



24 March 2017

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

Financial Services Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam,

**Supplementary submission**  
**Design & Distribution Obligations and Product Intervention Power – Proposals Paper**

The undersigned provided a comprehensive submission to the *Design and Distribution Obligations and Product Intervention Power – Proposals Paper* (the **Proposals Paper**) on 15 March 2017. We make this supplementary submission following the release of *Report 516: Review of mortgage broker remuneration* (the **Broker Remuneration Review**) by the Australian Securities and Investments Commission (**ASIC**) on 16 March 2017.

In our initial submission, we recommended that the proposed product design and distribution obligations apply to credit products, arguing that there is no overlap with the responsible lending obligations that already apply to credit products regulated by the *National Consumer Credit Protection Act 2009* (the **National Credit Act**). Our submission was that, unlike responsible lending obligations that apply at the point of sale, the design and distribution obligations would apply during product design, during the entire product distribution process and after the sale of a product. The proposed design and distribution obligations would require credit providers to design

safe and suitable credit products and distribute them to appropriate target markets. Credit providers would also be required to properly supervise their distributors, and distributors would be expected to act in accordance with credit providers' expectations, which are not requirements under the current responsible lending obligations.

A key finding of the Broker Remuneration Review was that governance and oversight arrangements by lenders, aggregators and brokers should be improved. ASIC found that the design and review of remuneration and governance structures in the mortgage market do not focus sufficiently on the conduct of brokers or lenders' staff dealing directly with consumers, or on the quality of consumer outcomes.

ASIC stated that this was exhibited through:

- a lack of consistent governance structures to incorporate a focus in the design of incentive schemes and to identify specific features of incentive schemes that may increase the risk of mis-selling home loans;
- a focus on a portfolio view of negative loan performance rather than on individual consumer outcomes; and
- a lack of measures to deal with misconduct and poor practices of brokers and lenders' staff.

ASIC also stated that lenders and aggregators should improve their oversight of brokers and broker businesses. ASIC set out its expectations for lenders and aggregators' oversight of brokers in the Broker Remuneration Review. In particular, ASIC stated that it expected lenders and aggregators to . actively monitor consumer outcomes being obtained at a broker and broker business level, including those relating to loan pricing, features, clawbacks, refinancing and default rates, and distribution of loans among lenders.

We welcome ASIC's articulation of its expectations of lenders and aggregators. However, under the National Credit Act, a credit provider is not required to supervise distributors of its products, unless the distributor is acting as an authorised credit representative under the credit provider's Australian Credit Licence.

As articulated by the Broker Remuneration Review, credit providers (banks and other lenders) do not generally authorise brokers as credit representatives. Rather, they enter into contractual relationships with aggregators, which in turn have relationships with brokers. Aggregators may deal with brokers and broker businesses that are credit representatives of the aggregator, hold their own licences or are credit representatives of another credit licensee. Importantly, the Broker Remuneration Review found that 'aggregators do not generally take a different approach to credit representatives and non-credit representatives'. This might underscore the fact that the existing regulatory framework that applies to consumer credit does require governance and oversight arrangements that deliver good consumer outcomes.

Applying the product design and distribution obligations to credit providers and intermediaries would ensure that governance and oversight arrangements in the mortgage market are improved. It is likely that banks and other lenders would be considered 'issuers' while aggregators and brokers would be considered 'distributors'. Distributors would be required to comply with controls to ensure that products are distributed in accordance with the issuer's expectations, and issuers will be required to conduct periodic post-sale reviews to inform whether any changes are necessary to design and distribution. This framework, in essence, codifies much of the governance and oversight expectations outlined in ASIC's Broker Remuneration Review.

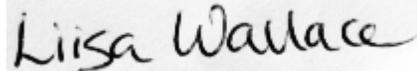
The contributors to this submission would be pleased to discuss the issues addressed in this submission in further detail.

Please contact Senior Policy Officer Katherine Temple at Consumer Action Law Centre on 03 9670 5088 or at [katherine@consumeraction.org.au](mailto:katherine@consumeraction.org.au) if you have any questions about this submission, or to arrange a meeting.

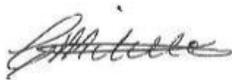
Yours sincerely,



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