



Department of Consumer
and Employment Protection
Government of Western Australia

Consumer Protection

Fax

L7 219 St Georges Tce PERTH Western Australia 6000

Tel: (08) 9282 0604 Fax: (08) 9282 0857

E-mail: www.plawson@docep.wa.gov.au Web: www.docep.wa.gov.au

TO: Committee Secretary FAX No: (02) 6277 4774

FROM: Pippa Lawson - Administrative Assistant to
Anne Driscoll TEL No:

DATE: 21 July 2008 PAGES (including this): 11

MESSAGE:

Attention: Committee Secretary

INQUIRY INTO COMPETITION IN THE BANKING AND NON-BANKING SECTORS

Attached is the Department of Consumer and Employment Protection's submission to the House of Representatives Standing Committee on Economics' Inquiry into Competition in the Banking and Non-Banking Sectors.

Regards

Pippa Lawson

Administrative Assistant
Commissioners Office
Department of Consumer and Employment Protection
(08) 9282 0780
plawson@docep.wa.gov.au



Department of Consumer
and Employment Protection
Government of Western Australia

Consumer Protection

15 July 2008

Our Ref: CP01283/2008/1 A640875

Enquiries: Robert Allen (08) 9282 0954

Mr Craig Thomson MP
Chairman
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600

Facsimile: (02) 6277 4774

Dear Mr Thomson

INQUIRY INTO COMPETITION IN THE BANKING AND NON-BANKING SECTORS

The Department of Consumer and Employment Protection (DOCEP) welcomes the opportunity to provide a submission to the House of Representatives Standing Committee on Economics' Inquiry Into Competition in the Banking and Non-Banking Sectors. Please note that Western Australia's Department of Treasury and Finance was provided with a copy of DOCEP's submission and has confirmed its support of the content.

Given the time constraints, the submission does not respond specifically to all of the terms of reference, but instead highlights issues relevant to DOCEP's consumer protection role. I trust this information will be of assistance to the Committee in conducting its inquiry.

Should you require any further information, please do not hesitate to contact Mr Robert Allen, Acting Director, Business Services, by email on rallen@docep.wa.gov.au or by phone on (08) 9282 0954.

Yours sincerely

Anne Driscoll

COMMISSIONER FOR CONSUMER PROTECTION



**Department of Consumer
and Employment Protection**
Government of Western Australia

Consumer Protection

Submission to:
House of Representatives
Standing Committee on
Economics - Inquiry into
Competition in the Banking and
Non-Banking Sectors

Department of Consumer and Employment Protection
Western Australia
July 2008

INTRODUCTION

The Western Australian Department of Consumer and Employment Protection (DOCEP) welcomes the opportunity to provide a submission to the Inquiry into Competition in the Banking and Non-Banking Sectors by the House of Representatives Standing Committee on Economics.

Department of Treasury and Finance

The Western Australian Department of Treasury and Finance (DTF) was provided with a copy of the submission and has advised that it supports the content of the submission.

Consumer Protection's Role

DOCEP's Consumer Protection Division is charged with delivering consumer protection and fair trading in Western Australia. Acting in support of the Minister for Consumer Protection, DOCEP has policy responsibility for 59 consumer protection related Acts of the Western Australian Parliament and has administrative responsibility (alone or in conjunction with the relevant statutory board) for 54 of those Acts.

DOCEP has regulatory responsibility for the following legislation relevant to consumer credit and finance broking:

Credit

- o *Credit (Administration) Act 1984*
- o *Credit (Administration) Regulations 1985*
- o *Consumer Credit ((Western Australia) Act 1996*
- o *Consumer Credit (Western Australia) Code*
- o *Consumer Credit (Western Australia) Regulations*

Finance Broking

- o *Finance Brokers Control Act 1975*
- o *Finance Brokers Control (General Regulations) 2005*
- o *Finance Brokers Control (Code of Conduct) Regulations 2007*
- o *Finance Brokers Maximum Remuneration Schedule*

DOCEP has infrastructure in place under the State's existing finance broking and credit providers licensing regimes and has significant experience in the regulation of these industries. Over the past year DOCEP has fielded over 1400 calls and has received 240 complaints in relation to credit and finance broking matters.

DOCEP conducts investigations into alleged breaches of relevant legislation and codes of conduct, and initiates remedial action as appropriate. Conciliation services are also provided to assist consumers and businesses to resolve disputes, and in particular ensure credit relief is available to those experiencing temporary hardship. In addition, DOCEP undertakes proactive compliance activities to assess industry participant's compliance with legislative requirements.

DOCEP is also closely involved in advancing the COAG reform agenda in the area of credit and financial services, by way of input via DTF to the COAG Business Regulation and Competition Working Group and representation on the Financial Services and Credit Reform Implementation Taskforce.

DOCEP wishes to note that the views expressed in this submission represent those of DOCEP and they do not necessarily reflect the views of the Government of Western Australia.

COMPETITION IN THE BANKING AND NON BANKING SECTORS

DOCEP notes the increase in the last 10 to 15 years in the number of non-bank lenders, funded by the issuance of mortgage backed securities, entering the market. This has brought increased competition to the sector which has benefited consumers by providing them with a greater range of loan products at reduced prices, by reference to the reduced difference between standard variable home loan rates and the bank-bill rate.

Reduced Competition

However, it is understood that over the last year, as a result of a reassessment of risk on global credit markets, there has been a significant reduction in investor demand for loans financed in Australia through the issuance of mortgage backed securities. A number of non-bank lenders have reduced operations while banks have reclaimed a significant amount of market share in the home lending sector. As a result, competition in the sector is effectively being eroded which will likely result in a reduction in the range of loan products available to consumers and an increase in prices. Recent figures from the Bank for International Settlements in fact show that Australia's big four banks are now the most profitable in the world, having increased their net interest margins.

In these circumstances, it is in consumer's interest to ensure that competition in the home lending market is not eroded, which in part relies on the continued viability of non-bank lenders. While it is outside the scope of DOCEP's purview to make specific recommendations in this area, subject to the matters outlined below, DOCEP supports initiatives which ensure continued competition in the lending sector, and therefore benefit consumers.

Consumer Protection in the Banking and Non-Banking Sector

While DOCEP notes that competition can benefit consumers by providing a greater range of products from which to choose, it is also important to ensure that the increase in product choice does not inadvertently lead to consumer detriment. Concerns have been raised in recent times that, with increases in the numbers of financial products, the variations to these product's features (including fees and charges) and their associated disclosure documents, consumers are experiencing greater difficulty in assessing the financial product that is best suited to their particular needs and circumstances.

DOCEP is therefore of the view that it is imperative that, with the ultimate aim of consumer benefit in mind, access to more loan products is accompanied by:

- measures to ensure that consumers can obtain appropriate disclosure to effectively compare these products;
- access to appropriate professional advice; and
- the capacity to switch loan products with minimum costs.

Disclosure and Product Comparability

Benefits to consumers in having greater choice in financial products are limited if consumers are unable to determine which product best suits their needs. Where consumers cannot effectively compare different products, increased choice can be detrimental to the extent that a consumer may choose a product that is not best suited to their circumstances. It is therefore imperative that measures for adequate product disclosure and tools to compare financial products keep pace with increasing product choice and complexity. Essential elements to effective disclosure include timeliness, completeness, comprehensibility and comparability.

Concerns have been raised with the existing disclosure regimes under the Consumer Credit Code and Financial Services Regulation with stakeholders agreeing that the existing disclosure requirements could be improved. A number of initiatives are currently underway at both the State and Federal level to address these concerns.

Disclosure Research

The Standing Committee of Officials of Consumer Affairs (“SCOCA”) has agreed to the commissioning of research by an independent consultant, with the goal of developing a disclosure model that better addresses the needs of consumers particularly in terms of making better informed choices about credit products. The research will draw on contemporary research in relation to consumer behaviour and patterns of comprehension. Researchers will conduct focus groups and undertake extensive consumer testing with the aim of ensuring the disclosure model, which is finally adopted, will be a considerable improvement on current disclosure. The research is expected to be completed by April 2009.

In addition to this review of credit pre-contractual disclosure, the Centre for Advanced Consumer Research in Western Australia (established as a joint initiative of the University of Western Australia and DOCEP) has awarded a three-year PhD scholarship on the study of the effectiveness of disclosure more broadly as a tool for consumer protection. Research commenced in 2008 and it is expected that the outcome of this research will inform national use of disclosure as a consumer policy tool.

Commonwealth Financial Services Working Group

DOCEP understands that the Commonwealth has also formed a Financial Services Working Group to look at key issues associated with financial services advice and disclosure. It is understood that, in consultation with industry and consumer groups, the Working Group is reviewing the length, complexity and readability of disclosure documentation in financial services, in order to determine the best possible approach to delivering short, comparable financial product disclosure documents.

Access to Quality Advice

While it is imperative that consumers are able to effectively compare financial products, it is also important for consumers to have access to quality advice. Consumers have varying degrees of functional and financial literacy and even with effective disclosure regimes in place, some consumers may require professional advice as to the best loan products for their circumstances. This is especially the case as loan products become more complex and are increasingly interrelated with other financial products (including credit cards and offset accounts), investment options (including shares and real estate) and broader financial plans.

Consumer's demand for advice on loan products is demonstrated by the increasing number of home loans arranged by finance brokers in recent years. While less than one in five outstanding home loans were arranged by finance brokers in 2002, around one in three outstanding home loans are currently arranged by finance brokers.

Western Australia's Licensing Regime

Despite the increasing role of finance brokers in arranging home loans in Australia, Western Australia is currently the only State that licenses finance brokers. Finance brokers licensed in Western Australia must meet prescribed educational and experience requirements, hold professional indemnity insurance and abide by a Code of Conduct. Amongst other matters the Code of Conduct requires finance brokers to make reasonable enquiries into the particular needs and circumstances of borrowers to ensure that the borrower is not placed into an inappropriate loan.

National Regulation of Finance Brokers

Western Australia has been working for some time with other States and Territories on developing nationally consistent finance broking regulation. A draft bill was released for public comment by New South Wales in late 2007. However, it is now clear that the Commonwealth intends to take over the regulation of all credit, including finance brokers. DOCEP is closely involved in this process and will continue to provide input to the Commonwealth's Financial Services and Credit Reform Implementation Taskforce as to how this might be best achieved based on DOCEP's own experience in regulating finance brokers, as well as credit providers.

In its recent submission to the Commonwealth Treasury in reply to its June 2008 Green Paper on Financial Services and Credit Reform, DOCEP noted its support for regulation and licensing of all parties providing credit advice, whether independent financial advisers, finance brokers or lenders, including both bank and non-bank lenders. DOCEP believes this would ensure that borrowers have access to appropriate advice whether they obtain a loan through a broker, or directly through a bank or non-bank lender.

Costs of Product Switching

As the benefits of competition are generally premised on a consumer's ability to choose amongst different products to take advantage of differences between price and/or product features, the level of costs associated with switching products is of particular significance. Where switching costs are high, consumers are less likely to be able to take full advantage from the benefits of competition.

While increased competition in the lending sector from non-bank lenders appears to have reduced interest rate margins, it does not appear the same reduction has been seen the level of credit fees and charges, including costs for switching loan products.

DOCEP notes that a recent report by the Australian Securities and Investments Commission ("ASIC") found that the range and size of mortgage fees had increased in Australia over the last 20 years. The report also noted that, while entry fees are low, Australian consumers are charged comparatively higher mortgage early termination fees than consumers in the United Kingdom and the United States.

As such, it is unlikely that Australian consumers are able to take full advantage from the potential benefits from competition. In fact, where significant termination fees are being charged, Australian consumers may find themselves worse off as a result of being effectively stuck in an inappropriate loan.

Commonwealth Responses to Switching Issue

DOCEP supports recent Australian Government efforts to address the issue of making it simpler and less costly for consumers to switch to less costly/more competitive mortgage products. DOCEP also notes the Senate Economics Committee's inquiry on unfair penalty fees in the context of Senator Fielding's ASIC (Fair Bank and Credit Card Fees) Amendment Bill 2007. It is suggested that recent developments in the United Kingdom in relation to credit fees and charges be taken into consideration in coming to position on the regulation of credit fees and charges.

DOCEP supports recent Australian Government efforts to address the issue of making it simpler and less costly for consumers to switch to less costly/more competitive mortgage products. DOCEP also notes the Senate Economics Committee's inquiry on unfair penalty fees in the context of Senator Fielding's ASIC (Fair Bank and Credit Card Fees) Amendment Bill 2007. It is suggested that recent developments in the United Kingdom in relation to credit fees and charges be taken into consideration in coming to position on the regulation of credit fees and charges.

State and Territory Approach to Fees and Charges

DOCEP also notes that State and Territory Ministers agreed at the May 2008 MCCA meeting to make all credit fees and charges reviewable under proposed fringe lending amendments to the Consumer Credit Code. The proposed amendments include provisions aimed at enhancing the ability of consumers to challenge unfair consumer credit charges imposed by lenders.

The key principle underpinning the proposed approach is fairness, which in relation to establishment, early termination, prepayment and default fees, is linked to cost or loss. DOCEP suggests that this approach would assist in addressing concerns raised by the Hon Wayne Swan MP, Treasurer, in regard to high 'exit' fees imposed by mainstream lenders on borrowers who wish to pay out a mortgage early, or switch their loan to another lender who may be offering more competitive interest rates.

CONCLUSION

DOCEP thanks the Committee for the opportunity to make a submission and is hopeful that the various Commonwealth initiatives which have a bearing on the provision of consumer credit have a coordinated effect of benefiting all Australians.