk involved with these products all “retail clients” have the same protection and product makers and sellers are required to be licensed and trained in the specifics of the products.

**Independent Finance Brokers research the market** place to find a product that matches a borrowers particular needs. They are not tied product sellers and usually have a large number of credit providers and product to investigate. The credit products researched may be generically the same with a number of lenders. Policy for approval and features of the product are drilled down on and to help the borrower make an informed choice whether to make application for a particular credit product.

Investing is about taking one’s own capital and “risking it” with the hope of creating more capital or income – the investor is the credit provider – many investors in the market are “everyday Australians” and not professional credit providers that is why they need protection from product makers and sellers.

Credit is about using other people’s money often with a personal money contribution in the hope of creating more capital or income – the credit provider and the borrower are investors in the transaction and both are risk takers. Many borrowers are “everyday Australians” and most credit providers are professional investors.

Borrowers need protection from credit product makers who want to eliminate their risk at the detriment and cost of the borrower. The borrower need not be placed into a position of taking a greater risk or pay a higher premium due to the “professional know how” of the credit provider. Deferred establishment fees and fixed interest break costs are two examples of this common every day credit provider practice.

The Big Banks in this country have a great amount of power and influence. They do not care about people they care about profit. This legislation will stop them from looking at individual situations and making a balanced judgment. Decisions already are being made around a risk of landing in court explaining the decision in front of the judge rather than on the credit risk itself. Big Banks have a lot of money to fight anyone they choose the courts.

Responsible lending has to have a balance between taking a calculated risk looking at the merits of an individual’s situation without fear of reprisal of having to defend yourself in court if something goes wrong down the track.

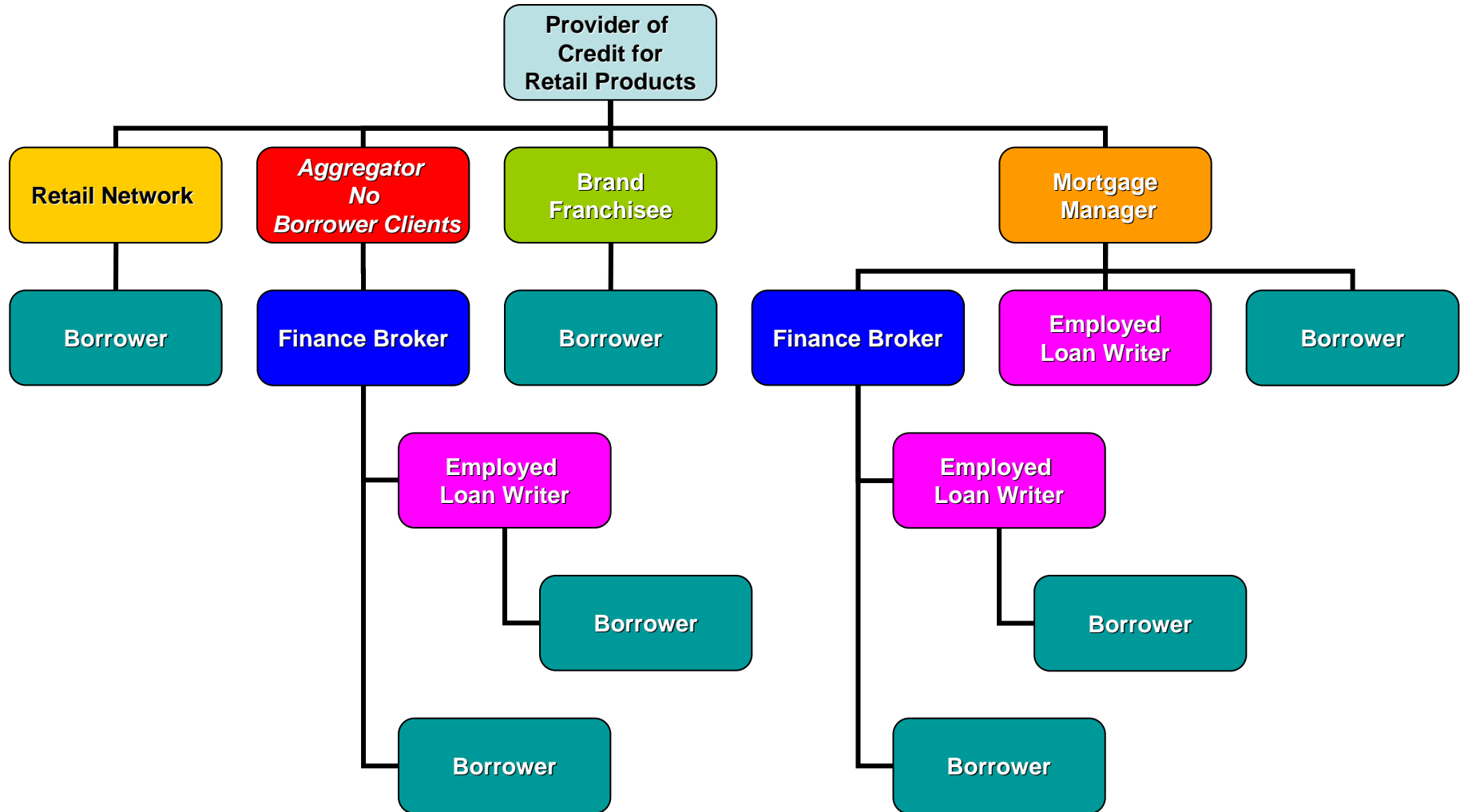
Hindsight is a wonderful thing and if something has not happened there is no certain outcome.

# A consumers dilemma – a true story

- A young single mum currently on Centrelink benefits sees an opportunity to purchase her first home with the assistance of the first home grant. She would have a 10% equity in the property at settlement.
- Due to her age and situation she has not been able to establish a work history and is considering future study options. Currently lives with her mother but wants to establish a home for herself and her young daughter. She sees the opportunity being offered to escape the rent route and is motivated to improve her situation. She works out a budget and decides how much she can afford to repay a home loan. She speaks to her father who is prepared to assist her financially and is proud that his daughter is making decisions to secure a future for her and his granddaughter. He is happy to help her in any way he can even if that means he has to help her with repayments until she establishes her self. A typical Aussie battler who is full time employed and runs a business on the side. Pays his taxes, declares his self employed income even though it is not significant. An honest proven reliable repayer of debt to the same lender an application for finance is made for his daughter to obtain assistance to purchase her first home. Security position for the lender is strong and the application passes the servicing test even though all income received is not considered as assessable income by the lender.
- Under the responsible lending “regime” this “big four lender” would not consider the young single mothers application for credit for a home loan as she is labeled as an “undesirable applicant” regardless of the fathers offer to be guarantor. However this “undesirable applicant” was sold a \$2000- credit card by the same credit provider on the basis that it would help her get a home loan.
- This young girls opportunity to demonstrate her financial responsibility and capacity has been quashed due to the credit decision makers fear of reprisal if the loan at some future time goes bad and the consequences of this consumer protection bill.
- **Responsible lending be damned fear based self interest is the result of this legislation.**
- This client and her father fitted the current credit policy of this lender – declined due to the consequence of this new “responsible lending” legislation. Unacceptable borrower due to her current reliance on Centrelink benefits even if she owned the property outright and the loan was in her fathers name supported by his income and his property and her property security guarantee.
- Does that make the makers of this law feel good because it sickens me!

# Retail Credit Distribution Channels

The credit provider is the seller who uses a variety of distribution channels and the borrower is the buyer



The credit provider or their Lender Mortgage Insurer is the “approved” or “declined” decision maker

Is government the right decision maker to determine when an owner of residential real property can borrow to gain access to equity for their own personal wants and needs – if a person wants to take speculative risks or waste their equity on frivolous spending or support themselves during a period when they know their income is not sufficient to support existing borrowings in a free democratic society is that not their right to do so?

This legislation has the capacity to make others responsible for decisions that are a right of and should be the responsibility of an individual applying for credit. While it may appear that some individuals need protecting from themselves the majority of people do not require such protection from their own decisions.

The responsible lending conduct section is a mechanism for the blame game and will stop a percentage of creditworthy sensible people being able to access appropriate credit and to use the equity in an asset they own in a way that they see fit.

Too much emphasis is on everyone but the borrower deciding if the borrower will suffer financial hardship or if the credit product is suitable? Surely most borrowers are in the position to have an input in this.

Chapter 3 – If the rules responsible lending conduct “are aimed at better informing consumers and preventing them from being in unsuitable credit contracts” and unsuitability is defined the same way why are there different disclosure rules re quoting and gross remuneration for industry players?

Borrowers understand that finance brokers need to get paid. Information relating to finance broker remuneration is only relevant if the borrower is actually paying the fee on top of the lenders delivery rate. Section 17 (14) page 326 of the National Credit Code exempts the requirement of commission paid to employees of the credit provider be disclosed – Why?

From my experience the protection **“retail credit” borrowers** want is that:

1. They are given disclosure about the true cost and conditions of using someone else's money for a period of time.
2. They can obtain suitable credit in a timeframe that suits their requirements without complication of irrelevant information being forced on them.
3. They have access to minimal cost legal recourse and compensation if they have been “stooged”.
4. Any contract they sign with a business providing money for them to use for a period of time is not “commercially stacked” in favour of the credit provider due to the borrowers bargaining power position.
5. During the transaction they are dealing with skilled, knowledgeable and ethical professionals whose intention is to assist them to understand the product and transaction process (if required) and will not “rip them off”.
6. That protection laws do not prevent them from accessing suitable and cost effective credit products by placing unreasonable requirements on credit providers and others who assist them.

As an everyday Australian I would like to see an explicit legal prerequisite of good faith and fairness to be included in the formation of a credit contract between borrower and commercial credit provider.

Many everyday Australians are unaware of the content of the Consumer Credit Code and this ignorance lures them into a sense that they are protected against predatory and unscrupulous and conservative lending practices when this is often not the case due to a commercial credit contract being in place which takes priority over fairness.

A finance broker under this new legislation can sit in front of a natural person who wants to obtain certain credit and will have to be licensed and provide a myriad disclosure documentation (much useless to a borrower wanting to make an informed decision about cost and suitability for purpose of the credit product itself) and the next day the same finance broker can sit in front of the same natural person wanting certain credit and they are not required to be licensed and need provide no disclosure documentation etc.

A finance broker may not be required under this new legislation to be licensed and when they sit in front of a prospective borrower who believes that all finance brokers need to be licensed it would be fair for the consumer to conclude the innocent finance broker must be a doggy dude.

Protection for borrowers buying and using “Retail Credit Products” is considered to be the intention behind this legislation (phase one and two) and a name relaying that intention would be more appropriate.

The legislation names “National Consumer Credit Protection Bill” or “National Credit Act” incorporating the “National Credit Code” infers that all credit products and all credit providers offering credit products that any borrower may choose to purchase are covered by the legislation.

The act is far from absolute and very limited in its sphere of influence and this needs to be changed or otherwise **its inadequacies be loudly disclosed to the Australian public.**

The Act offers limited “protection” for some borrowers and none for other borrowers obtaining the same amount of credit from the same credit provider. The same borrower can have protection with one credit facility and none with the next.

Why are everyday Australian borrowers being segregated by our laws based on the “purpose” of borrowing or the borrowing entity? Why is it ok for the assumed to be “more sophisticated borrowers” not to have the same level of protection against predatory lending practices and hardship? **Why is the retail credit product not in all instances required to be fit and safe?**

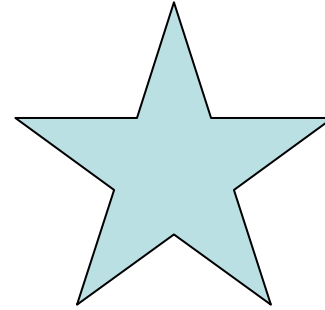
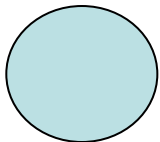
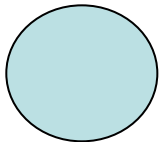
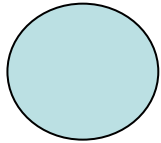
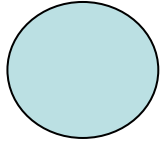
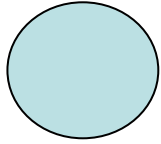
### Concerns

- In many instances the bill will create an illusion of protection for the end user (the borrower) of a variety of credit products initially during phase one and potentially after phase two.
- The proposed legislation is complicating the credit industry and confusing those who engage in it.
- The Australian Credit License operates Australia wide and includes only some parts and only some people who work in the credit industry.
- Only some finance brokers are required to be licensed however the language in the National Consumer Credit Protection Bill infers that all are required to be. Some finance brokers in Western Australia no longer have to be licensed to operate and others are still required to be so.
- The proposed barrage of disclosure information to be provided by the chain of players is mostly irrelevant to a borrower wanting to make an informed decision around their purchase of a credit product.
- Responsible lending should cover off the credit provider responsibility of ensuring credit card debt that is refinanced is actually repaid and closed. This would reduce the chance of equity stripping.

- Commercial contracts between an aggregator and a credit provider determines the payment structure for the introduction of business and the completion of the outsourced loan writing tasks. The remuneration payment is calculated on various criteria including volumes and for a finance broker to provide a figure or formula to a borrower at the initial stage is misleading. The calculation is not a simple standard calculation method. It can change periodically and finance brokers are usually not privy to the “complete” picture of how much commission is being paid to the aggregator.
- Credit providers are discriminating against independent finance brokers via volume demands, lack of supply of credit products and denial of access to their products through the third party channel. Finance brokers are being placed in a position of losing their livelihood and this legislation may be a waste of time as the profession of finance broking as we know it may only be in existence in the short term.
- Accreditations until now have allowed a finance broker to work independently in the industry. Conflict of interest and confusion is currently being caused by credit providers who are buying finance broker aggregation groups and introducing policy to stop a finance broker from being independent via volume hurdles (to retain their accreditations) and yet offer more commission to supplement the reduction commissions if they cross sell non credit related products.
- Positive credit reference reporting reduces credit risk for the credit provider and has no positive affect on the borrower. The Credit reporting system is already causing havoc for many credit worthy borrowers. Declined for shopping around or small Telco non payments. This can hinder a person from obtaining finance to purchase a home for 5 years. Some borrowers have limited or no access to main stream credit products they require and some as a result are having to pay well over the standard variable interest rate to obtain credit.
- Finance Broker gross commission is in the majority of cases paid by credit providers directly to aggregators for completing outsourced lending tasks. Aggregators are finance broker member organisations and the amount paid is unascertainable if there is a clawback provision.
- “commercially sensitive information” is a practice commonly used to hoodwink full disclosure prior to buying and allows credit providers to take advantage in situations (such as in the case of break costs on a fixed rate facility) and is not being addressed by this legislation. Advertising of fixed rates offerings that for many borrowers are not available unless they pay exorbitant “lock in fees” are not being covered by this consumer protection legislation. Responsible lending should high light these fees in plain simple mathematical calculation.



More distinction between players in the credit market is required  
It is very obvious many, many people do not understand the industry.



# Responsible Lending Conduct

Better informing consumers and preventing them from being in unsuitable credit products

Finance broker have to disclose gross income before expense and quote however credit providers and their staff are exempt from this disclosure requirement – why?

Naming 6 most used lenders may create a false impression that those lenders are better or more suitable than others not listed.

Credit Providers / LMI  
approve or decline  
all loans

An informed consumer should be the decision maker about when a loan is unsuitable and / or affordable.

Is this law taking away a borrowers basic right and responsibility by suggesting that someone else other than the borrower is responsible for the decision of suitability and ability to make the repayments without hardship.

Aggregators clients are  
finance brokers  
They are a for profit  
member organisation.  
They do not  
approve or decline  
loans

Mortgage Managers  
have borrower clients.  
They do not  
approve or decline  
loans and may determine  
end delivery rate  
borrower pays

Finance  
Broker  
A borrower  
advocate

Commercial contract

Commercial contract

usually

Commercial contract

Sometimes  
Commercial  
contract

To allow the use of equity in an owner occupied property is not always predatory lending or “equity stripping” – capacity to pay need not only apply to an income stream to save the bacon.

3-1 wording is a mine field