

8 October 2019

Ms Ruth Moore
Manager, Advisers and Brokers Unit
Financial Services Reform Taskforce
The Treasury
Langton Crescent
PARKES ACT 2600

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Via email: consumercredit@treasury.gov.au

Dear Ms Moore,

Submission: Mortgage broker best interests duty and remuneration reforms

The Westpac Group (**Westpac**) welcomes the opportunity to provide a submission in response to Treasury's exposure draft of the *National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019*. Westpac supports the views expressed in the Australian Banking Association (ABA) submission on the exposure draft.

Our submission focusses on the impact of the legislation on franchisee distribution models where the franchisee is selling loans branded as per the franchisor's brand, and the application of the legislation to referrers.

Franchisee distribution models

RAMS Financial Group Pty Ltd (RAMS FG) is part of the Westpac Group and distributes RAMS-branded home loans under a franchise model. On the current drafting, it is unclear whether it is intended RAMS FG, its franchisees and individual loan writers would be considered mortgage brokers/intermediaries.

RAMS FG holds an Australian Credit Licence as a credit assistance provider and intermediary. Franchisees (i.e. the corporate franchise entities), and, where applicable, the franchisees' individual loan writers, are credit representatives of RAMS FG. Westpac is the credit provider for RAMS-branded loans.

In relation to ss 15B and 15C, the Explanatory Memorandum states:

"In particular the definitions of both terms are not intended to extend to credit providers where they are providing credit assistance in relation to their own products rather than providing broking or intermediary services".

In our view, where RAMS FG franchisees are distributing RAMS-branded loans, it is in effect the same as a credit provider distributing its own products and RAMS FG would not ordinarily be described as a mortgage broking or mortgage intermediary business. This is supported by RAMS' marketing and website which position RAMS as a direct lending business. We believe that customers generally approach RAMS franchisees with the expectation that they will be obtaining a RAMS loan and not that they are seeking mortgage broking or intermediary services to obtain a loan from another lender.

Where a RAMS loans does not meet the needs of a customer, some RAMS franchisees are able to assist customers to obtain loans with other lenders under an agreement with Choice Aggregation Services. To be able to do this they need to be accredited by Choice. However, not all franchisees offer this service and RAMS does not advertise the offering. Westpac needs to consider the operation of the Choice model in light of the Bill.

To clarify the situation for franchisees, we propose that the legislation be amended so it is clear that entities such as RAMS FG where they are distributing their own branded loans are not subject to the legislation.

This could be achieved by amending ss 15B and 15C to read as follows:

15B Meaning of mortgage broker

- (1) A licensee is a **mortgage broker** if:
 - (a) the licensee carries on a business of providing credit assistance in relation to credit contracts secured by mortgages over residential property;
 - (b) the licensee is not the credit provider under the majority of those credit contracts; and
 - (c) for the majority of those credit contracts:
 - (i) there is more than one credit provider; and
 - (ii) the credit contracts are not branded with the name of the licensee or any other words, phrases, initials or logos associated with the licensee.

- (2) A credit representative of a licensee is a **mortgage broker** if:
 - (a) the credit representative carries on a business of providing credit assistance in relation to credit contracts secured by mortgages over residential property;
 - (b) the licensee is not the credit provider under the majority of those credit contracts; and
 - (c) for the majority of those credit contracts:
 - (i) there is more than one credit provider; and
 - (ii) the credit contracts are not branded with the name of the licensee or any other words, phrases, initials or logos associated with the licensee.

15C Meaning of mortgage intermediary

- (1) A licensee is a **mortgage intermediary** if:
 - (a) the licensee carries on a business of acting as an intermediary in relation to credit contracts secured by mortgages over residential property;
 - (b) the licensee is not the credit provider under the majority of those credit contracts; and
 - (c) for the majority of those credit contracts:
 - (i) there is more than one credit provider; and
 - (ii) the credit contracts are not branded with the name of the licensee or any other words, phrases, initials or logos associated with the licensee.

- (2) A credit representative of a licensee is a **mortgage intermediary** if:
- (a) the credit representative carries on a business of acting as an intermediary in relation to credit contracts secured by mortgages over residential property;
 - (b) the licensee is not the credit provider under the majority of those credit contracts and
 - (c) for the majority of those credit contracts:
 - (i) there is more than one credit provider; and
 - (ii) the credit contracts are not branded with the name of the licensee or any other words, phrases, initials or logos associated with the licensee.

The second limb of ss 15B and 15C includes the term "the majority of credit contracts". Westpac, being a credit provider, assists in the distribution of loans offered through government lending schemes aimed at assisting people into their first home. The legislation should not operate to fetter those programs. The concept of "majority" should be retained. However, the term is undefined and it is unclear how "the majority" is to be assessed, i.e. over what period (e.g. . week, month, year) or based on what measure of mortgage lending (e.g. monetary value of total lending, number of loans). Accordingly, we propose the legislation be amended to include a definition of "majority" which is based on the number of loans provided over a 12-month period.

Application to referrers

We understand the intent is that the obligations in the Bill do not extend to referrers. As currently drafted, we do not believe this exclusion is clear where a licensee or credit representative is engaging in referral activities. As a result, we would propose an additional section in the legislation which clarifies that Part 3-5A does not apply where a licensee or credit representative is performing credit activities to which an exemption from s 29 of the *National Consumer Credit Protection Act 2009* applies.

We would be pleased to provide further information to assist Treasury in drafting the legislation.

Yours sincerely,



Michael Chouefate
Group Head of Government and Industry Affairs

