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Ms. Tara Marshall
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Financial Services Group
Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, 3000

By email: mortgagebrokerBID@asic.gov.au

25 March 2020

Dear Ms Marshall

Implementing the Royal Commission recommendations: Mortgage brokers and the best interests duty

The Australian Finance Industry Association (AFIA) welcomes the opportunity to provide a response to the Australian Securities and Investment Commission (ASIC)'s *Consultation Paper 327: Implementing the Royal Commission recommendations: Mortgage brokers and the best interests duty* (CP 327) and corresponding draft regulatory guidance (draft RG). AFIA is committed to ensuring that all Australians have continued access to finance and is also committed to enhancing consumer protection.

AFIA Background

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia. For more information about AFIA, please see Annexure A to this submission.

AFIA's role as an industry body is to drive industry leadership and represent members' views, facilitate self-regulation through industry codes, and to work with the Federal Government, financial regulators and other stakeholders to promote a supportive environment for industry.

Our guiding principles seek to build the settings to:

- Promote simple, convenient, innovative and affordable credit to finance Australia's future, including maximising access to credit for customers able and willing to service their commitments and minimising the likelihood or incidence of customers entering into unsuitable credit contracts;
- Foster competition and innovation in Australia's financial services industry, which enables our members to grow, expand and thrive as key participants in lending and other markets; and
- Generate greater financial and economic participation by consumers and small businesses in Australia's financial system and economy and improve social participation as a means to create financial wellbeing.

To do so, we focus on the key drivers that provide positive customer outcomes, foster competition and innovation within industry, and facilitate financial, economic and social engagement by both customers and industry.

Key Recommendations

We make the following recommendations:

- clarify if the best interests duty applies to non-mortgage products that have no nexus or connection to a mortgage product and/or is not part of a bundled mortgage product package;
- if the best interests duty does apply to those products as described above, that the regulatory guide provides examples as to how brokers are to apply the best interests duty when providing credit assistance to a customer in relation to those types of products;
- if the best interests duty does not apply to those products described above, then we recommend:
 - the removal of the words in RG 000.13 "*as well as standalone products on which mortgage brokers provide assistance*" (and any other similar references); and
 - to ensure scope of the RG mirrors the revised EM, include the words "*the best interests duty applies to a broker or a broker business only where the credit product is:*"
 - (a) *a mortgage for a residential property, or*
 - (b) *is part of a package of products that contains a mortgage for a residential property, or*
 - (c) *is utilising an existing mortgage product for a residential property (for example utilising a re-draw facility to purchase another asset), or*
 - (d) *is a separate loan for which the principal purpose is renovation work to be carried out on a residential property*".
- clarify that the best interests duty does not apply to commercial credit (including credit assistance in relation to commercial credit that is provided within a mortgage broking business similar to the clarification provided in ASIC Regulatory Guide 209 at paragraph RG209.30; and
- in line with the submission made by the Combined Industry Forum (CIF) in its submission, for those reasons outlined in the CIF submission, that Treasury and ASIC consider a 12-month relief period on commencement of the best interests duty and conflicts priority rule until 1 July 2021.

Our Submission

AFIA welcomes the consultation and note, that while members have contributed to our submission, the position being put by AFIA may not reflect a particular member's organisationally-specific position on all of the issues. These individual positions will get captured through a submission from that organisation.

We refer to AFIA's previous submission(s) in relation to the Government's Exposure Draft Bill *Financial Sector Reform (Hayne Royal Commission Response - Protecting Consumers (2019 Measures Act 2020 (the Bill))*, which was subsequently passed, to implement a best interests duty for mortgage brokers together with other changes to mortgage broker remuneration structures as recommended by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and welcome an ASIC regulatory guide to assist industry with compliance of the legislation.

We also refer to the submission by the CIF support the CIF's submission.

Our submission does not propose to respond to the specific questions set out in the Consultation Paper, but instead request one specific area that our members request further guidance on.

AFIA and its members are supportive of a best interests duty, however some of our members have concerns that there is a lack of clarity within the Bill, updated Explanatory Memorandum (EM) and draft Regulatory Guide (draft RG) in relation to the scope of the best interests duty and whether that duty extends to non-mortgage broking products where those products have no nexus or connection to a mortgage product.

By way of example, there are many broker businesses that provide credit assistance in relation to both mortgage and non-mortgage broking products (for example, asset finance and personal loans) as very separate business streams (but under one Australian Credit License).

The Bill suggests that the best interests duty applies to a licensee if the licensee is in the business of providing mortgage products (section 15B). The updated EM states the best interests duty specifically applies to packaged products and loans for home renovations as noted in the following paragraph of the EM:

3.26 The obligations apply in relation to credit assistance provided by mortgage brokers in relation to any credit contract. This ensures that when mortgage brokers deal with consumers in relation to mortgages, the broker must act in the best interests of the consumer not only in relation to the mortgage but also in relation to any other credit contracts for which they provide credit assistance. Examples of other credit contracts in relation to which a mortgage broker may provide credit assistance include credit cards and personal loans that are packaged with the mortgage as well as unsecured credit for home renovation. **[Schedule 3, item 5, subsection 158L(1) and sections 158LA, 158LD and 158LE of the Credit Act]**

On our reading of the Bill and the EM, it is not clear if the best interests duty extends to non-mortgage products offered by brokers (i.e. asset financing type products for example) where those products are *not part* of a bundle with mortgages or for home renovation purposes. In our view, the EM indicates that the best interests duty only applies to products that are, or have a connection or nexus with a mortgage product or home renovation loans.

The draft RG in comparison seems to go further than what is in the EM (RG 000.13) and states that the best interests duty is extended to all standalone products on which mortgage brokers provide credit assistance.

We recommend that this is made clearer so brokers who provide mortgages and other products for example asset finance (albeit as separate business streams) can be read as being subject to the best interests duty for both their mortgage and very separate non-mortgage businesses.

It will also clarify that brokers that do not provide assistance with mortgages, will not be captured by the best interests duty. Without this clarification, we believe there is the opportunity for arbitrage between mortgage brokers offering non-mortgage products and brokers who offer those same products that are not mortgage brokers.

We thank you for the opportunity to be consulted and trust our feedback is of assistance.

Should you wish to discuss our feedback further, or require additional information, please contact Naveen Ahluwalia, Director, Policy & Regulatory Affairs at naveen@afia.asn.au or 02 9231 5877.

Kind regards

A handwritten signature in black ink, appearing to read 'Karl Turner', with a long horizontal flourish above it.

Karl Turner
Chief Operating Officer

Annexure A

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance sector. AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia which includes:

- major, regional and mutual/community owned banks;
- providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers;
- providers of land finance, including residential and commercial mortgages and bridging finance;
- equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing;
- motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance;
- fleet leasing and car rental providers; and
- providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services;
- commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).