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The exemption of retailers from the National Consumer Credit Protection Act 2009

Response by the
Mortgage and Finance Association of Australia

To Treasury Discussion Paper
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Executive Summary

- Considering the Options posed by Treasury Discussion Paper, MFAA strongly opposes Option 1.
- Although Option 3 appropriately recognises that people operating 'like brokers' in the F&I¹ sector, shall be totally covered by NCCP and either hold an ACL or be appointed as a credit representative of an ACL holder, it does not appropriately deal with those who may be operating on behalf of a single financier or under first or second choice arrangements. Therefore Option 3 is also opposed by MFAA
- MFAA supports Option 2
 - incorporating a monetary carve out (described below) for smaller amounts of finance in retail shops
 - providing it is amended to ensure subsidised finance arrangements are captured and disclosed to consumers

History of NCCP discussions

To assist in the development of the NCCP the, then, Minister Senator Sherry established a Working Group to work with Treasury which comprised representatives of a wide range of industry and consumer groups as well as ASIC.

The basic premise of the group was that, while there were differences about the look of the ultimate legislation, it should be 'all-in'. That is to say there should be no exemptions. That was certainly the view of the MFAA and our strong support of the legislation proceeding was underpinned by this basic premise.

There was never any indication that the 'point of sale' sector would seek to be, or would be, exempt from the NCCP. Had that possibility been raised at the time, MFAA would have strongly opposed an exemption on the basis that the POS sector is involved in providing and/or recommending credit and accordingly should be regulated the same as every other individual or business involved in providing or recommending credit.

It was not until the 11th hour that the POS sector lobbied for an exemption, ostensibly on the basis that the sector had not sufficient time to properly assess the impact of the NCCP on the sector.

The exemption ultimately announced recognised the 'temporary' nature of the exemption by the use of the words 'pending a review of the sector'.

Accordingly MFAA now welcomes the opportunity of participating in this review (noting that we also participated in the Point of Sale Working Group convened by the Government for this purpose).

¹ Described in the Discussion paper as 'FNI'

MFAA's approach to NCCP coverage

As indicated in the previous section MFAA's view has always been and still is, that there are no grounds for exemptions from the NCCP.

To allow exemptions is to weaken the integrity of the legislation by enabling both consumer protection and competitive fairness gaps to appear.

Considering the Options posed by Treasury Discussion Paper, MFAA clearly opposes Option 1. When the exemption was announced MFAA was confronted by many dismayed members who, from their own experience, were able to see that the most appropriate candidates for regulation (viz vehicle F&I operations) were being 'let off the hook'. MFAA members take pride in the professional level of their own operations and the fact that the association code and membership requirements which bind them are, in many areas, superior to the standards mandated under NCCP and are horrified to have to contemplate that their competitors in the F&I sector might be allowed to operate at standards even less than required by NCCP. Accordingly MFAA also opposes Option 3.

Although Option 3 appropriately recognises that people operating 'like brokers' in the F&I sector, shall be totally covered by NCCP and either hold an ACL or be appointed as a credit representative of an ACL holder, it does not appropriately deal with those who may be operating on behalf of a single financier or under first or second choice arrangements.

The Discussion Paper refers to *First-Choice Arrangements* included in the Exposure Draft Finance Broking Bill 2007, which was based on the provision operating for several years under the NSW Finance Brokers Act (before NCCP). However we don't agree that the POS sector (particular F&I) is analogous to the circumstances on which this provision was largely based.

The NSW First-Choice arrangements did not exempt individuals or businesses from the substantive provisions of the legislation. They simply enabled a 'mortgage manager' commonly known as 'non-bank lender', to be treated as a lender when they operated as a single financier and providing/recommending their own products but to be fully regulated as a broker if they recommended other lenders' products (the, now not operating, Wizard model was a good example). This is not what the 'supplier's representative' model in the Discussion Paper requires. If First choice/second choice arrangements were to be paralleled to the F&I operation, the F&I when operating as a single financier would be treated as a lender (or lender's representative) under the NCCP and when acting as 'like a broker' would be treated as a broker under the NCCP.

Our concern about the apparent lighter touch treatment of 'suppliers' representatives' is that they will be subject to a lesser level of regulatory requirements than would be the case if a consumer went to another financial institution (eg bank or credit union) or a broker who are all competing in the same market. The loans officer in the bank or credit union is totally covered by the NCCP requirements as is the broker. The supplier's representative is not.

F&I operatives are our main concern

As will be clear from this submission, the MFAA's main concern is the regulatory treatment of F&I operatives. Firstly, because this is an area in which it has been demonstrated in the past that inappropriate conduct is well known and secondly the subject of the finance, usually the family car is the second most costly purchase the average consumer will make (after only the family home). We set out below examples of or comments about inappropriate conduct in the F&I sector.

Examples/comments provided by MFAA members:

1. *One of my clients was offered the following "deal":*

*The rate was quoted at an interest rate 6.75% pa fixed for 5 years, and then went on to list additional fees and charges which, if added to the total cost, would bumped up the effective rate of interest to 8.75% pa fixed for 5 years!
!!!!NBSP!!!!*

At first glance, the dealer offered my client a rate of 6.75%. And this is how the dealer at POS get the client to sign up for their finance, not disclosing the all up rate inclusive of the fees and charges!

My quote to my client was at all up rate of 7.75%, which included the fees and charges, which was 1.0% cheaper than the dealer's quote!

After explaining it to my client, he called up the dealer and told him that he received a cheaper quote from his broker.

These are the type of issues we as brokers have to put up with, because the dealers at point of sale, have been exempt and don't have to comply with the new NCCP regulations!

2. *I have found in my experience with young people that this kind of finance ie Car, motor bike, speed boat and store account finance is the easiest for young people to get with no deposit*

Their level of debt and commitments can then prevent them qualifying for home ownership or saving for it for a very long time (if ever)

Some even think they should take out some credit to establish a credit rating!

After telco defaults, this kind of credit would also be the greater contributor to bankruptcy and defaults for younger people - especially when they lose their job or have a relationship split.

I guess it is also a maturity and education issue

If housing reposessions were examined, I expect that excess of other forms of credit would have been a significant factor in the cause of the repossession.

I most certainly support the MFAA submission that providers of this credit should be tighter and have the same licencing requirements as us brokers.

3. *Have had many applicants apply for a home loan but did not qualify because they had just committed to a car loan, on the other hand if they had come in for the home loan first and then applied for a car loan all would have been Ok'd by the car financier.*

4. *A broker was provided with a suite of documents that was presented to the consumer by F&I at the dealership who is a representative of major lender in the Motor Vehicle Industry.*

On none of the documents was there any reference to the interest rate nor the lenders fees nor the dealer's fee for securing finance.

The broker who provided this information to me established that based on the repayments, the loan term and vehicle cost that the finance was calculated at 16.22%. This transaction did not include any other up sell products such as CCI insurance or protection products, like warranty. This consumer was a young man who trusted the dealer. The transaction was able to be financed by the broker at more favourable interest rate with the same financier.

5. *Similar example was provided by another broker where the client was charged 19% by the dealer.*

The issue is that F&I is not disclosing the true cost to the consumer. When you take into account the up selling of other products that when added to the finance contract increases the dealer's commission and therefore the interest rate to the client. Full disclosure as per NCCP requirements would make F&I representatives more accountable and the consumer will be better informed of the costs associated with the loan contract.

Dealers take advantage of the young consumers and the less financially aware consumers.

Some dealers also get an unfair advantage because the financier enables them to earn more commission on the same products that brokers can access.

The captive position that dealers have when the consumers go to purchase a vehicle makes consumers vulnerable to being exploited by F&I. !!!NBSP!!!!These type of consumers need to be protected.

6. *Finance contract through a dealer in which CCI Insurance is \$7,266.92 and GAP Insurance is \$1,419.00 which gets added to the finance cost of the vehicle. These products earn the dealer approximately 45% which is not disclosed.*

The finance and financing of the add-ons would have earned the dealer possibly up to \$4,000 in commission.

Full disclosure would make dealers and F&I representatives more conscious of what they are charging and the consumer more aware.

7. *For anyone reading thinking what's the big deal about POS legislation and what's wrong with how things are currently I'd offer this disclaimer attached to (...s) recent "1% across the range" - "WARNING: This comparison rate is true only for the examples given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate. Comparison Rate for the purpose of the National Credit Code is based on 5yr secured loan of \$30k although this offer relates to a 36 month term only".*

Similar examples appear in every tabloid newspaper every day.

8. *With POS having an exemption under the current legislation Lenders have seen this as an opportunity for them to increase their market share, they have set up the ability to accredit Motor Dealers under a second string relationship which now enables them to offer additional products. I have seen this from a local basis where we are now competing against dealers who have access to two additional lenders and offer the same products as we have, this has reduced the profitability of our business as we relied on the business these dealers gave us. These dealers are clearly acting as finance brokers but are hiding under the POS exemption.*

On the other hand the more respected dealers have taken the necessary steps to cover themselves in this area by either obtaining their own licence or joining forces with a finance broker to offer their clients a fully variety of products.

A Fundamental issue

A fundamental issue is the different dynamic operating in relation to vehicle finance where subsidies are often in place hiding the real finance cost. None of Options posed in the Discussion paper adequately addresses disclosure of these subsidies.

Cars make up about 80% of all Asset Finance and the consumer is clearly being deliberately misled if someone can advertise a rate that isn't even available. In the rare cases where it is the manufacturer is writing a cheque to pay for the finance which is built into the sale price – consumers deserve to know if they are only getting cheap finance because they are paying more than what a vehicle/asset is truly worth.

They particularly deserve to know, while a broker has to disclose how much they earn on a consumer deal, that even if the F&I salesperson at the caryard did disclose what they earned, it wouldn't alert the consumer to that subsidy.

Retail Shops

We acknowledge the concerns expressed by the retail shop sector and outlined in this paper and we think their concerns may be best accommodated, not by a general exemption but, by a carve out that does not cover loan contracts for amounts of less than, say, \$5000. This would significantly reduce the possible negative impact on consumer protection of a general exemption.

MFAA's Position

In light of this submission MFAA supports Option 2 incorporating the above described carve out and providing it is amended to ensure subsidised finance arrangements are captured and disclosed to consumers.
