s22 [redacted]

From: s47F [redacted]@ausbanking.org.au>
Sent: Wednesday, 1 April 2020 7:43 PM
To: Department
Cc: s22 [redacted]; Kelly, James; s22 [redacted]
Subject: Combined Industry Forum - impact of Covid-19
Attachments: CIF Covid-19 response letter.pdf

Dear Treasurer,

Please find attached a letter from the Combined Industry Forum (CIF) seeking a 12-month delay of the application of the instruments associated with the Mortgage Broker Best Interests Duty and Conflicts Priority Rule, and conflicted remuneration changes.

The CIF notes the considerable challenges facing members as they work to assist customers through this difficult time. The restrictions and response to Covid-19 places a number of constraints (both systems and resources) on member's ability to be prepared for the legislative changes due to commence on 1 July 2020. Accordingly, we seek a 12-month delay so companies can meet the implementation requirements, and ensure that the immediate and longer term needs of customers are met.

Should you require any further information or would like to discuss our request, please contact s47F [redacted], Director, CIF Secretariat s47F [redacted]@ausbanking.org.au or s47F [redacted]).

Signed on behalf of:

Anthony Waldron

Chair, Combined Industry Forum &
Executive General Manager- Enablement, Strategy & Transformation
Consumer Banking, National Australia Bank Ltd.

Mark Haron

Deputy Chair, Combined Industry Forum &
Director, Connective Pty Ltd.

s47F [redacted]
Director, CIF Secretariat
Combined Industry Forum
M: s47F [redacted]
E: s47F [redacted]@ausbanking.org.au

combined industry forum | Australian Banking Association | MFAA | FBAA | Customer Owned Banking Association | AFIA

The Hon. Josh Frydenberg, MP
Treasurer
PO Box 6022
House of Representatives
Parliament House
Canberra ACT **2600**

1 April 2020

Dear Treasurer

On behalf of industry associations and members of the Combined Industry Forum (CIF), we write to inform you of the significant impact that the social and economic disruptions related to the COVID-19 pandemic are having on the industry as it prepares for the implementation of Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2019 Measures)).

12-month implementation deferral

The CIF seeks a 12-month deferral of the implementation of the legislation and regulations relating to mortgage broking[1] (until 1 July 2021). This is not a request which is made lightly, and is only done so after rigorously assessing likely industry preparedness for the 1 July 2020 start date given the reallocation of resources and operational constraints related to the COVID-19 response.

The effect of the COVID-19 response has meant that:

- significant resources in brokers, aggregators and lenders have been reallocated to respond to customer concerns, hardship requests, loan deferrals and related systems and processes
- timing of the training of brokers for best interests duty compliance requirements will be delayed due to the ban on mass gatherings and the limitations of technology to deliver the content required; and because brokers are otherwise engaged providing ongoing service and support to customers in financial difficulty
- lender technology and operations staff are focussed on systems changes related to loan deferrals and implementing government schemes, such as the SME Loan guarantee
- offshore business processing resources have been shut down, which impacts on programming, audit and compliance activities

We believe this request is consistent with the Council of Financial Regulators March 2020 release which stated *'Given the disruption being caused by COVID-19, Council members are examining how the timing of regulatory initiatives might be adjusted to allow financial institutions to concentrate on their businesses and assist their customers'.*

Finalisation of regulations and regulatory guidance

Due to the issues noted above, industry does not believe it will be possible to undertake the required activities to ensure compliance with these new requirements by 1 July 2020, at least without diverting significant resources away from critical work related to COVID-19, specifically in respect to:

- <u>Conflicted Remuneration changes</u>: industry cannot commence operational and systems changes because the underlying Regulations to the legislation have not been finalised as yet by Treasury (noting that the CIF and member associations requested that Treasury consider

[1] *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020*
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 and Mortgage brokers: Best Interests Duty Regulatory Guidance.

amending a number of sections). Given this and the industry focus on COVID-19 related matters, it is not feasible for implementation to take place by 1 July 2020.

- Best Interests Duty and Conflicts Priority Rule: similarly, industry is still awaiting ASIC's finalisation of the regulatory guidance to underpin the Best Interests Duty for mortgage brokers. Furthermore, professional development days and training sessions cannot take place due to the ban on mass gatherings, and technology can only replace a proportion of this training. This means it will be very difficult to prepare brokers for the application of legislation and regulations at a time when many are struggling to just stay viable as a business.

We are happy to meet with you to discuss any aspects of a potential delay. Please contact s47F s47F, Director, CIF Secretariat on s47F for further information or to find a suitable time.

Yours Sincerely

s47F

Anthony Waldron
Chair, Combined Industry Forum &
Executive General Manager- Enablement, Strategy & Transformation
Consumer Banking, National Australia Bank Ltd.

s47F

Mark Haron
Deputy Chair, Combined Industry Forum &
Director, Connective Pty Ltd.

s22

From: s47F @ausbanking.org.au>
Sent: Tuesday, 17 March 2020 5:19 PM
To: Kelly, James; Brown, Diane
Cc: Zaheed, Mohita; Pai, Neena; O'Rourke, Kate; s47F ; s47F (Australian Banking Association - Unclassified); s47F
Subject: ABA key issues - Royal Commission legislation consultation
Attachments: 200317 ABA key issues list - Royal Commission consultations.docx

Good afternoon James and Diane,

Please see attached a table that summarises the ABA's key concerns with the Royal Commission exposure draft legislation that the Government consulted on in February 2020. The table also outlines proposed implementation dates for the various recommendations.

We would be happy to meet with you to discuss the table in further detail.

Regards,

s47F
Associate Director, Policy

Australian Banking Association

PO Box H218, Australia Square NSW 1215
T: s47F M: s47F
E s47F @ausbanking.org.au W: ausbanking.org.au

Australian Banking Association

Royal Commission Implementation – Key issues

Issue	Impact of current proposal	Change required	ABA proposed implementation dates
Hawking – new requirements apply to basic deposit products and non-cash payment facilities	The legislation applies the new regime to basic deposit products and non-cash payment facilities will prevent banks. This will prevent banks from: • Undertaking proactive transition of customers to more suitable and lower cost products (eg basic bank accounts) • Addressing banking needs unprompted by the customer (eg discussing higher interest rate accounts).	The current hawking regime should be retained for basic deposit products and non-cash payment facilities, and the new regime should apply to more complex products, including superannuation and insurance, as recommended by Commissioner Hayne. NB – basic deposit products and non-cash payment facilities are the simplest banking products such as transaction accounts, term deposits, eftpos facilities. Because they are simple and low risk, they are already subject to a range of exemptions from conduct and disclosure requirements under the Corps Act.	The ABA proposes that the no hawking legislation commence operation from 1 July 2021. Consideration to be given for a later date for smaller AFSLs (including smaller ADIs).
Hawking – banks are restricted in having proactive discussions with customers about their financial situation	Many banks offer 'needs analysis' or 'A-Z reviews' of a customer's financial situation. These are increasingly important as financial advice becomes more unaffordable. The legislation prevents banks having these broad discussions, without a customer making a specific request to do so.	The legislation should also be changed to ensure that, with the positive, clear and reasonably specific *consent* of a customer, banks can continue to have proactive discussions with customers about their financial situation.	
Add-on insurance – application to	The legislation should apply to add-on and 'junk insurances' such as CCI, tyre and rim etc. It	The legislation should be changed so that the model explicitly applies to traditionally understood 'add-on insurances' that protect the principal product or service	The ABA proposes that the deferred sales model

higher value general insurance products	appears to apply more broadly to higher value insurances such as home and contents and vehicle insurance. This may affect the accessibility and availability of important insurances like home and contents and vehicle insurance and leave customers uninsured for a period.	(and represent the poorest value to customers) – eg CCI on a credit card. It should also be explicit that the model does not apply to general insurances (specifically home and vehicle insurances) that do not provide cover for the principal product or service (eg home and contents insurance sold at the same time as a mortgage).	legislation commence operation from 1 July 2021. Consideration to be given for a later date for smaller AFSLs (including smaller ADIs).
Add-on insurance – embedded insurance and benefits	Our interpretation of the Bill is that embedded insurance and benefits (eg with credit cards) are not offered or sold, but part of the terms and conditions of the principal product.	Embedded credit card insurances (such as travel insurance, purchase protection and extended warranty insurance) should be out of scope of the regime. These insurances and benefits are not offered or sold to the customers (for example under s12DO(1)(a)) as they form part of the terms of the principal product (in this case a credit card) and the legislation should be refined to ensure these embedded benefits are not subject to the regime. This position should be reflected in the EM.	
Hawking and add-on insurance – commencement 1 July 2020	The proposed implementation timeframe is unachievable and will likely result in banks pulling certain products and service from sale all together while new compliance is being put in place, rather than risking widespread breaches and compliance incidents.	See ABA proposed implementation dates.	
Enforceable Codes –criteria for enforceable provisions are too broad	The criteria for ASIC to identify enforceable code provisions are too broad and unspecific and could result in a large number of code provisions being deemed enforceable under this regime. This will undermine the ability of	The legislation should be changed to ensure enforceable provisions: • Do not duplicate already enforceable requirements (such as those related to legislated requirements) and relate to specific rights and requirements	The ABA proposes that the legislation commence operation from 1 January 2022.

	the industry to change behaviour in a speedy and flexible way and reduces the incentive to set better practice standards and introduce new rights for customers.	• Are specific obligations, rather than those that record guiding statements or principles • Provide a clear and specific extra protection beyond the existing laws • Relate to matters already within ASIC's regulatory jurisdiction.	
Enforceable codes – sanctions can include probations or community service orders	The proposed sanctions include community service or probation orders. These are inappropriate for these types of civil contraventions (they generally relate to criminal contraventions). They generally also require the respondent not to breach the provision again or face criminal charges. Breaches are inevitable and banks should not be facing criminal charges for repeated inadvertent code breaches.	The sanctions for breaches of enforceable code provisions should not include community service or probation orders.	
Enforceable codes – no materiality test on breaches reported to ASIC	The current legislation will require breaches of enforceable provisions to be reported to ASIC. These are not subject to a materiality threshold, which means ASIC may be inundated with reports of minor and trivial code breaches.	The requirement to report breaches of enforceable code provisions to ASIC should be subject to a significance threshold.	
Breach reporting – regime too complex	The proposed regime 1. Is inconsistent in important respects with the recommendations of the ASIC Enforcement Review Taskforce; 2. Is so complex that licensees, as well as regulators, will have	• The requirement to report should not include circumstances where a licensee has, within 30 days after the reportable situation arose, investigated a breach and concluded either that the breach did not occur or, for circumstances where deemed significance does not apply, that the breach was not significant.	The ABA proposes that the transition date to the new breach reporting regime be from 1 January 2022.

difficulty in applying it in practice; and 3. Will capture such a broad range of reportable situations as to be counter-productive, diluting ASIC's source of intelligence on industry breaches.	• The subject of investigations under the breach reporting regime should encompass both the fact or otherwise of the occurrence of the breach and its significance. • Breaches of core obligations should be deemed significant where they result in *material* financial loss to clients having regard to the amount invested and the circumstances of the client/s in question (ASICERT). • The Bill should clearly define the circumstances in which a licensee is taken to have commenced an investigation for the purposes of the reportable situation provisions. • Breaches of civil penalty provisions should not be deemed significant per se (but are reportable if they are significant or otherwise deemed significant). • The obligation to report breaches by other financial services licensees should only apply to reportable situations involving serious misconduct (as defined), or that give rise to material financial loss or damage to retail clients. • For notification and remediation of clients following investigations, ASIC should have power to grant relief from the timing requirements where it thinks it appropriate, based on the circumstances and complexity of the breach. Further the time period for notifying clients should be extended to 21 days.

s22

From: s47F @ausbanking.org.au>
Sent: Thursday, 16 April 2020 11:03 AM
To: Zaheed, Mohita; Christine Cupitt
Cc: s22 ; s47F
s47F
Subject: RE: ABA issues on Treasury's radar [SEC=UNOFFICIAL]

Hi Mohita,

s22

The ABA would highlight our priorities in the following ways:

- Seeking clarity from the Government on Royal Commission implementation dates as previously submitted

s22

Could we set up a time to discuss further, ideally this week? s 22

Again, many thanks for your helpful assistance and look forward to hearing from you on a time to connect.

Best regards
s47F

s47F
Acting, Executive Director, Corporate Affairs
Australian Banking Association

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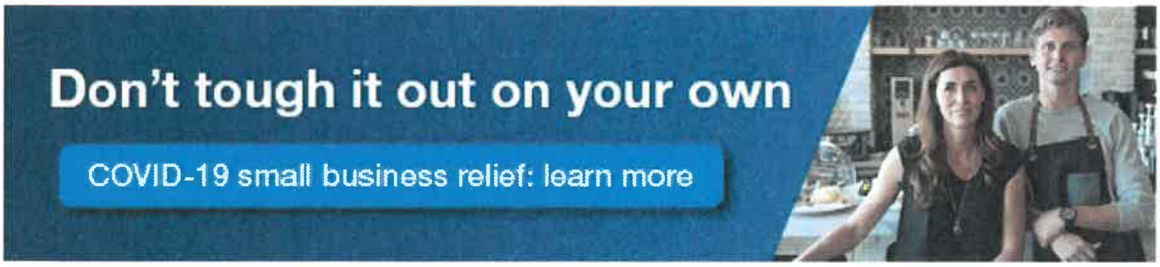

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[redacted]

FOI 2694
Document 8

s22 [redacted]

From: s47F [redacted]@ausbanking.org.au>
Sent: Thursday, 2 April 2020 10:42 AM
To: Zaheed, Mohita
Subject: Royal Commission implementation timeframes

Hi Mohita,

s22 [redacted]

Just wanted to touch base to see if there was an update on the review of RC implementation timeframes and whether there was any changes to the mortgage broker reforms that were set to commence on 1 July 2020. Chris, Justin and I would be happy to host a call to discuss. Sometime tomorrow or next week works for us. Recognising that you have plenty going on, please let me know when works best for you.

s22 [redacted]

Talk soon.

Thanks,

s47F [redacted]
Associate Director, Policy

Australian Banking Association

PO Box H218, Australia Square NSW 1215
T: s47F [redacted] M: s47F [redacted]
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FOI 2694
Document 9

AFIA

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T: 02 9231 5877
www.afia.asn.au

18 March 2020

Hon Josh Frydenberg MP
Treasurer
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Treasurer

AFIA COMMENTS ON THE GOVERNMENT'S STIMULUS PACKAGE AND OTHER MEASURES TO SUPPORT THE AUSTRALIAN ECONOMY

s22

[redacted]

pages 2 to 5 and 8 to 12 are outside the scope of the request and have not been provided.

s22 [redacted]

AFIA's recommendations with respect to regulatory relief and other initiatives

Defer the 30 June 2020 deadline for legislation or extend the timelines for implementation of the recommendations from the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry (Royal Commission)

AFIA and our members support the Government's commitment to implement the recommendations of the Financial Services Royal Commission. We believe that implementation must be done in a way that achieves the intent of the Recommendations to increase consumer protections, while minimising adverse and unintended consequences in terms of access, consumer choice, compliance costs, regulatory burden, and competition.

The finance industry has invested considerable time and resources in responding to Treasury's and ASIC's consultation papers on various issues that have arisen. We note that in the Government media release on the roadmap published on 19 August 2019, the Government acknowledged the implementation roadmap and timetable was ambitious.

Given the immediate and significant impact of the COVID-19 crisis and the likely ongoing impact across our economy, we believe it is vital that the finance industry is able to target and re-prioritise resources and capital to support our customers and our economy.

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s22 [redacted]

AFIA requests the Government make an announcement in relation to its Financial Services Royal Commission implementation roadmap and adjust the timetable to enable the finance industry to focus on immediate priorities and the crisis.

We recommend that the Government pause 'all financial services legislation' or 'all non-essential reforms' to help industry have time to stabilise, and specifically:

- Confirm the introduction of the AFIA Supplier ACR Model along with the removal of the point of sale (POS) exemption to raise consumer protections and provide a transition period of at least 24 months (i.e. 1 July 2022) (Recommendation 1.7) – this would recognise the severity of the coronavirus across our economy, allow some relief for the most impacted industries to focus on the immediate priorities and the economy to partially recover from the immediate crisis before commercial decisions are required, and then allow an appropriate implementation phase for necessary changes and adjustments to business models to be made.
- Defer a decision on the Financial Accountability Regime (recommendations 1.17, 3.9, 4.12, 6.6, 6.7 and 6.8) until 30 June 2021 – with any implementation timeline to be appropriate and from this date – this would allow the finance industry to focus on immediate priorities and not divert resources, time and investment to conducting the necessary legal and commercial assessment, risk appetite and risk management analysis, and government and regulatory engagement required to conduct impact analysis, project and change management and implementation.
- Defer a decision on the definition of an enforceable code provision (Recommendation 4.9) until 30 June 2021 – this would allow the finance industry to focus on immediate priorities. While the industry supports making industry codes more robust, we believe that further consideration should be given to making sure the code regime does not inadvertently undermine industry efforts to raise standards above and beyond the law, introduce voluntary standards for emerging sectors, and create a 'tick a box' compliance response rather than drive a culture of integrity, transparency and fairness across the financial services industry.
- Allow a more extended period to engage further with industry on other proposed reforms and recommendations when the extent of the impact of COVID 19 is better understood

s22

[redacted]

s 22 [redacted]

From: Zaheed, Mohita <Mohita.Zaheed@treasury.gov.au>
Sent: Tuesday, 28 April 2020 9:59 AM
To: s 22 [redacted] @TREASURY.GOV.AU>
Cc: Writer, Simon <Simon.Writer@TREASURY.GOV.AU>; s 22 [redacted] @TREASURY.GOV.AU>; Codina, Martin <Martin.Codina@TREASURY.GOV.AU>; s 22 [redacted] @TREASURY.GOV.AU>; Kennedy, Darren <Darren.Kennedy@treasury.gov.au>; Jeremenko, Robert <Robert.Jeremenko@treasury.gov.au>; Beckett, Ian <Ian.Beckett@treasury.gov.au>; s 22 [redacted] @TREASURY.GOV.AU>; s 22 [redacted] @TREASURY.GOV.AU>; Storer, Aidan <Aidan.Storer@TREASURY.GOV.AU>; s 22 [redacted] @TREASURY.GOV.AU>; s 22 [redacted] @treasury.gov.au>
Subject: RE: Royal Commission [SEC=PROTECTED, CAVEAT=SH:CABINET]

~~PROTECTED//CABINET~~

s 22 [redacted]

- s47C [redacted]

s22 [redacted]

s22 [redacted]

Thanks

Mohita

Mohita Zaheed
Principal Adviser
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s22 [redacted]