

MFAA Submission on changes to disclosure requirements under the National Consumer Credit Protection Act 2009

This submission is made by the Mortgage and Finance Association of Australia (MFAA).

Who is the MFAA?

The MFAA is the peak national body providing service and representation to the mortgage and finance industry. Although our prime representation is of mortgage and finance brokers, we are also the key representative body for non-bank lenders and mortgage managers. We have close to 10,000 members.

The MFAA requires members to observe the NCCP and apply their obligations with a high standard of regard towards achieving consumer understanding and legal compliance. MFAA members are however, pressured by the volume of obligations imposed on them by the NCCP. As such, the MFAA takes a hesitant approach to future legislative amendment due to the burden on members, many of which are small businesses with limited access to legal, education, support, and other resources. The MFAA calls for a halt on changes to regulation unless a very dramatic need for action is demonstrated.

While some of the proposals have significant merit, the cost to industry and the stress of further change is not warranted by the perceived benefit to consumers. We do not have any evidence of borrowers not understanding their key financial obligations under finance contracts and so oppose change.

Our comments below should be read subject to this general submission.

1. Issue One: Removing requirement for Information Statement

We support the removal of the Information Statement. Our enquiries reveal that the document is rarely read by consumers and does not convey any useful information. As noted by Treasury, key information regarding the credit provider's membership of an external dispute resolution scheme is provided in the Credit Guide.

Further, because many lenders use the same documentation for loans regulated by the National Credit Code and for unregulated loans, the provision of the Information Statement can be misleading.

It would be more useful for contracts to have a prominent notice encouraging consumers to contact the lender if they are unable to make a repayment.

2. Issue Two: Changes to the disclosure requirements in Section 17

2.1 Where the amount of commission is not ascertainable, should a credit provider be under an obligation to provide a reasonable estimate of the amount of any such commissions? If so, should this disclosure be in accordance with the methods used for calculating this amount for providers of credit assistance?

- (a) The key disclosure is at the broker level. We think that the current disclosure by lenders is appropriate and there should be no change. Consumers are provided with adequate information in the Product Disclosure Document (PDD) when there is one. There will be circumstances where commission for introduction is paid to exempt referrers or other entities that are not required to provide a PDD. Accordingly retention of the generic statement in the credit contact is appropriate.
- (b) Bringing the two disclosures into line may create confusion for consumers for several reasons.
 - (i) When the credit contact is prepared the amount of credit and therefore the amount of commission may have changed from the reasonable estimate made by the broker in the PDD.
 - (ii) There may be one or more intermediaries between the lender and the broker. Usually there is at least one aggregator. Accordingly, the amount of commission paid by the lender may be significantly greater than the commission to be disclosed in the PDD by the broker. *Example: lender contracts with aggregator and pays aggregator 65bps plus a trail of 15bps. Aggregator pays broker 50bps and a trail of 10bps. The PPD will show the lower amount.*
- (c) We request that there is no change, as any change has no particular demonstrated benefit and would cost industry significant money to rework how the disclosure is made.

2.2 Should lessors be under the same obligations as credit providers as to disclose commissions? Alternatively, are there any differences in relation to commission arrangements for lessors that would prevent disclosure or require a different approach to be taken to disclosure of commissions?

Our enquiries reveal that there is limited use of consumer leases. Most equipment finance for consumers is documented by way of loan with a chattel mortgage.

We have no particular view in relation to disclosure commissions by lessors other than to say that MFAA members acting as a broker for consumer leases receiving commission would be required to disclose the commission to the consumer under our Code of Practice.

2.3 Should there be any other changes to the matters required to be disclosed by Section 17?

The provision of information regarding frequency of statements of account and the statement that enforcement expenses may become payable are of limited

utility and suggest that they be removed from compulsory matters. However, we see no pressing need for change as industry has become accustomed to disclosing this information.

3. Issue Three: Timing of precontractual disclosure

3.1 What are the stake holders' views on the advantages and disadvantages of changing the timing for disclosure in relation to credit contracts?

Our experience is that most lenders issue the credit contract very promptly (usually within two business days) of the credit being approved. We therefore cannot identify a time at which the pre-contractual disclosure could be made earlier.

Of course, finance brokers and in particular MFAA members should ensure that key information is provided to consumers early in the transaction and normally before the application for the loan is made.

3.2 Are the phrases 'reasonable time before the contract is entered' and 'as soon as practicable' sufficiently certain for credit providers to be able to readily comply with the requirement based on such terms? If not are there any more precise ways to articulate the trigger for compliance?

We think there is no time before the credit contract is issued during which this disclosure could be made. There are exceptions when the issue of a credit contract is significantly delayed, but these circumstances are so rare as to not warrant specific legislation.

3.3 What costs might industry incur if required to provide the pre-contractual summary of the contract to a consumer within a reasonable time before the contract has ended?

We cannot identify any such time and so we cannot answer the question.

3.4 Should any such obligation apply to all credit contracts or only particular categories?

The requirements should not apply.

Attachment A – Financial Summary Table

1. What modifications would be necessary to deal with a product which is not a ‘standard home loan’ – eg initially interest only?

A significant portion of borrowers take out split loans with two or more separate accounts. A typical combination is a variable rate, a fixed rate portion, and a line of credit portion.

The financial table will be very difficult to work with in these circumstances and the credit contract will become much longer than the current contract. In these circumstances is it envisaged that the lender would need to specify an aggregate of the three accounts or provide three separate financial tables? A situation could be further complicated if some of the accounts are interest only or have different maturity periods.

2. Can the proposed Financial Summary Table be adapted to deal with various types of interest rate?

This question demonstrates the cost to industry of amending documents. Even with the best of intentions there will be circumstances where ‘squeezing’ information into a narrow prescribed format will be difficult. There will be loan structures and features that present significant compliance challenges. As noted in our introduction, the MFAA opposes change in the absence of material demonstrated need.

3. What are stake holders’ views on disclosing the following information?

3.1 Name of Credit Facility

Should not be required because many products may have no name. A name does not assist understanding repayment obligations.

3.2 Estimated Cost of Credit

We oppose disclosing the estimated costs of credit and the estimated total amount to be paid back for the reasons specified in para 3.3 below.

3.3 Estimated Total Amount to Be Paid Back

- (a) When the UCCC was introduced, it was felt that showing the estimated total cost of credit over a 30 year loan is unhelpful considering that virtually every home loan borrower repays early. Accordingly, the obligation to disclose the estimated cost of credit was limited to loans to be paid out within seven years. We are not aware of any report which changes that position. We submit that showing this figure is unhelpful.
- (b) A statement of the total amount to be paid back may mislead borrowers as to which of two or more loans is the cheaper loan. For example, a loan with a ‘bullet’ repayment at the end of five years (ie principal and interest over five years but amortised at the rate of a 25 year term, with a lump sum payable at the end of five years) will have lower total repayments than a loan for 25 years, but may not be as suitable for the consumer because of the lump sum repayment. Further, when interest rates are variable, an initial estimate of the total amount to be paid back could be quite misleading. An unsophisticated consumer may well be

convinced to take a loan that has a lower 'Estimated Total Amount to Be Paid Back' only to find that the loan is not cheaper or more suitable.

- (c) If the disclosure is to remain, to avoid being misleading, it should be qualified to explain that *'This is the interest and fees charged over XX years. Most borrowers do not keep their loan for the whole period and so it is unlikely that this total amount will be payable by you. If you repay the loan early, you are only obliged to pay interest to the date of repayment (plus any early termination fee) (see below).'*
- (d) The Estimated Total Amount To Be Paid Back could not be calculated for line of credit loans.
- (e) The statement will be incorrect and misleading for accounts where borrowers have redraws, offsets, make lump sum reductions, or make additional repayments.

3.4 Personalised comparison rate

- (a) Calculating a personalised comparison rate will be a significant compliance impost for many small lenders. This will be particularly so for those lenders who only occasionally do home loans.
- (b) It is widely accepted that comparison rates are of limited utility, hence the removal of Comparison Rate Schedules. Consumers do not understand what they are.
- (c) The comparison rate may mislead borrowers as to which of two or more loans is the cheaper loan as the interest rate may vary during the term of the loan. Further, comparison rates are too easy to manipulate because they do not incorporate unascertainable fees and optional fees. For example, are legal costs, stamp duty, registration fees, search fees, discharge fees, land titles requisition fees, courier fees, and other such costs to be included in the calculation?

3.5 Term of the loan

This is important information and should be disclosed in the financial summary.

4. Disclosing how money is paid

The disclosure of how a loan will be paid in home loan contracts is unhelpful because generally the lender does not know how the loan will be paid at the time the credit contract is prepared. However, the disclosure of how money will be paid may be useful for personal loans.

5. Use of the term fees and charges

We do not understand the distinction between fees and charges and feel it would be better only to refer to fees. However this might require an amendment to the National Credit Code.

6. Late payment fees and early termination fees

(a) Late payment fees

These should not be included in the summary. Consumers do not enter loan agreements expecting to default. This information could easily be misleading, because late payment fees viewed in isolation from other enforcement expenses only tells a portion of the consequence of default.

(b) Early termination fees

(i) Early termination fees in respect of regulated loans secured by residential mortgages are prohibited except for reasonable administration costs and break costs. The concept of administration costs and break costs are quite separate and should be shown separately and not bundled together.

(ii) This disclosure fails to bring forcefully to the borrowers' attention the significant amount that might be payable for fixed rate break costs.

Summary

Proposal	Comment
Name of credit facility	Some products have no name. Difficult for split loans. Name has potential to be misleading.
Estimated cost of credit	Potentially misleading and unascertainable for many home loans – see para 3.2 and 3.3 above.
Estimated total amount to be paid back	Misleading because of our comments in relation to the estimated cost of credit.
Personalised comparison rate	Unhelpful because comparison rates are not readily understood, and can be manipulated – see para 3.4 above.
Term of the loan	Good idea.
How is the loan paid?	The disclosure of how a loan will be paid in home loan contracts to be unhelpful because generally the lender does not know how the loan will be paid at the time the credit contract is prepared.
Fees and charges	We think it is better just to call them fees.
Late payment fees and early termination fees	Early termination fees should be in the table. Late payment fees should not be.

Attachment B – LMI Information Statement

1. General comments

In the second bullet point on page 1 and the second last paragraph on page 1 the draft states that the 'LMI insurer **will** pay to the lender'. This should be changed to 'may' because the lender may not be entitled to claim insurance for many reasons.

The last sentence before the example should read 'The LMI insurer **may** pay your lender the difference between the amount outstanding and the sale price, and **may** then ask you'

The example should be amended by deleting the words '*which for him is included in the amount borrowed*' (as that does not add to the clarity of the statement). 'Together with interest' should be added at the end of the example.

We submit that a much more useful disclosure would occur by adopting the MFAA recommendation of including a short and concise statement in the credit contract itself rather than creating another piece of paper. Adding more paper to the parcel, particularly in the context of electronic lending where items are just clicked through, is unhelpful.

The MFAA recommended statement is as follows.

If your credit contract requires you to pay for Lender's Mortgage Insurance, this insurance protects the Lender and not you.

If you default in your mortgage, resulting in the need to sell the security property and the sale proceeds are insufficient to fully repay your loan, the Lender may incur loss. The Lender may recover this loss under its Lender's Mortgage Insurance policy. However, you are still legally responsible for repaying the insurer the amount outstanding under the mortgage because you are not protected by the Lender's Mortgage Insurance policy.

2. When is it proposed that the LMI statement will have to be provided?

Given the short time between application approval and issue of a credit contract, we suggest that the LMI information statement should go with credit contracts which require LMI and replace the current information statement.

Questions for stakeholders

1. Terminology for 'the Lender'

We think the reference to 'the Lender' is fine, particularly if the disclosure is going to be in the credit contract.

2. Who pays the premium?

When the credit contract is prepared, lenders do not know whether the borrower will pay the LMI although it is usual for the LMI premium to be paid from the loan advance.

3. Contact the LMI or the lender?

Borrowers should be instructed to contact the lender not the LMI or insurer.

4. Disclosure

Even if the LMI premium is not deducted from the amount of credit, it would still need to be disclosed as a fee or a charge under section 179(8).

It should be made clear that if the borrower is not paying for the LMI premium that the LMI statement is not required to be provided. This is because the borrower may not be aware that LMI is taken out. *Examples: Pool insurance, or insurance paid for by the lender.* Providing the statement would provide irrelevant information to the borrower.

Attachment C – Financial summary table for credit cards

The MFAA makes no submissions in relation to credit cards.

Attachment D – Financial summary for personal loans

Questions for stakeholders

1. Disclosure of ascertainable fees and charges

The financial table for personal loans should be the same as in model A1 except that for loans to be repaid within seven years the estimated cost of credit and the estimated total amount to be paid back should be disclosed (in line with the disclosures required in the financial table at the moment). Given the addition of this information, it is also appropriate to include any regular non-optional fees in the repayments to give the consumer an all- inclusive disclosure.

2. How is money paid?

Although we think disclosure of how money is paid is unhelpful for home loans, we think showing how the money is paid is probably useful for personal loans (in line with current practice).

3. Advantages of various disclosures

Item	Comment
Name of credit facility	Should not be required because many products may have no name. A name does not assist understanding repayment obligations.
Personalised comparison rate	Should not be required as comparison rates can be misleading and are a confusing concept for consumers. Which is my real interest rate?
Term of the loan	Yes good idea.

Attachment E – Reverse mortgages

The MFAA makes no submissions in relation to this table.

Attachment F – Disclosure for consumer leases

The MFAA makes no submissions in relation to this proposal.