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The Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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Dear Secretary

Inquiry into the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

The Mortgage and Finance Association of Australia (MFAA) makes the following submission in response to your letter dated 28 September 2011. MFAA comprises some 11,400 members, the bulk being mortgage and finance brokers, but also including non- bank lenders, mortgage managers, mortgage insurers and support services to the mortgage and finance industry.

Hardship application rationale

MFAA has long supported the need to support borrowers in hardship. Our Code of Practice has included, for some years, hardship provisions. That being the case we support the new section 72(1) which allows borrowers to give lenders a 'hardship notice' orally or in writing, if unable to meet their obligations, without the need to specify the nature of the hardship in any detail.

Loan cap

We think that the proposal to remove the cap of \$500,000 is too wide as it could result in borrowers of any amount making a hardship application. This concern is particularly relevant because the extension applies to loans secured by residential investment properties. We believe that the statutory loan cap should remain limited to loans of \$500,000. However, failing that, the cap should only be removed when the loan is secured over the borrower's principal place of residence. It is important that lenders have commercial certainty on larger investment loans unencumbered by a vehicle to delay lenders enforcing their legal rights.

Variation orders

The proposed section 74(2) seems to empower a court (including an EDR scheme) to vary a contract but not so as to reduce the amount ultimately payable. This is different from the current position under which a variation could not extend the term, or deprive the lender of interest. Current orders can only adjust the payments to address the borrower's difficulty, but the new provisions would enable reduction of interest and extensions of term. We do not believe any changes from the existing law are necessary to protect consumers. Further it may bring issues for non- bank lenders especially those utilising securitised funds resulting in potentially higher interest rates which will disadvantage some borrowers.

EDR schemes

We understand that there is a growing trend in the EDRs in this industry (viz COSL and FOS) for hardship applications to be lodged merely to buy time, rather than because of a bona fide dispute.

Once a hardship notice is given to a lender, the lender is prevented from taking any enforcement proceedings until 14 days after the response to the hardship notice. But, if it is then referred to an EDR scheme, there can be delays of several months while the application is handled by the EDR.

MFAA recommends that EDR schemes should be required to finalise hardship applications within prescribed period of time eg 60 days. If that period is exceeded the restriction on enforcement action should lapse.

Postponement applications

Under proposed section 94(3) if a lender receives a postponement application, the lender must not begin enforcement proceedings until 14 days after giving the response to the postponement application. Further delays will arise if the issue is referred to an EDR scheme. To place this in context, this is an application for postponement to the enforcement of a mortgage after default and after a 30 day default notice. Allowing this situation to pertain for more than two months after the referral to an EDR scheme is inappropriate for the reasons stated above in relation to hardship applications.

EDR schemes should be mandated to determine postponement matters within 60 days of reference, failing which any standstill of enforcement action should lapse.

Impact on consumers

The delays at EDR (which can run into many months) is a cost to both industry and consumers. Consumers can find interest running up while the dispute is considered, and eventually be left with a bigger problem than they started out with. Prompt resolution of EDR disputes is essential for both consumers and industry.

S180A

We support the proposed section 180A.

Other proposals

We support the other proposals relating to:

- restriction on use of terms and representations;
- extension of time to issue direct debit default notices;
- reverse mortgage provisions;
- consumer lease alignment provisions.

Yours sincerely

PHIL NAYLOR
 CHIEF EXECUTIVE OFFICER