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MORTGAGE BROKER BEST INTERESTS DUTY AND REMUNERATION REFORMS

Suncorp Group Limited (*Suncorp*) welcomes the opportunity to respond to the Exposure Draft of the *National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019* (*the Bill*).

As a smaller bank, Suncorp believes a viable and ethical mortgage broker channel is critical in driving greater banking competition in Australia. We strongly support measures that deliver better outcomes for customers, and we have actively participated in discussions about how remuneration influences broker conduct and decisions.

Suncorp overall supports the Bill, and the implementation of the best interests duty for brokers, to improve outcomes for our customers. However, we believe greater clarity is required around how brokers should discharge the best interests duty to be provided through an Explanatory Memorandum to the Bill.

Moreover, Suncorp has been an early supporter of Stephen Sedgwick's review of remuneration in the banking sector and welcomed his findings and recommendations. We will be pleased to see important reforms from his review become legislated in the Bill.

About Suncorp

Suncorp is a top 20 ASX-listed company with $99 billion in total assets. Suncorp employs approximately 13,400 people and serves more than nine million customers across general insurance, banking and wealth through various distribution channels.

Suncorp relies heavily on the mortgage brokering channel to access new customers in areas where we do not have a major presence. As consumer behaviour shifts to online, our physical footprint is also impacted making the brokers channel even more important as we move forward.

Importantly, in FY19 around 70 per cent of Suncorp mortgages written are sourced through brokers nationally. In addition, over 80 per cent of Suncorp's mortgages written outside Queensland are sourced through mortgage brokers, which reinforces the competitive benefits of brokers. Currently, 56 per cent of mortgages written in Queensland come through brokers, reflecting Suncorp's more prominent physical footprint and history in this state.

As such, Suncorp strongly supports a viable mortgage brokering industry as it enables competitive, high quality products to reach more customers.

A key role of a mortgage broker is to assess the myriad of mortgage products available in the market and provide customers with the best product for their needs. This ultimately drives greater competition in the banking industry as it allows smaller banks, who lack the branch footprint of the major banks, to access geographically diverse markets outside of their home region. Brokers provide expertise, convenience and choice for borrowers, while maintaining a key role in facilitating competition, and exerting downward pressure on the price of home loan products.

Suncorp has been an active participant in the Combined Industry Forum (*CIF*) which includes mortgage broker practitioners and representatives, aggregators, lenders and industry bodies (Australian Bankers Association, Mortgage and Finance Association of Australia, Finance Brokers Association of Australia Limited, Customer Owned Banking Association and the Australian Finance Industry Association).

The duty to act in the best interests of the customer closely aligns to the work that the CIF has been undertaking to develop a recommended approach to ‘good customer outcomes’. The ‘good customer outcomes’ policy focuses on the customer and reflects the activities of a mortgage broker. The four key measures which need to be met to ensure a ‘good customer outcome’ are:

- The customer has a loan which is appropriate in size and structure;
- The customer’s stated needs and objectives are met;
- The loan is affordable for the customer; and
- The loan is applied for in a way that meets all responsible lending requirements.

The best interests duty

As a critical channel driving banking competition, Suncorp strongly supports measures that deliver better outcomes for customers while ensuring the continued viability of, and consumer trust in, the mortgage broker industry.

Suncorp seeks more guidance on how brokers would exercise the duty as proposed in s158 LA and s158 LE of the *National Consumer Credit Protection Amendment (Mortgage Brokers) Regulations 2019*. While we support the Government in its position to have a principle-based approach of best interest, there are risks of an inconsistent application, as individual brokers may develop their own principles in the absence of regulatory guidance.

However, Suncorp is also mindful of the ‘tick a box’ approach to regulation. Especially considering comments made by Commissioner Hayne in the Financial Services Royal Commission Final Report, when he noted in relation to financial advisors that prescribing steps has the potential to undermine the broader obligations of advisors – to act in the best interest of their clients.

Suncorp therefore supports a principle-based duty which is consistent across the industry guided by an Explanatory Memorandum to the Bill.

Discharging the duty

Suncorp notes there needs to be strong links between Australian Securities and Investments Commission (*ASIC*) responsible lending provisions and a broker discharging the duty. Also, both brokers and lenders need to ensure any product offered is suitable to the borrower.

Suncorp believes the scope of the broker duty is based on the needs and goals of the borrower. Further, a lender needs to take reasonable care in reviewing loan options before making a recommendation. Suncorp believes it is a bank’s responsibility to ensure brokers have a good understanding of their products, so they are well equipped to understand the basic differences between the mortgage products available.

In line with the recent ASIC *report 628: Looking for a mortgage: Consumer experiences and expectations in getting a home loan,* when developing a guidance Suncorp recommends it encapsulates a broad range of considerations which would see a loan being in the best interest of a borrower. This report found that for many borrowers, the importance of a good rate was not the main factor when entering a mortgage. Other factors included, but are not limited to:

– Product features such as cashback or loan offset facilities;
– Bricks and mortar vs online lender;
– Type of security;
– Lenders mortgage insurance;
– Income structure (PAYG, contractor or self-employed)
– Geography (preference for a local lender); or
– Borrower type (personal or trust).

Supporting the duty

Suncorp recommends guidance be provided and a 'credit-appropriate' test applied to help brokers comply with the duty. This test would incorporate a reasonable person test in line with guidance provided by ASIC as to how the regulator could measure whether the credit assistance has satisfied the requirements of the duty.

Any guidance should follow that a reasonable broker in the same position (including with the same information disclosed to them by the customer, and with the same range of loan products available to the broker) would consider that:

– any loan recommended is appropriate (in terms of size and structure of the loan) for the borrower;
– the borrower can afford the loan;
– the product recommended by the credit assistance provider product meets the borrowers needs and goals as disclosed to the broker by the borrower;
– the loan is applied for in a compliant way; and
– the broker placed the borrower's interest ahead of their own.

Drawdown amount time limit

When entering a residential mortgage, a borrower may use the lending facility to fund the renovation of the property or for other purposes after purchase. These renovations can take between four to eight months depending on the scale of the renovation[1].

Given this, Suncorp believes the 90-day cut-off on utilising a drawdown set out in s28VB could inhibit a borrower's ability to use their loan facility to renovate their newly purchased property.

Extending the 90-day period to twelve months from the initial settlement date would allow borrowers the time to utilise their facility to renovate without the added stress of having to complete any renovation in 90 days to meet with the terms set out in the Bill.

Further guidance

To help with effective compliance, monitoring and supervision of brokers in a clear and consistent way, Suncorp believes further detail would help in developing parameters to govern this activity, particularly when exercising the duty will change with the borrower circumstances.

Without further guidance, Suncorp believes there are risks of an inconsistent approach to the application of best interest as previously mentioned.

Areas Suncorp believes further guidance is needed include:

1. Other credit products

Section 1.19 of the Explanatory Memorandum outlined an intent for the duty to cover other credit products, not just residential mortgages. Suncorp believes any focus of the duty away from the package of credit assistance to individual products will make credit assessments significantly more complex and result in assessment delays.

[1] https://renovationjunkies.com.au/how-long-does-it-take-to-renovate-a-house-2/

2. Small business cross over

Section 15B and 15C of the Bill state the NCCP would apply to *“credit assistance in relation to credit contracts secured by mortgages over residential property”*. Given a large portion of SME lending is secured against a residential property, and the NCCP is focused on personal credit, Suncorp believes it needs to be made clear the duty excludes commercial and small business lending where the residential property is used as security.

3. Benefit of hindsight

Suncorp believes there needs to be a clear understanding that a broker can only be assessed on the assistance provided to the borrower at the point in time the loan application was made. Any assessment must not be made with the benefit of hindsight or include factors arising after the application. Further, any retrospective assessment of the duty must be undertaken based on the standards of the time the application was made.

4. Scope of assistance

Suncorp believes more guidance is needed around the scope of assistance. With a clearly defined scope, the broker and borrower are clear about expectations, which can help to reduce misunderstandings when assistance is prepared and address them quickly if they arise.

5. Obligation to warn

Suncorp believes an obligation like those in line with the FOFA reforms or general insurance duty of disclosure requirements would be useful. An obligation would help the borrower understand their position and that providing accurate information helps them receive appropriate credit assistance.

Conclusion

Suncorp supports a strong viable mortgage broking industry as a key component of competition in the banking industry. Borrowers’ continued confidence in mortgage brokers is fundamental to a strong industry and a best interests duty for brokers will help continued confidence.

We acknowledge the poor customer outcomes that were documented in the Royal Commission and agree with Commissioner Hayne’s view that the broker’s duty towards the customer has been ambiguous. This Bill will more clearly articulate that the broker works for the borrower – not the lender, nor should they at any time be influenced by remuneration at the expense of the best possible outcome for the borrower.

More guidance around regulator expectations on brokers’ discharge of the duty will prevent an inconsistent approach to the application of the duty and provide greater clarity for borrowers. This guidance can be provided through an Explanatory Memorandum to the Bill.

Should you wish to discuss this submission further please contact Matthew Tapsall, Manager - Government, Industry and Public Policy on 0423 388 982 or by email at matthew.tapsall@suncorp.com.au.

Regards

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