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FBAA Response to ASIC's Mortgage Broker Remuneration Review

1. The Finance Brokers Association of Australia Limited (FBAA) as the leading national professional association to finance and mortgage brokers welcomes the opportunity to provide its submission in response to ASIC's Report 516: Review of mortgage broker remuneration, on behalf of our members and industry.

2. Report 516 identified 6 specific proposals for further consultation and we will address each of these proposals in our submission.

3. Report 516 also details 13 key findings that influence the proposals. We consider it necessary to provide our observations against a number of the findings as a precursor to our response to the proposals.

Overview

4. The FBAA acknowledges the substantial amount of data reviewed by ASIC in undertaking this review. We recognise the observations and conclusions made by ASIC as valid however we do have concerns that the reporting of the findings presents one of a myriad of possible interpretations of that data.

5. We were surprised by some of the findings in that they are not supported by our own observations and those of our members, some even going so far as to directly contradict our understanding of the segment.

6. We also note that some of the data is quite old, dating back to 2012 and possibly earlier. This was just two years into the establishment of the NCCP framework and a time when there was still significant uncertainty around how the specifics of the legislation would operate.

7. There have been other significant changes in the industry since the ASIC review was announced. These in no small part have come about through industry gaining a better understanding about striking a balance between offering incentives to improve sales and market share and motivate partners whilst ensuring good consumer outcomes. It takes considerable time to observe the effect of certain practices before being able to make adjustments where they are producing unintended consequences. In the past few years we have seen:

a) Volume bonuses removed;

b) Changes to soft dollar benefits moving towards better aligning them with educational/conference content;

c) Lenders ceasing to link sales campaigns to short term commission incentives;

d) Changing away from offering higher commissions on special offers and promotions.

8. On the regulatory front, industry attitudes have been influenced by ASIC action against numerous licensees and individuals, court cases and changes to regulatory guidance. All of this has culminated in an industry that is very different in 2017 when compared to 2012 or even 2015.

9. The data analysed by ASIC in this Report will not reflect these more recent changes, some of which may have already gone a long way to addressing impressions created by this data set.

10. It is not our objective to directly challenge ASIC's conclusions. Given that we are not privy to the data obtained and reviewed by ASIC, we cannot comment on the integrity of the data nor do we seek to discredit its analysis. The designs of the statistical controls applied to the data are also hugely important to the outcomes and we have no visibility of that.

11. Rather, we consider that the findings made, highlighted just one of many valid interpretations for the data and that each casts a fundamentally different light on the conclusions. We are also acutely aware from our own experience of the difficulties we face in obtaining data in any format that easily allows comparison of credit provider and credit assistance provider records and understand that these difficulties would have impacted ASIC also.

12. We are pleased that ASIC has acknowledged the positive impact mortgage brokers have had on the home loan market. That brokers get paid to provide their services is not something that of itself requires particular scrutiny. Whereas brokers can exert downward pressure on the cost of credit to consumers through increasing competition, the remuneration paid to brokers has no impact on the cost of credit to consumers. This is supported by the findings from ASIC's review. Unnecessary interference with broker remuneration threatens to destabilise the profession and can only produce adverse outcomes for consumers.

13. ASIC's findings raise a number of concerns. Our views on many of the conclusions inferred or reached by ASIC are that:

a) They are not exclusive – there are numerous ways to interpret results and the review methodology neither addressed nor excluded many of the plausible alternative interpretations of the data;

b) Loan purpose is not explored in detail. This is possibly the most material factor when looking at loan features since the characteristics and performance on an owner occupier loan are fundamentally different to those on an investment loan;

c) Some of the differences between data sets does not appear material when adjustments are made for data discrepancies;

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d) The ASIC Report does not adequately address the role of the lender (credit provider) in the findings. Observations about loan performance also need to reflect the opinions about the role of the credit provider and it is our view that this omission from the Report presents a distorted perspective about the role and influence of the broker.

e) Without mortgage brokers, consumers would have diminished choice. The ASIC Report attempts to compare the range of product choice offered by brokers to the concentration of product placement and suggests that despite the large range of products on offer, brokers favour particular credit providers. The Report infers that such preference is likely influenced by commission payments.

f) The Report does not identify that licensee credit providers are 100% conflicted. Consumers using licensee credit providers will only ever end up in that issuer's products. We cannot see how this outcome can be promoted as superior to consumers being given product choice through a broker. Commission is only one factor that has potential to influence a broker's preference for recommending particular products to consumers.

14. Consumers also have a major role to play in product selection. A significant number of consumers influence the product decision citing factors such as:

a) Avoiding certain providers because of personal biases or previous poor experiences;

b) Desire to split loans between multiple credit providers to spread risk, hedge rate cycles between providers and give the consumer greater control in adverse circumstances;

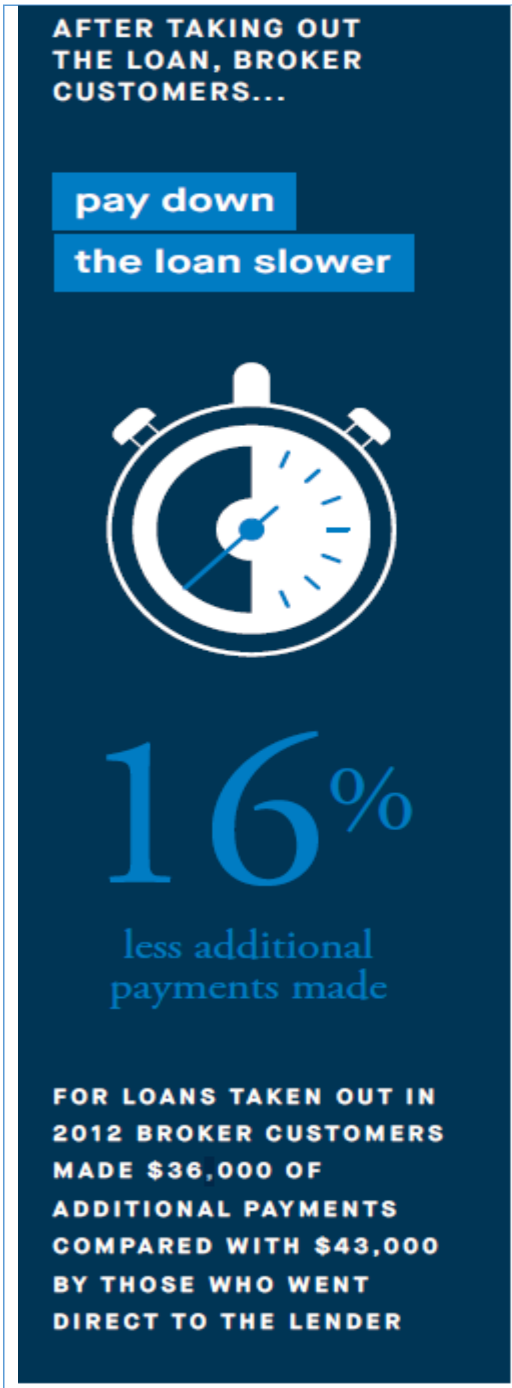
c) Desire to split banking (lending & insurance) arrangements across a number of suppliers;

d) Preferences for accessibility – better online platform, mobile apps and other features.

15. Even issues such as availability of ATMs in a local area impact consumer choice.

16. Section G of the Report **Consumers Experiences with Loans** seemed unnecessary. Comparing a consumer's perception of the mortgage broker's role against outcomes achieved by brokers, without making any inquiry into the source of the consumer's understanding about the mortgage brokers role, potentially identifies nothing more than an information asymmetry. It is unclear how the opinions of consumers who have never used a broker can be relevant for contrasting this to the experience of those who have.

17. We were disappointed with ASIC's one page summary of its findings.. The Report summary highlights the most adverse interpretations of the data without the qualifications that are co-located with the conclusions that appear in the Report. As a result, the Summary carries the strong implication that loans taken out through brokers are worse than loans taken out directly from lenders or that consumers are no better off using a broker. For example:



This representation ignores the following:

- Whether the loan was for owner occupier or investment only;
- Consumers going through brokers tended to be younger by two years[1];
- Consumers tended to have incomes around $6,000 lower[2];

Factors such as these are enough to potentially invert this finding. By our experience, brokers arrange a high proportion of investment loans. Investment loans are often negatively geared and will naturally have lower repayments than owner occupier loans. Add in consideration of further demographic attributes, the age of the data and the difficulty of obtaining like for like data and the findings become even less credible.

[1] Report 516 para 47
[2] Ibid

18. Many of the other statements in the summary might also be challenged and even reversed where fair consideration of borrower demographics are recognised. That younger, lower income earning borrowers would be buying lower valued properties, have lower wages hence less disposable income hence make lower voluntary payments towards their mortgages and likely have higher LVRs are more appropriately attributed to demographics and their economic reality rather than any influence by their broker.

19. It is unreliable to assess a mortgage broker's conduct against the lender file.

20. Lenders may modify the consumer's stated needs and objectives in their own records. The consumer's needs and objectives discussed with the broker are sometimes re-worded for the application to conform to the requirements or format of the lender portal. ASIC cannot assess what information was collected or retained by the broker by assessing the lender's file so it is difficult to make strong conclusions based on this analysis.

21. We were disappointed to see instances in the Report where data appeared to support the role of the broker being dismissed as 'statistically irrelevant'[3] where in other situations, minor differences that did not support the broker were highlighted as material.

22. ASIC's own Moneysmart website highlights the impact on the cost of credit of 'small differences'[4] over time.

23. The FBAA is committed to working with regulators to maintaining high standards of service and positive consumer outcomes in consumer credit. We are cautious to accept that the ASIC Report presents a compelling case for the need for further reform.

FBAA comments against findings in Report 516

24. Report 516 made thirteen key findings.

Key Findings	
Finding 1:	The standard commission model is almost universal
Finding 2:	Brokers are paid bonus commissions and lenders' staff are paid bonus payments
Finding 3:	Soft dollar benefits are widely used in the broker channel
Finding 4:	Consumers who use brokers are different to consumers who go directly to lenders

[3] See para 836 "While there were some signs of slightly lower interest rates being paid by consumers who used a broker, these differences were not considered to be statistically significant".
[4] https://www.moneysmart.gov.au/borrowing-and-credit/home-loans/interest-rates "*Interest rates get a lot of attention and for good reason: they determine the cost of your home loan and what you pay back each month. Even a small difference in interest rates can make a big difference to your repayments*".

Finding 5:	Loans obtained through brokers are larger, and more likely to be interest-only
Finding 6:	Interest rates are not different between distribution channels
Finding 7:	Lenders and brokers did not make sufficient inquiries into consumers' expenses
Finding 8:	For some lenders, loans provided through brokers are more likely to go into arrears than loans provided directly to consumers
Finding 9:	Competition in the home loan market is affected by ownership and the limited ability of some lenders to access and remunerate brokers
Finding 10:	Lenders provided bigger loan discounts for new loans in 2015 compared with 2012
Finding 11:	Those who merely refer consumers to lenders are paid almost as much as brokers, despite doing much less than brokers
Finding 12:	Governance and oversight need to be improved
Finding 13:	Data quality and public reporting

25. ASIC provided a significant amount of commentary around each of the thirteen key findings. The FBAA has concerns with some of the reasoning expressed by ASIC in relation to these findings.

Finding 1: The standard commission model is almost universal

26. Against finding 1, ASIC states that a commission model creates conflicts of interests. We accept that conflicts of interest may be created by the design of specific commission models but are more cautious to accept that commission models create conflicts of interest as a matter of course. Care must be taken not to confuse choice with conflict. A broker may <u>choose</u> to recommend one product over another for many reasons. It is not axiomatic that such a choice is guided by a conflict caused by the remuneration model.

27. A conflict of interest must have elements of self-interest being promoted ahead of some other duty (legal, professional) owed to another person. Care needs to be taken not to redefine the role and obligations on brokers to a higher standard than is created under the framework of the credit legislation in to order to support an argument for reform.

28. In actuality, all remuneration models are incentivisation schemes and most remuneration schemes have some form of tension (reward for effort) built into them. To adopt the broader definition of a conflict as used in the Report, even wage earners are conflicted where it is implicit in an employment agreement that underperformance may lead to termination.

29. Applying that same concept of a conflict even further, it is worth noting that lenders are 100% conflicted in that they can only ever recommend their own products.

30. We reject any suggestion that brokers routinely advise consumers to borrow higher amounts than they need merely to boost their own revenue. This is a great source of frustration for the industry. We recognise the correlation between higher loans and higher revenue however it is not a common practice to inflate application amounts for the relatively little additional revenue they may bring in. It goes against the training given to brokers, reflects very poorly on the many hard-working, client focussed brokers and the risks of encouraging a consumer to borrow more than they require significantly outweigh the potential benefit. They include:

    a) Losing the customer where they get a sense they are being 'upsold';

    b) The risk that the proposed loan will be unsuitable for the consumer's needs and objectives;

    c) The risk the customer cannot service the higher amount and therefore the loan is not approved (meaning the broker would not be paid);

31. We would expect that regular audits of loan files would also detect patterns of upselling loan sizes relative to purchase prices which in turn would lead to questions being asked of the broker.

Finding 2: Brokers are paid bonus commissions and lenders' staff are paid bonus payments

32. Bonuses are a common part of remuneration models in Australia, even operating within Federal Government organisations.

33. Bonus payments are intended to incentivise hard work and reward individuals for extra effort. The FBAA strongly supports maintaining bonus payments and commissions. In many professions, they are the point of difference between the industrious and the complacent.

34. There is insufficient evidence to assert that bonuses cause misconduct or even establish a strong correlation between bonuses and misconduct.

35. We do not support the view that bonus systems routinely distort the services provided by mortgage brokers. They motivate and reward innovation and hard work. We want a profession that is motivated to work hard and recognises high achievers.

Finding 4: Consumers who use brokers are different to consumers who go directly to lenders

36. The FBAA believes this is possibly the most informative finding of the Report and is disappointed ASIC did not present a more balanced account of this. It is extremely difficult to measure the impact of many of these differences - for example how does one account for attitudinal differences between generations? It is clear that the goals, expectations and habits of a Boomer or Gen X borrower are significantly different to those of a Centennial (Gen Z). Their attitudes towards material factors such as money, saving, home ownership, employment and personal possessions differ markedly. These differences manifest in different habits and appetites.

37. By our experience, brokers arrange a high proportion of investment loans. We note ASIC provided some information on loan purpose[5] however they encountered challenges with the data[6]. The Report did not distinguish between owner occupier and investment loans.

38. Investment loans tend to be higher LVR and interest only. Negative gearing taxation benefits encourage higher borrowing and investors divert income from investment properties towards paying down non-deductible debt resulting in lower repayments towards investment loans. The Report does not appear to acknowledge the value of taxation benefits received by consumers on negatively geared properties or the attributes of loans between owner occupier and investment.

39. Other than loan purpose, generational and attitudinal differences could have had a larger impact on the findings than any other factor. It is not clear from the ASIC Report how these factors were applied to raw data to derive the controlled data.

Finding 5: Loans obtained through brokers are larger, and more likely to be interest-only

40. Finding 5 potentially confuses correlation with causality. If we accept the finding as being an accurate interpretation of the data, there are any number of extraneous factors that can explain the correlation between consumers seeking higher loans or interest only loans and using a mortgage broker.

41. We refer to our statements against Finding 4 above and reiterate that loan purpose is one of the most material factors for understanding loan attributes. Brokers have historically arranged a much higher percentage of investment loans than direct channels.

42. By our experience, consumers seek out a mortgage a broker for larger loans because they believe brokers can help them maximise their capacity.

43. It is also our experience that consumers seeking advance loans (also known as top-up loans) are more likely to approach branches and call centres as they are facilitated by a pre-existing relationship and are easy to process. Advance loans are often smaller in size and P&I and customers are less concerned about the interest rate.

44. The Report identifies the broker channel dealing with a large percentage of loans involving construction, refinance and 'other' purposes – all of which may well account for further differences observed in the profile of broker and lender loans. A number of submissions have been made to ASIC that rebut the suggestion that brokers would inflate the size of a consumer's loan solely to boost their commission.

45. There are numerous reasons why a broker may advise a consumer to borrow an additional amount and few, if any, relate to the additional remuneration they will receive. It is good practice

[5] Report 516, para 834
[6] Ibid, para 828

to encourage consumers to leave headroom in their facility to provide consumers with a small buffer in the event that they encounter a short term cashflow problem.

46. It is also common practice to seek approval for additional amounts to enable the consumer to redraw additional funds without having to reapply to the lender at a later stage. Such requests are frequently made by the consumer and may be recorded in the broker's file but this information would be less likely to be apparent from the lender's file or from an assessment of the loan LVR.

47. ASIC's Report notes that younger generations are more likely to use a broker[7]. Younger generations are likely to have lower incomes[8]. ASIC's data suggested consumers who used a broker have an average income that is $6,000 lower. This $6,000 is a significant sum of money which materially feeds into other observations about additional repayments on loans and consumer consumption patterns.

48. While the Report notes that LVRs tend to be higher, the average LVR is 70% for lender loans and 75% for loans arranged through broker channels. Even accepting this observation as being accurate, there is little functional difference between an LVR of 70% and 75% although it is presented as though it is a point of concern.

49. Investment loans are generally higher LVR loans. A full analysis of the taxation benefits must be taken into account in order to properly assess this.

50. A higher proportion of refinances are carried out through a broker. Consumers refinancing are comfortable with debt, have a track record in meeting their existing commitments making it conceivable they have a greater appetite for credit.

51. ASIC's observations on increased use of interest only loans could be explained by the prevailing economic climate of historically low interest rates, high property prices and wage stagnation. Advice to take out an interest only loan may well be in the consumer's best interests where there is a reasonable expectation that rates will remain supressed for some time and most consumers should expect to earn more as they gain more work experience thus their capacity to service P&I in future years is greatly improved. Younger borrowers typically earn lower wages and must extend themselves further to get into the housing market. Younger generations also have higher expectations about the quality and amenity of their home purchase when compared to Boomers and Gen Xs purchasing 15 or more years ago.

52. We are also concerned with the use of language such as "All other things being equal"[9] when writing about the long-term impact of interest only loans. ASIC's assessment of the files was point in time and could not measure the long term impact of the consumer's decision to take interest only for a period. It would be important to obtain data about the consumer's longer-term intentions and we understand with the differences between broker and lender files that this may

[7] Rep 516 para 831
[8] Rep 516 para 47
[10] Paras 909- 911 of the Report recognise that consumers often have multiple reasons for using a broker with accessing a wider range of loans being the primary reason.

have been difficult to obtain. Commonly consumers expect their wages to increase over time. Higher wages give consumers greater capacity to pay down debt. How would the review have identified where the consumer had an expectation of wage increases over coming years so that they could make higher voluntary contributions where the interest only period expires?

53. We suggest it is unreliable to draw any conclusions about the propriety of this observation unless the broker file was also checked for additional notes about the purpose of interest only.

54. Additional research would be required to understand from the consumer whether they had been told by their adviser to take out an interest only loan, and if so for what reason. Absent this information we say it is not appropriate to draw any conclusions. We reject any suggestion that mortgage brokers would recommend interest only loans solely to increase borrowing capacity in order to maximise their commission on the loan.

Finding 6: Interest Rates are not different between different distribution channels

55. We question the accuracy of the conclusion that consumers going direct to a lender get the same rate. Perhaps the more relevant question would have been whether the customer who went direct with the lender could have achieved a better rate with a <u>different lender</u> had they used a broker. In our view, many would have. It is clear that lenders win a larger share of the market when they offer lower rates and promotional honeymoon periods.

56. Even accepting Finding 6 for the purposes of the current exercise, ASIC's report acknowledges that consumers don't seek out the services of a broker only to obtain a lower interest rate[10]. Many will use a mortgage broker to assist them to understand the myriad of lenders and products available and to deal with the lenders as they themselves are time poor and have sought to outsource this function to a specialist. It is difficult to measure the value consumers place on the comfort they receive from knowing they utilised a service that compared multiple products in the market before they made their final choice.

57. We have previously noted that all consumers receive the benefit of enhanced competition through lower interest rates because of the role played by brokers. Additionally, this finding demonstrates that remuneration paid to brokers has no impact on the cost of credit to the consumer.

Finding 7: Lenders and brokers did not make sufficient inquiries into consumer's expenses

58. This has been noted in other ASIC reviews and we see this as an area in which there has been substantial change over the past few years following federal court decisions such as *The Cash*

[10] Paras 909- 911 of the Report recognise that consumers often have multiple reasons for using a broker with accessing a wider range of loans being the primary reason.

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Store and *Channic* and reported outcomes against a number of credit providers in home loans and other forms of finance. ASIC has also updated its guidance in RG209.

59. We also note ASIC encountered difficulties accessing data and may not have obtained broker files to compare and contrast to specific lender files to the inquiries made of brokers.

60. This is not a finding that impacts broker remuneration.

Finding 8: For some lenders, loans provided through brokers are more likely to go into arrears than loans provided directly to consumers

61. We reject this Finding.

62. The data discrepancies between raw and controlled data saw adjustments of up to 100%.

63. The Report does not explain how a broker influences loan performance. We also question whether the data was clear enough to enable accurate matching between loan performance and origin. It is unclear if ASIC assessed and eliminated other variables. For example:

    a) 30 day defaults are often caused by incorrect payment arrangements being set up – these only become apparent when the first payment is attempted and it fails

    b) Impact of lender conduct – defaults could be caused by lender error – paperwork going to the wrong place etc

    c) Who makes the lending decision? Ultimately the lender has determined the consumer can service the proposed credit contract. Many brokers are active in contacting their clients if they are made aware there has been a payment default. There is no way to monitor how often this happens. It is unclear from the Report what role ASIC expects the broker to play in loan performance.

    d) Consumer caused defaults – there are numerous reasons why consumers miss payments and few can be attributed to the role or influence of a broker. Did ASIC allow for results such as where the consumer may have failed to adjust spending habits or reduce discretionary spending or had external factors intervene?

64. The 90 day arrears rate is slightly more reliable than the 30 day measure since it reduces the likelihood of administrative errors which would generally be rectified by 90 days.

65. When looking at the 90 day arrears figure in Table 22, the 'adjustments' between raw data and controlled data saw reductions of up to 100%[12] and adjustments for controlled data were larger in percentage terms than the final figures cited.

[12] Table 22, page 165. Other bank 1 had a raw difference of 79% which was reduced to 0% when controlled.

66. Table 22 shows that of the seven lenders mentioned, four have no difference in 90 day arrears rates between channels. The Report focuses on the outlier of the data set claiming "for one lender, there was still a 25% greater chance of a broker loan entering 90 days arrears"[13].

67. This commentary paints a picture that doesn't reflect the analysis on Table 22 in a balanced manner. The average prime 90 days arrears rates for the industry (sourced from S&P) is typically around 0.55%. A 25% difference on such a base level can draw an inaccurate inference of a more material problem. An example of a 25% difference in 90 day arrears rates between channels would be 0.50% and 0.625%, a relatively immaterial difference when converted into loan numbers across a scale mortgage portfolio.

68. Where ASIC could have reported its Findings in a more balanced manner, it chose to lead with a headline stating “For some lenders, loans provided through brokers are more likely to go into arrears than loans provided directly to consumers”.

69. We have no visibility about the sample size for any of the entities nominated in Table 22 of the Report and question its validity.

Finding 9: Competition in the home loan market is affected by ownership and the limited ability of some lenders to access and remunerate brokers

70. This finding is not surprising. It is a basic law of commerce. Larger entities have more resources to spend on branding, advertising and winning market share. Smaller competitors will always face these competitive pressures.

71. We note ASIC’s findings that broker businesses tended to recommend loans from a much smaller number of lenders than the total number on aggregator panels[14]. We believe there are multiple relevant factors that impact this finding. It is difficult to distil findings down to a broker level where the factors set out below are taken into account. A more accurate picture is likely to be produced by looking at broker applications across an aggregator broker panel.

    a) An individual mortgage broker may settle between 6 and 10 loans per month which does not provide a significant opportunity to diversify loan applications between a large number of lenders where other factors are taken into account.

    b) Loan products can be grouped according to key attributes such as prime home loans, loans for those with impaired credit, self employed etc. Once the type of consumer has been paired with the correct product type, the number of products from the total pool that is available to these consumers is usually reduced to a small number. Therefore a panel of 29 lenders usually reduces to two or three providers for the particular loan in question. There is often little product variation between lenders at this stage. It is to be expected that different brokers would develop preferences for

[13] Para 68.
[14] Report 516 para 86

different lenders just as any other professional develops a preference for particular products and service providers in their respective fields. This finding should not be construed as something adverse to brokers.

c) Mortgage brokers often have a common customer profile so that a lender may meet the borrowing needs of a number of a single mortgage broker's clients.

d) Existing clients often refer new clients who are in similar circumstances to themselves.

Proposals

72. This part of our submission contains our comments against each of the proposals. The comments are supported by observations made against the key findings.

Proposals	
Proposal 1	Improving the standard commission model
Proposal 2	Moving away from bonus commissions and bonus payments
Proposal 3	Moving away from soft dollar benefits
Proposal 4	Clearer disclosure of ownership structures
Proposal 5	A new public Reporting regime
Proposal 6	Governance and oversight

Proposal 1: Improving the standard commission model

73. The FBAA partially supports this proposal however we maintain the data and findings from ASIC's Report do not establish a causal link between commission and consumer borrowing patterns. The FBAA's preferred approach is to better understand instances (via improved file reviews and education) where outcomes at the time of obtaining a loan did not meet the "good customer outcome" or "not unsuitable test".

74. We further note that there is no correlation between the cost of credit to a consumer and the remuneration being paid to brokers. Accordingly, any change to remuneration models which adversely impact brokers provide no gain to consumers. Any proposal for change must evidence a clear business case in favour consumers. The FBAA will not support changes to remuneration models that injure the profession and deliver no consumer benefit.

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Commentary

75. We recognise that the objective of this Recommendation, and those of Stephen Sedgwick in Recommendations 17 and 18 of his Report, is to address the perceived risk that brokers and lenders would lend more money to a consumer than they reasonably need in order to boost their own remuneration.

76. As noted earlier in our submission, we remain unconvinced that the data does any more than indicate a possible correlation between broker arranged loans, loan size and LVR. Commission cannot be singled out as causative of this. Further, the research contains no qualitative assessment of the products entered into through direct lender channels therefore there is no analysis of the final outcome to the consumer as to whether they end up in a better product.

77. FBAA has held copious meetings with members to canvas their views on the current remuneration model and to discuss remuneration alternatives. The outcomes of these discussions is that each remuneration model has its pros and cons. Incentives are an inherent part of any sales or fee for service model but we should not rush to call an incentive a conflict of interest.

78. The two important elements of considering any changes are LVR and utilisation.

79. We have held discussions about the merits of LVR weighted commission payments. Our conclusion is that such arrangements would be difficult to implement and administer. They disadvantage brokers working hard to secure finance of higher LVR consumers which could lead to high LVR consumers (investors or first time buyers who generally need more assistance) potentially not getting the same level of support and service at a time when they most need it.

80. We considered the merits of changes to remuneration where there are high levels of unutilised funds. It may be possible to base commission payments on the utilised/ drawn down balance and not on large amounts left in redraw although any such requirement would need to be subject to reasonable timeframes or possibly a utilisation trigger that is based on more than mere settlement, since it would be unreasonable to have a broker forfeit their income in a situation where a consumer's purchase falls through and it takes some time to locate another suitable purchase.

81. The focus of any further reform must be on whether remuneration models are creating poor outcomes for consumers and we maintain they do not. Consumers have greater competition and choice than ever before. With brokers now assisting more than 50% of the market, consumers are immeasurably more likely to have their affairs reviewed on a regular basis and be given advice to move between providers to secure better rates. We know that it is not a regular practice of banks to contact an existing customer and encourage them to refinance to a lower rate. Prior to efforts of third parties, consumers would be placed into their product by their credit provider and forever there remain. Greater consumer detriment would come from diminished competition and reducing motivation based remuneration incentives.

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Proposal 2: Moving away from bonus commissions and bonus payments

82. The FBAA supports this proposal in principle.

Commentary

83. We note industry has significantly modified incentive payments including:

a) Removing volume bonuses removed;

b) Changes to soft dollar benefits moving towards better aligning them with educational/conference content;

c) Lenders ceasing to link sales campaigns to short term commission incentives; and

d) Changing away from offering higher commissions on special offers and promotions.

84. It is possible that many of the practices noted by ASIC in its review of data from 2012 and 2015 have already been addressed however we are prepared to work with regulators to address any remaining bonus commission and bonus remuneration practices in place today that are causing concern.

Proposal 3: Moving away from soft dollar benefits

85. The FBAA supports this proposal in principle and recommends further work in this area. We note there has already been some change to soft dollar benefits paid in the industry.

Commentary

86. We support removing high value soft dollar benefits that are capable 'buying' loyalty from brokers however we remain mindful of the challenge of addressing the subtleties that turn a positive incentive into a potential detriment. An outright ban on soft dollar benefits is a blunt approach that may not yield improved consumer outcomes.

87. We also consider it necessary to preserve systems that recognise, reward and incentivise industrious brokers.

88. The ASIC Report identifies the difficulties in appropriately segregating beneficial, from potentially detrimental soft dollar benefits. The Report recognises that membership of broker clubs has potential to distort recommendations from member brokers to direct more loans through the lender without considering whether the home loan is the best choice for the consumer[15]. The Report also recognises that ASIC does not consider that all broker clubs are likely to result in poor consumer outcomes.

[15] Report 516 para 619

89. Soft dollar benefits exist to attract and reward more business however they are not unique to consumer credit. Other examples include airline frequent flyer clubs and retailer rewards programs. The issue in question is whether the existence of such programs leads to unsuitable recommendations. Product issuers use competitions and honeymoon rates as a form of marketing. Marketing can be broad based (such as television commercials) or targeted (such as offering honeymoon rates). It is expenditure by the issuer intended to raise product awareness and win market share. Ultimately the consumer has a role to play in acting on the recommendation of the broker about applying for a particular loan with a particular provider. With the significant compression of variety of features and pricing of home loan products, the differences between products offered by major issuers are relatively small. Brokers assist consumers to identify and exploit the differences between product issuers however the issuer with the most attractive product changes from week to week.

90. Brokers are not required to place consumers into the most suitable product but into a not unsuitable product. Even shedding the awkwardness of the term *not unsuitable*, and replacing it with a requirement to recommend a *suitable* product, it is rare that a consumer would end up in an unsuitable product having chosen one major issuer over another. Absent a significant misalignment between the consumer's needs and objectives and the features of the product recommended, any recommendation of any loan product is likely to be not unsuitable.

91. We advocate taking extreme care not to move to a conclusion that change is required simply where data analysis indicates different outcomes occur based on observations about different remuneration models or incentives. The issue that must be identified is whether any of the outcomes amount to a contravention the NCCP Act standards and obligations.

92. Notwithstanding the focus on soft dollar benefits and the recognition that they have potential to influence where recommendations go, the Report stops short of identifying situations where such benefits are producing unsuitable outcomes.

93. The FBAA would welcome the opportunity to discuss the merits/impact of specific benefits or practices if ASIC has concerns that they are causing consumer detriment.

Proposal 4: Clearer disclosure of ownership structures

94. The FBAA is prepared to support this proposal.

95. We advocate independence in the provision of credit services and agree that consumers should not be disadvantaged by any misapprehension about who they are dealing with.

Comments

96. Care needs to be taken with recommendations for further disclosure. Consumer credit is already overburdened with disclosure.

97. Imposing additional disclosure requirements carries risks for both licensees and consumers.

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98. The risks to licensees is that additional disclosure requirements are yet one more regulatory obligation to introduce, monitor and comply with. The higher the number of obligations and greater the complexity of the requirements, the higher the risk of inadvertent non-compliance becomes. It also increases licensee compliance costs which flow through to consumer costs.

99. Disclosure should not be confused with consumer understanding. There is already an enormous amount of information exchange that takes place under a consumer credit transaction. Consumers are presented with a significant amount of disclosure through credit guides, quotes, credit proposals, loan contracts and privacy material. In addition to the mandatory disclosures they may also receive other information including account opening information, marketing information and information about other products and services. In addition to receiving and processing what they are given, consumers are also required to provide a considerable amount of information in the course of applying for credit.

100. Consumers must filter through all of this information to determine what is most material to them. ASIC must assess the potential impact and benefit for consumers being presented with information about ownership structures.

Proposal 5: A new public Reporting regime

101. The FBAA strongly opposes this proposal and cannot understand the purpose of such a proposal other than to attempt to discredit the services provided by brokers. It is beyond doubt that the presence of brokers in the mortgage market have expanded consumer choice and driven down rates through raising consumer awareness and increased competition pressure on issuers. Whilst brokers often do secure lower rates for consumers, or at the very least minimise the risk that a lender would passively exploit a consumer's failure to ask for a larger discount, the fact that a broker may not be able to individually secure a lower rate than the lender will offer direct misrepresents the impact the broker has had on getting consumers to that level of discount and choice.

102. The collection and publication of the suggested data sets under Proposal 5 are not aligned with the offerings by brokers. We are concerned that reporting on the proposed data sets (which do not accurately represent the services offered by brokers) would unfairly impact brokers and discredit their services.

103. By way of example, we refer to the proposed data set under paragraph 128(b) of the Report *"the average pricing of home loans that brokers obtain on behalf of consumers"*.

104. Brokers can, and do, secure lower rates for consumers in one off situations, however the greater impact of broker presence in the market is increased competition and lower margins on rates for all consumers[16] – not just how much further discount they obtain on a singular transaction.

[16] Report 516 Para 889 "Across all but one of the banks, the discount margin for loans in 2015 was greater than that in 2012".

Regular publication data such as is contemplated by s128(b) would send a signal to consumers that brokers cannot help them achieve a lower rate than if they go direct to the lender. This tells only a very small part of the story and fails to acknowledge the broader impact of the broker role on pricing of consumer credit.

105. How would publication of this data assist consumers? If the data were presented to suggest that brokers do not achieve a materially different rate to that offered by a lender, is it suggested that the consumer should bypass the broker and go direct to the lender? Which lender? Should consumers be told to pursue the lowest rate or the most suitable product? Once a consumer presents in front of a lender, will that lender make them aware of competitors' products at lower prices?

106. No other industry is subject to having a regulator collect and publish data of the nature contemplated by ASIC under Proposal 5 and the very notion of it carries anti-competitive undertones. This is not a space that ASIC has any place in. The very concept of publicly reporting this data is misguided and we do not support any part of it.

Proposal 6: Governance and oversight

107. The FBAA welcomes the observations under Proposal 6 for greater oversight and governance.

108. One of the greatest barriers to more effective governance and oversight is the availability of data, something also noted by ASIC as a barrier to being able to undertake more comprehensive research.

109. Care needs to be taken when identifying additional record keeping obligations to distinguish between that which is necessary to meet specific regulatory obligations and that which is merely desirable for broader purposes (e.g. intel or assisting ASIC to conduct research). Industry currently collects and records a substantial amount of data, however it is not always retained and collated in such a way as to make it easily accessible or comparable between organisations. Data is also collected for a wide range of purposes and that which is retained for one purpose (e.g. monitoring financial performance) may not always inform other aspects of the business. We recognise that it is desirable to more towards greater uniformity of data retention but also recognise the very significant barriers of cost and licensee system architecture to easily addressing the issue. Lenders must agree to be a part of any solution to this issue.

110. The FBAA recommends further work be undertaken to identify the critical data that should be retained and made accessible before it is possible to propose a solution to this proposal.

Para 22 "...brokers have the potential to…..exert downward pressure on home loan pricing, by forcing lenders to compete more strongly with each other for business".

111. Record keeping obligations are imposed on all parties to consumer finance (brokers, aggregators and credit providers) and each party holds different information in different systems and formats. Much of the data collected by brokers through their contact with consumers can be omitted when navigating through aggregator and lender portals. This potentially leads to large differences in the data collected by brokers and the data held by lenders on their file. A lender's file will rarely, if ever, tell the full story of the amount of data collected by the broker.

112. Data flow is one directional. Brokers and aggregators often do not see the details of the settled loan and are not privy to performance data. Brokers are only notified of loan performance issues when commission is clawed back. Many lenders cite privacy barriers to being able to relay information back to brokers about loans arranged by them.

113. There is clearly work to be done in this area between lenders, aggregators and brokers to determine better ways to share ongoing data and reporting to ensure that there is an ongoing customer relationship management system to identify as early as possible any events which could have a negative impact on existing borrowers. There has been significant advancement in recent years and since the introduction of the NCCP Act. If we can work further with ASIC to understand the data they would like to see we will have stronger grounds to agree between lenders, aggregators and brokers which information needs to be captured and how.

End.

Yours faithfully

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