

**THE FINANCE BROKERS ASSOCIATION OF  
AUSTRALIA (FBAA)**

**MAKES THIS SUBMISSION**

**TO THE**

**“Financial Services and Credit Reform Green Paper”**

Corporations and Financial Services Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [financialservicesgreenpaper@treasury.gov.au](mailto:financialservicesgreenpaper@treasury.gov.au)

Prepared by: M.J. Unwin General Manager 26<sup>th</sup> June 2008  
Email: [munwin@financebrokers.com.au](mailto:munwin@financebrokers.com.au)





## ***About Finance Brokers Association of Australia***

The Finance Brokers Association of Australia is the Principal Industry body for Finance /Mortgage Brokers whose members' activities include arranging finance for both consumer and commercial clients.

A National Association representing in excess of 9,500 finance and mortgage loan writers throughout Australia. The FBAA is an unlisted company, limited by guarantee, and is run by an elected Board of Directors supported by a National Executive comprising all States and Territory Presidents and a Secretariat. Its head office remains in Brisbane, Queensland.

Membership comprises practicing finance/mortgage brokers, senior individuals involved directly in the finance/mortgage broking industry and some lenders and credit providers. Our organisation represents a range of companies and single operators throughout Australia and our main function is to represent both our members as well as the interests of their clients, primarily, the consumer.

Approximately 45% of our members provide credit products other than residential mortgages and with the changes in the market particularly in relation to the mortgage area all of our members are looking to value add to their suite of products by moving into the more regulated area of financial advice and products eg; insurance products, financial planning etc.

### ***About Finance Brokers in the current environment.***

Currently there is no known definitive listing as to who or how many finance and mortgage brokers or intermediaries are operating in Australia in a true broking role. The FBAA is of the belief there is somewhere between 15,000 and 18,000.

These numbers could change substantially due to the volatility and uncertainty in the current financial markets as a flow-on effect of the US sub-prime debacle, particularly with the drying up of funding lines for the credit providers in the non-bank lender area.

Those with funds, the major banks and deposit taking entities are raising the stakes for Brokers by way of the perceived tightening of acceptance standards, the enforcing of volume levels and the lowering of commissions paid for the introduction of business.

There is conjecture amongst industry players that due to the changes by credit providers and the subsequent impact on the brokers' income streams that there may be up an exodus from the finance/mortgage broking profession over the ensuing twelve months or so.



## **FBAA SUPPORTS “OPTION 2”**

We welcome the opportunity to provide input into the discussion **for the “Financial Services and Credit Reform Green Paper”**. It is in relation to Chapters 1 and 6 that the FBAA has the most interest as these are the main areas of interest for our members etc. and we list our comments here under

Our submission covers the issues proposed and on thorough consideration of the three options proposed in the green paper **the FBAA supports Option two (2) unequivocally**. It would appear to provide for a nationally consistent regulatory regime for all finance/mortgage broking and credit.

We are also of the belief that any legislation proposed should encompass Credit Providers.

### **Option 1** Maintain the status quo. **Not an option.**

The rationale behind the enquiry which is the subject of this green paper is that the present system of differing state regimes looking after credit related issues and a UCCC that is not uniform across the country has not succeeded in successfully servicing consumers and Industry as need be.

**Option 3** again is **not an option** as we would see multiple regimes in some States which again would be both un-commercial and un-workable. As an example, In Western Australia there may be a National License for UCCC loans and a WA license for all other products. It is obvious that this not what the legislators anticipated.

## **COMMENTS**

Over the past years de-regulation of the financial landscape and significant innovation within financial markets has seen a rapid increase in the availability and type and number credit providers and of consumer credit products.

Credit is more freely available than ever. From little choice in products and suppliers twenty years ago, consumers now have an enormous range of choices available to them.

While on the one hand the explosion in the number of credit providers and available products certainly points to there being a competitive market, the very complexity of some of the products on offer means that there is an asymmetry of knowledge between consumers and providers. That is, providers have specialists who develop and sell these products, who have an intimate knowledge of how they operate. It is the FBAA's belief that all credit products and credit providers be captured under the one regime

Over the past years there has been a dramatic change in the housing market and a subsequent rise in the consumer decision to use a finance or mortgage broker when considering their lending options. Low interest rates, the first homebuyers grant and broader desire for the consumer to own their own home has resulted in a steady increase in where consumers look to for finance and lending advice. During this period there has been increased recognition at both State and Federal level of the needs for finance and mortgage brokers to be covered by some form of regulatory regime.



There is overwhelming evidence that the consumer benefits greatly from the increasing range of borrowing opportunities that have been accessible through the growing finance and mortgage broking sector. As consumers continue to turn toward finance and mortgage brokers to assist in their borrowing needs, the FBAA recognises and is supportive of the need for a regulatory regime to be established which governs the activities of finance and mortgage brokers that has national consistency.

Positive steps have been made by State Governments to introduce legislation that would provide for uniform regulation of the industry. However, as States continue to develop and negotiate on a legislative approach to the industry it has become apparent to the FBAA that the only way a satisfactory uniform national regulatory regime can be established is through the Federal Government taking the lead and implementing a nationally consistent legislative framework.

The FBAA welcomes COAGS' initiatives in this regard.

Saying that, we do not want finance/mortgage brokers to be aligned with the licensing requirements of the Financial Services Reform Act (FSRA) as the finance/mortgage brokers' role does not mirror in any way the role of the financial planner or financial advisor. The two roles are like chalk and cheese.

In December 2007 the NSW Government on behalf of The Ministerial Council on Consumer Affairs (MOCA) produced a draft bill for consultation of a proposed national state-based model for finance/mortgage brokers without any consultation with the FBAA.

The FBAA was totally opposed to what is on offer in that Draft Bill for many reasons which were set out in our subsequent submission.

A key current public policy issue is how to ensure consumers are well informed and have the capacity to make effective evaluations of products on offer.

The FBAA believes that any licensing regime should capture also all credit providers both retail and wholesale. All consumer credit channels must be covered equally.

To license finance and mortgage brokers and not license credit providers would not only limit choice for the consumers however remove any perceived level playing field which now exists.

Finance and Mortgage Brokers will be at a competitive disadvantage against banks and bank branches and their mobile lenders as unlike the broker the bank staff will have unfettered access for some credit products thus restricting any choice available to consumers via the broker channel.

It is commonly known throughout the industry that finance and mortgage brokers compete openly with the Lenders/Credit Providers marketing staff. Wherein the broker generally is remunerated by commission paid by the credit provider and the credit providers marketing personnel are remunerated by base salaries plus commissions and bonuses for products and volume written.

The FBAA supports any legislation that must be consistent and cover not only finance and mortgage brokers and credit providers but encompass all credit and credit products such as credit cards, personal loans, car loans, reverse mortgages and of course residential mortgages.



## **FURTHER SUPPORT**

- \* The FBAA favours National licensing of finance and mortgage brokers and finance intermediaries with a National a Register of Participants along with the associated regulatory Regime.

The FBAA does not believe that the current recently proposed Draft Finance Broking Bill (NSW) would be acceptable without the need for further consultation resulting in major changes.

- \* The FBAA agrees that all Finance/Mortgage Brokers and Intermediaries must hold professional indemnity insurance cover.
- \* The FBAA agrees that all industry participants be they Brokers or Credit providers they must be a member of an ASIC registered External Disputes Resolution Scheme.
- \* The FBAA is in full agreement that the UCCC also be gathered under the commonwealth regime. This would bring true uniformity to the operation and enforcement of the Code.

## **LICENSING OF INDIVIDUALS**

All finance/mortgage brokers and intermediaries should be registered and no one but registered practitioners should be able to offer finance/mortgage broking or intermediary services. Entry would be dependent on meeting minimum standards, ongoing competency and conduct requirements. There may be different standards for particular loans and functions.

### **The FBAA supports this with the following comments.**

Where a broking firm is a corporate entity and offers finance/mortgage broking services the registration regime should apply to all individual finance/mortgage broking intermediaries. In other words it is the finance/mortgage broker or intermediary that must be registered. This is the only way to ensure that an offending broker is accountable and answerable for his or her advice and actions. Enforcement would be taken against the individual broker. They are the person meeting the consumer and giving the advice on the finance product; they should ultimately be responsible for that advice. This is a truly effective mechanism for preventing rogue brokers transferring, undetected, from firm to firm.

It is paramount that any registration carries with it an element of mandatory compulsion. Those finance/mortgage brokers and intermediaries, currently operating at the margins or outside the scope of self regulation, must be compelled to meet industry standards, be subject to all disciplinary procedures and provide the consumer with inexpensive, effective and fast redress.



## **THE CREDIT SIDE**

As previously stated The FBAA is in full agreement that the UCCC also be gathered under the commonwealth regime. As stated previously this would bring true uniformity to the operation and enforcement of the Code.

**However one must look at the overall picture in relation to credit products and services where the Broker is concerned.**

A finance/mortgage broker is generally advising consumers and or businesses about the suitability of a particular credit/loan product or to meet that business or consumer's particular needs and desired outcomes. The advice element is about the loan or structure to facilitate the purchase or refinance of a property, whether it is a residential home, a farm, or an investment property or Plant and Equipment etc. It maybe for business or debtor finance

The Finance/mortgage broker is not advising about the merits, or otherwise, of investing in real property as opposed to any other form of property. Such investment advice, more often, comes from financial planners, accountants, tax advisers, lawyers, real estate agents and property developers/vendors.

The finance/mortgage broker comes late to the transaction, after the decision to purchase or to invest in a property, refinance or increase the debt on a property or purchase plant and equipment or arrange business finance or the like has already been made.

The Broker's role is to choose the most appropriate loan product or structure of the loan facility to facilitate the funding arrangements. The need for the product is not created by the finance/mortgage broker. The advice component is confined to the characteristics and attributes of a home loan or loan facility and its suitability for a particular individual or company and transaction, comparing it with similar finance products in the market.

Nevertheless, because there is generally a choice of loan facilities or loan products that could be suitable, the broker will make a clear recommendation as to the most suitable. This clearly puts finance/mortgage brokers within functional definition of giving advice on credit/loan products .

They provide:

*"advice on finance products and implicitly or explicitly advise the consumer or business owner or representative on the suitability or appropriateness for that consumer's personal or business circumstances.*

The FBAA recognises that finance products should be defined widely to include personal finance, investment and property finance, business/ debtor finance, plant and equipment and chattels and risk and credit products.

There is a danger in believing that the consumers and businesses' exposure to financial liabilities, debt levels and debt management issues are factors that can be attributed to the role of finance/mortgage brokers and intermediaries. This is too simplistic a diagnosis. **Levels of debt and debt exposure are the responsibility of lenders and not the finance/mortgage brokers or intermediaries. Whether or not to lend or advance the loan funds is a decision for lenders alone.** However, responsible finance/mortgage brokers will be helping clients understand the consequences of debt, over exposure and risk.



**Business lending** can embrace either UCCC or non- UCCC lending depending on the loan purpose and timing of the proposed purchase or refinance. It should be noted that a large proportion of finance broking for business purposes involves an already established broker client relationship with the broker already holding the clients financial and business details on file. It is not uncommon therefore for applications of all types of business loans to be commenced with a telephone call from the client to his broker. This relationship between the parties eliminates any delay that would occur if the parties had to meet face to face to make the application and complete the process, particularly if the client is in a remote location.

The finance broking and banking industries must by sheer force of commercial reality be aware of the needs of the Borrower/ Consumer and cater for their needs in the market place.

### Conclusion

The FBAA supports the general thrust of the proposed National Legislation, in fact it realizes on the aims of the Association.

The FBAA trusts that the Federal Government finds our comments useful. The devil is very much in the detail and we hope that you will encourage the regulators to work closely with industry groups to implement the detailed regime.

Finance Brokers Association of Australia

