

18th May 2007

Consumer Policy Framework Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616
Attention: Ms Jill Irvine

Dear Ms Irvine,

I submit this submission on behalf of Financial Counsellors Association of Queensland (FCAQ).

FCAQ is the peak body for the Financial Counselling sector in Queensland. The association has a membership of 35 members located from Cairns in North Queensland to Brisbane in the south.

Our membership's client base (dependent on funding agreements) ranges from farmers and fishermen to wage/salary earners, and welfare recipients. Financial Counsellors provide support to individuals or families experiencing financial difficulties. Support is tailored to each client and includes advocacy, budgeting, education, and empowerment.

FCAQ welcomes the opportunity to participate in this Review.

We would like to address the following issues:

1. The failure of the regulatory framework to protect consumers from unscrupulous financial advisors.
2. The need for fine tuning of the Consumer Credit Code in regards to short term lending.
3. Continued exemption of Financial Counsellors from the ASIC financial licensing requirements.
4. Ombudsman schemes.

1. The failure of the regulatory framework to protect consumers from unscrupulous financial advisors.

With the failure of WestPoint and Fincorp it is clear that the consumer protection in place to stamp out financial advisors advising clients to purchase products that are risky, has not worked. The Australian Financial Services (AFS) License has been issued by ASIC to stop financial advisors or financial services businesses from misleading clients in the areas of risk and commissions.

It is clear to our membership that the financial services industry appears to be concerned with the selling of products, not what is best for the client. Some Financial Counsellors report that some of their clients have been pressured to borrow money to negative gear an investment property or shares. For the majority of these clients reduction of their existing debt, not accumulating more debt would have been more prudent. Borrowing the deposit and thus having a loan of 100% of the purchase price as well as legal costs and stamp duty are risky endeavours.

To overcome these issues investors should be made more aware of the downside of the investment they are making, not the taxation benefits. Some clients do admit that a comprehensive budget was done during their initial and subsequent interviews (any figures given by the client were never verified by the lender or the advisor). Although the client should reveal all information, financial advisors (and lenders) should also be verifying the details given.

2. The need for fine tuning of the Consumer Credit Code in regards to short term lending.

Although major lenders as a whole follow the Consumer Credit Code, micro lenders or payday lenders can and do operate outside of the Code. They lend money to the most desperate, those who have no choice but to pay interest rates per annum of 50% or more. Typically these loans are short term (under 60 days) and do not charge interest but a fee, in order to get around the requirements of the Code.

The purpose of the Code is to provide consistency across state jurisdictions. As a whole this has been successful, and certainly the Code needs to be kept in place.

However although it is called the Uniform Consumer Credit Code some states have added to it and at times this can be confusing for consumer advocates and creditors. One of the areas of confusion is regarding interest caps: NSW and Victoria do have caps, but Queensland does not. It would be prudent to have the Code the same in all jurisdictions so all that use the Code, especially creditors, can have a standard contract and procedures no matter where they operate.

3. Continued exemption of Financial Counsellors from the ASIC financial licensing requirements.

Currently Financial Counsellors have exemption from the ASIC requirement to hold an Australian Financial Services (AFS) License. We would ask that this exemption be continued, especially in the light of the matters raised in issue 1. Financial Counsellors do not give financial advice in the same manner as financial advisors.

It is clear to FCAQ that having to meet the current requirements or future requirements would not be in the interests of the majority of our clients whose options would not be in breach of the need for an AFS License. Most employers of Financial Counsellors in Queensland are not funded for the entire cost of providing the service. For many of these organisations the service that they provide would have to be cut back in order to meet the reporting requirements of AFS License.

4. Ombudsman Schemes

Ombudsman schemes have played an important part in the protection of consumers in Australia. For Financial Counsellors it is quite frustrating when members of these schemes will only engage with our clients or Financial Counsellors when they know the ombudsman has been contacted.

Although membership is voluntary some members choose to have restricted conditions attached to what will and what will not be handled by the ombudsman. One large credit provider has conditions in place that in effect, mean for the majority of Financial Counsellor clients we cannot use the Banking Industry Ombudsman. In fact this creditor insists that their customers seek the assistance of a Financial Counsellor but will not talk to a Financial Counsellor when contacted. The BIO is aware of these sorts of issues but is powerless to act as they do not have jurisdiction in this area.

FCAQ asks that the various industry ombudsman schemes be reviewed and where necessary their operations become part of the regulatory framework as it is clear that some creditors are able to engage in business practices that should come under the ombudsman powers but the ombudsman is unable or unwilling to protect the interests of consumers.

In closing, FCAQ is not in favour of any of the current regulatory framework being changed into self regulation or Codes of Practices as consumers, especially those from a low socioeconomic demographic, tend to have less rights than what was intended. By having regulations in place, unscrupulous operators once identified are more able to be prosecuted. Despite the best intentions of self regulation those who choose to do the wrong thing can and do so without fear of prosecution.

FCAQ is not in favour of making it harder for companies to do business but we firmly believe that it is in the public good to ensure that the disadvantaged in our community are protected and that consumer protection laws are uniform throughout Australia both at a state and national level.

Kathleen M Austin
President FCAQ