MORTGAGE BROKING
HOME LOANS
CREDIT CARDS
CAR LOANS
PERSONAL LOANS
HOME INSURANCE

17 July 2009

Mr John Hawkins
The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

BY EMAIL TO **economics.sen@aph.gov.au**

Dear Mr Hawkins

Inquiry into the National Consumer Credit Protection Bill 2009 and related bills

Thank you for the opportunity to comment on the National Consumer Credit Protection Bill 2009 and the related bills.

Information about Aussie

As you know, Aussie is a major finance intermediary with a national network to service customers throughout Australia.

Aussie is a compliant organisation and a strong advocate of appropriate regulation for the finance industry. We welcome the proposed implementation of national credit legislation and licensing of credit intermediaries and lenders, and support the thrust of the draft legislation.

Aussie is very pleased that much of its and the MFAA's submissions on the exposure draft have been adopted in the current version of the National Consumer Credit Protection Bill 2009 and the related bills, as submitted to parliament. Aussie considers that the draft legislation is moving towards a workable framework which will be beneficial for consumers and the industry.

There are, however, some important matters which need to be addressed.

Indemnity for criminal acts

Normally, an indemnity in respect of criminal acts is void. However, a provision authorising indemnities for criminal acts similar to section 169A of the existing UCCC (which is replicated in section 192 of the proposed National Credit Code) is required to allow trustees, special purpose vehicles and other vehicles used in securitisation to obtain an indemnity for criminal acts under the new Bill. Further, licensees should be able to obtain indemnities from their credit representatives.

For example, if Aussie authorise its loan writers to act as its credit representatives and a credit representative breaches the law and Aussie is penalised, Aussie should be able to seek recourse from the individual who breached the law.

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Inclusion of the ability to obtain an indemnity is fundamental to the smooth operation of the financial system where credit transactions may involve more than one party.

Disclosure of referral fees

The existing New South Wales and Western Australia legislation requires finance brokers to disclose to consumers fees paid to referrers. Although the responsible lending provisions will not commence until 1 January 2011, it is important that when they do commence they include an obligation on finance intermediaries to disclose referral fees.

The importance of this disclosure is best explained by an example. A consumer's friend might refer the consumer to a lender or broker. The consumer places significant importance on that referral because it appears to be one based solely on the consumer's interests. This may not be the case if the friend is paid a referral fee.

It is important for consumers to know that a referral fee is paid and to be able to properly assess the value of the referral.

Outsourcing

A significant part of the lending industry involves outsourcing various activities. For example, lenders might outsource credit assessment or servicing activities and mortgage managers might outsource loan management or mortgage enforcement.

When an activity is outsourced, the licensee responsible for the activity should retain responsibility for the acts of the service provider. If outsourcing service providers are required to obtain their own credit licence, this may impact adversely on market efficiency and competition, and increase costs for consumers.

This was recognised when section 10 (loan assignment) of the draft legislation was amended to limit its operation to legal assignees (ie a change to the lender of record as distinct from an equitable assignment).

However, this rationale has not been carried through to three other sections of the draft legislation as follows:

- Section 6, which defines a credit activity, in items 1(c), 3(c), 4(b) and 5(b) contemplates that an outsourced person is conducting a credit activity and therefore needs to be licensed. These subparagraphs should be deleted.

- Part 3-6, sections 159 and 160 in relation to debt collectors provide that debt collectors must provide a credit guide. Debt collectors should only be required to provide credit guides (and consequently be licensed) if the debt collector takes a legal assignment of the debt and proposes to collect the debt in its own right. In the absence of a legal assignment, the debt collector is collecting the debt on behalf of the licensee and the licensee's licence is the relevant licence.

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- Section 130(3) should be deleted, because there should be no case when the lender can escape liability for its credit decisions. If a lender wants to outsource some credit activities to a broker (and more particularly to a mortgage manager or in the case of a trustee to the program manager), the lender's licence applies. This is an outsourcing arrangement and is not a change of who is responsible for the actions.

This underlines the importance of the indemnity for criminal acts mentioned above. If a lender is penalised due to the conduct of the outsourcing service provider, the lender should have recourse to the outsourcing provider.

There is fundamental confusion about outsourcing in the draft legislation which needs to be addressed to avoid a major loophole, which will allow unscrupulous operators to exist, and also add significant costs and loss of competition for consumers when dealing with reputable credit licensees who will not be able to access efficiencies from outsourcing activities.

As an example, some financial institutions have outsourced certain activities offshore for cost efficiency and other reasons. The offshore outsourcing service provider is unlikely to hold a credit license and it would be difficult to regulate the offshore provider. It would be more appropriate to regulate the onshore credit licensee.

Internal dispute resolution requirements

Section 47(1)(h) requires a licensee to have an internal dispute resolution procedure (IDR) which complies with the requirements specified by ASIC in accordance with the regulation. The draft regulation in clause 2.3 provides that when considering approving an IDR, ASIC must consider AS ISO 10002 in relation to accessibility, independence, fairness, accountability, efficiency, and effectiveness. Most small loan writers, including Aussie's mortgage representatives, will find it difficult to provide any realistic IDR. Consequently, the requirement for IDR should be removed or it should be recognised that the IDR can be a simple procedure handled by sole operator businesses.

Prohibition on earning fees

Section 114 prohibits a licensee from earning a fee in excess of the fee quoted to the consumer. Intermediaries such as Aussie often earn fees from lenders and other product suppliers. Section 114 should be amended to prohibit additional fees being derived **from the consumer**, and not prevent payment from other sources.

Reasonable enquiries about the consumer

Section 117(1)(c) requires a licensee who is providing credit assistance (as Aussie does) to take reasonable steps to verify the consumer's financial situation. It is important that this is limited to enquiries **of the consumer** because that is the extent of enquiry practically available to businesses such as Aussie.

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Provide copy of the credit assessment

Section 120 requires the licensee to give a copy of the credit assessment to the consumer. The note to section 120(1) provides that the assessment need not be provided if the licensee does not provide credit assistance. A licensee can provide credit assistance without a loan being provided. Consequently, a copy of the credit assessment should only be given if a loan is actually provided.

Penalties for making an unsuitable loan

There should be no civil penalties for licensees for recommending an unsuitable loan because this creates an unacceptable risk for the industry. The more appropriate remedies are:

- consumers should be allowed to re-open the contract at any time; and
- to suspend or cancel the licence where the conduct of recommending unsuitable loans by a licensee is reckless and systemic.

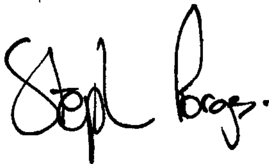
Registration period

Registration should be permitted until 30 June 2010. While Aussie expects to ensure all its corporate entities and loan writers have registered by 31 December 2009, there may be participants who miss this very small window of time, or are unable to arrange their EDR membership. The impact of missing the small registration period could be financially crippling for small businesses, as they would then need to wait for a license to be granted.

Conclusion

We would be pleased to provide information on any of the matters discussed in this submission.

Yours sincerely



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