

Dear Senator Bishop

I'm writing in response to your question relating to the evidence provided by Ms Brailey at the public hearing on 20 February. I have discussed the below with Karen Cox at the Consumer Credit Legal Centre NSW, and I refer you again to the information in her Centre's written submission about the allegations of fraudulent lending practices.

I understand the concerns raised by Ms Brailey to be that there are some consumers who are pressured into purchasing property, and the loans for these purchases are unaffordable over the medium term, and that broker misconduct and bank automated assessment process (including bank calculators) mean these loans are approved despite not being affordable. Ms Brailey appeared to be saying that it was particularly bank automated assessment processes (i.e. calculators that estimate borrower income and expenditure) that encourage brokers (and borrowers) to mis-state financial capacity on loan application forms.

It may well be that bank automated assessment processes and commissions incentivise brokers to mis-state a borrower's financial capacity on loan application forms. However, since the National Consumer Credit Protection (NCCP) Act came into force in 2010, both lenders and brokers have a positive obligation to make inquiries into a borrower's financial situation (i.e. that the loan will not cause substantial hardship), and to verify that assessment. There is also a requirement to make inquiries into whether the loan will meet the borrower's requirements and objectives. ASIC has enforcement power in this area.

Prior to the NCCP Act, there was some capacity to take action against a bank lender for mal-administration if affordability checks were not sufficient, but there was a very limited ability to bring action against a broker, and the existence of a broker in the transaction made it difficult to make a claim against the bank. Further, ASIC had much more limited power to take action compared to under the NCCP Act.

So, despite bank calculators, since the NCCP Act came into effect, where banks or brokers breach the responsible lending requirements, borrowers will have a remedy. Our casework experience is that most mainstream lenders in particular have put in processes to ensure compliance with these obligations.

Where there is non-compliance, for example where there is evidence of a broker mis-stating a borrower's financial situation on a loan application form, ASIC is empowered to take action. ASIC has removed licences, banned individuals, and obtained criminal convictions in a number of recent matters where there is such evidence: <http://www.asic.gov.au/asic/asic.nsf/byheadline/14-030MR+ASIC+concerns+about+loan+applications+result+in+cancellation+of+mortgage+brokers+licence?openDocument>

One area of concern in which I agree with Ms Brailey is in relation to the initial conduct inviting a consumer to invest in property. Currently, property spruikers are not regulated and not licensed by ASIC. There may well be commission arrangements between such spruikers and certain brokers or lenders which encourage individuals to purchase property (with or without a loan) that are inappropriate. The issue has been examined by the Victorian Parliament's Law Reform Committee

and a recommendation made for property advisors to be regulated similarly to brokers or other financial advisers:

http://www.parliament.vic.gov.au/images/stories/committees/lawrefrom/property_investment/financial_report.pdf. We would encourage the committee to review that report.

Please let me know should you have further queries.

Yours sincerely

Gerard

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Chief Executive Officer



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