RateSetter

4 October 2019

The Treasury
Langton Crescent
PARKES ACT 2600

Attn: Financial Services Reform Taskforce

By email: ConsumerCredit@treasury.gov.au

Dear Treasury

RE: Mortgage broker best interests duty and remuneration reforms – RateSetter submission

RateSetter Australia Pty Limited (**RateSetter**) operates a peer-to-peer lending business, matching lenders with creditworthy borrowers to facilitate personal loans to provide value to both lender and borrower, including distribution to consumers through partnerships with over 9,000 accredited brokers across Australia.

RateSetter is pleased to make a submission in relation to the exposure draft National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019 (**Bill**) and corresponding exposure draft Regulations (**Regulations**).

In summary, RateSetter urges Treasury to enhance the Bill such that the best interests duty and conflicted remuneration provisions apply equally across the broking industry to promote consistency and consumer certainty as to the obligations of their particular broker. Further comment on each of these points is provided below.

1. Introduction of a best interests duty

RateSetter supports the introduction of a best interests duty and the associated consumer benefits that this encourages.

However, the Bill as drafted creates a significant asymmetry between the obligations of mortgage brokers and other types of finance brokers when providing identical credit services, such as for car loans or personal loans.

By way of illustration, a consumer might approach two separate brokers for assistance in obtaining a personal loan. Both brokers may recommend and help the consumer apply for a personal loan product. It is reasonable that the consumer would expect that each of the two brokers would equally act in the best interests of the consumer when assisting them. However, if one of the brokers usually provides assistance in relation to home loans, and the other only offered assistance in relation to personal loans, the Bill as drafted results in only the first broker being legally required to act in the best interests of the consumer.

This situation evidences a significant gap between the duties of brokers and appears inconsistent with the overarching aims of the Bill: to bring the law into line with the expectations of consumers.[1] It is our view that consumers have equal expectations of a broker's obligations notwithstanding the type of loan they are seeking. To apply different obligations to different types of brokers where they are providing

[1] Exposure Draft Explanatory Materials at 1.4.

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identical services would require consumers being able to recognise and understand the distinction between a mortgage broker and other type of finance broker.

For this reason, **we recommend that the Bill is amended to ensure that the best interests duty is applied equally as between brokers when facilitating identical credit contracts.**

From a practical perspective, Treasury may implement this recommendation in one of two forms:

1. Amending the application provisions in Subdivisions A and B of Division 2, Part 3-5A of the Bill to remove the requirement that the licensee or credit representative is a mortgage broker. This would have the effect of expanding the application of the best interests duty as set out in sections 158LA and 158LE beyond mortgage brokers and credit representatives to appropriately capture any licensee providing credit assistance in relation to a regulated credit contract.

2. In the alternative, equality between brokers can be achieved by the provisions operating only where a mortgage broker is acting in the capacity of a mortgage broker, that is, the best interests duty applies only when a broker is providing credit services in relation to a credit contract secured by a mortgage over residential property.

Clearly the first option is more closely aligned with the aims of the Bill, and, in our view, is the preferred option.

2. Conflicted remuneration

The proposed Bill enables the Regulations to prescribe circumstances in which benefits are deemed conflicted remuneration and so cannot be given or received.

As drafted, the Regulations preclude credit providers from giving monetary benefits to mortgage brokers (and mortgage brokers from accepting those benefits) if the credit contract is not "wholly or predominantly for the purpose of purchasing residential property", such as a personal or car loan. To continue the example set out above, if a consumer then entered into a personal loan, the credit provider would be able to provide a flat-sum, single monetary benefit only to the broker who offers only personal loans and credit cards, and not to the mortgage broker.

This distinction has the consequence of disincentivising mortgage brokers to offer a diversified range of credit products to their consumers, as well as requiring close monitoring by credit providers to differentiate between mortgage brokers and any other type of broker.

The Regulations set out circumstances in which monetary benefits are not taken to be conflicted remuneration at Division 2 of Part 3.8. A monetary benefit given to a licensee is not conflicted remuneration if it meets a defined set of criteria which includes, among other things, a requirement that the benefit is given:

> *(d) for a credit contract that relates to:*
> *(i) the provision of credit wholly or predominantly for the purpose of purchasing residential property; or*
> *(ii) the provision of credit wholly or predominantly for the purpose of refinancing credit that was provided wholly or predominantly for the purpose of purchasing residential property*[2]

It is our recommendation that the Regulations be amended to remove the requirement held in reg 28VA(3)(d) that the credit need be provided in relation to purchasing residential property.

[2] Exposure Regulations reg 28VA(3)(d).

This amendment would not contradict the aim of the conflicted remuneration restrictions but would bring mortgage brokers in line with other brokers providing identical credit services, while allowing consumers to continue to receive services from a mortgage broker offering a comprehensive range of products.

Final remarks

We thank you for the opportunity to provide comment on the exposure draft Bill.

If desired, RateSetter would be pleased to speak directly with the Treasury and other Government representatives in relation to each of the subjects included in this letter.

Ben Milsom
Director
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