



**SUBMISSION BY THE MORTGAGE AND FINANCE
ASSOCIATION OF AUSTRALIA (MFAA)**

**IN RESPONSE TO THE DRAFT REPORT (12 DECEMBER 2007) OF
THE PRODUCTIVITY COMMISSION ON
THE REVIEW OF AUSTRALIA'S CONSUMER POLICY
FRAMEWORK**

ADDRESSING

**DRAFT RECOMMENDATION 5.2
DRAFT RECOMMENDATION 9.2**

24 January 2007

THE MORTGAGE AND FINANCE ASSOCIATION OF AUSTRALIA (MFAA)

The MFAA is an association comprising mortgage brokers, finance brokers, mortgage managers, lenders (non-bank and bank) and support services to the mortgage and finance industry. Of its 13,000 members, over 12,700 are individual mortgage or finance brokers and mortgage and finance broking businesses. The remainder are non-bank lenders, banks and support services.

Some 12000 of its members are individual loan writers holding the MFAA accreditations of 'accredited mortgage consultant' [AMC] or 'certified mortgage consultant' [CMC].

The association requires all of its members involved in credit provision to be a member of the Credit Ombudsman Service Ltd [COSL] or another ASIC –approved ADR scheme. The overwhelming majority (other than mainly lender members) belong to COSL.

In addition to consumer protection afforded by the mandatory ADR membership requirement, MFAA also has a disciplinary process and a Tribunal for the purpose of dealing with complaints about members' conduct. The Tribunal is empowered to issue a range of sanctions including suspension and expulsion from membership. Suspensions and expulsions are publicly notified by media release and the MFAA website www.mfaa.com.au and advised to ASIC.

Notwithstanding its own robust membership criteria and disciplinary processes, MFAA has been campaigning since 2002 for national regulation of mortgage and finance brokers. The Federal Government, in 2003, declined to include mortgage and finance brokers in federal legislation on the basis that the states and territories had the constitutional carriage of 'credit'. Since 2003, the MFAA has worked with the states and territories, through MCCA and SCOCA to develop 'nationally consistent' regulation of mortgage and finance brokers. In December 2007, the NSW Minister for Fair Trading, on behalf of all jurisdictions released for public comment an Exposure Draft Finance Brokers Bill. Submissions in respect of that draft bill close on 15 February 2008.

Although MFAA has some concerns, at the margin, with some of the proposed provisions, we generally support the thrust of the Bill, which has been drafted taking into account the specific operations of mortgage and finance brokers and the need to fairly protect their consumers. This has resulted from much consultation with MFAA, the industry and consumer groups over the past few years.

DRAFT RECOMMENDATION 5.2

MFAA is supportive of the recommendation that *‘responsibility for regulating finance brokers and other credit providers should be transferred to the Australian Government’ with the regulatory requirements encompassed within the regime for financial services administered by the Australian Securities and Investments Commission (ASIC).’*

However we emphasize that the operations of finance brokers (using this general term to encompass ‘mortgage brokers’) and their relationship with, and services provided to, their clients is different to financial services already under the administration of ASIC and the Financial Services Reform Act (FSRA). We strongly oppose finance brokers being roped into FSRA on a one-size-fits-all basis. Those covered by FSRA now provide services in which consumers’ money is invested or advised to be invested or otherwise expended. Finance brokers are not investing or advising on the investing or expending of their clients funds. The ‘money flow’ is in the opposite direction. They assist their clients to source loans from lenders.

Accordingly the risk to consumers and the degree of protection is different. MFAA believes the content of the Exposure Draft of the Finance Brokers Bill gets the balance pretty right (subject to some submissions we will be making, as noted above).

If the Australian Government is to take over the regulation of finance brokers it should enact legislation which is in the terms of the Finance Brokers Bill (when finalized)

MFAA supports the recommendation that *‘a registration system should be introduced for other credit providers... with a condition of registration being participation in an ASIC-approved ADR scheme’*

This is identical to a submission made by MFAA to all state and territory fair trading/consumer affairs Ministers in 2006.

DRAFT RECOMMENDATION 9.2

MFAA opposes the recommendation that *'Australian Governments should improve the effectiveness of alternative dispute resolution (ADR) arrangements for consumers by:*

...

- *Encouraging further integration of financial ADR services'*

We have been presented with no evidence to demonstrate that a *'single umbrella dispute resolution scheme for consumers'* would improve the effectiveness of ADR arrangements for consumers.

There is already in place an arrangement for a common call centre and joint promotional and educational activities by financial services ADR schemes.

MFAA strongly opposes as one-size-fits-all approach (as we do with respect to Draft Recommendation 5.2) with ADR schemes.

The financial services industry (including credit) is not one homogeneous industry. MFAA's main membership of brokers and mortgage managers developed as a result of nimble consumer centric operators devising mortgage and finance distribution systems that were proven to be more customer friendly and competitive than the bank branch system which dominated the industry until the 90s. Such has been the success of these new players that they write close to 50% of all residential mortgages in Australia.

According to MFAA/Bankwest consumer research¹, the service of brokers is rated by consumers at 7.8 out of 10 compared to a 6.6 rating for bank branches.

Based on the industry's confidence that it would develop strong consumer support, MFAA established the Mortgage Industry Ombudsman Scheme (MIOS) in 2000 to demonstrate to consumers that there was an effective dispute service in place when they dealt with an MFAA member. In 2003 MIOS became the Credit Ombudsman Service (COSL) and obtained ASIC approval as an ADR scheme.

The vast majority of COSL's members are small broking businesses or individual brokers with a direct one- on-one relationship with their clients. They operate in an entirely different culture to the members of, for example, the Banking and Finance Ombudsman (BFSO) which principally covers large banks.

COSL underwent a three year review last year as required by ASIC and has made a number of significant changes to its operations to improve its relationship with its members and its service to consumers.

¹ MFAA/Bankwest Home Finance Survey, Winter 2007

COSL has the largest membership of financial services ADRs and unlike all the BFSO which relies on complaint fees to fund its operations, over 90% of COSL's operations are covered by membership fees. The independent review of COSL showed that its members deeply resented the complaint fee system. Because of its low reliance on complaint fees COSL is able to offer its members a complaint voucher which enables them to have one complaint per annum without a fee. This facilitates industry support for the ADR, which is crucial in the continued success of COSL.

It should be noted that the independent review of COSL recommended that COSL remain independent (but work with other ADR schemes where appropriate), recognizing that there were significant industry differences. That recommendation has brought positive results – in the past 12 months, complaints received by COSL have increased five fold, yet in the same period there were only 4 determinations made by the Ombudsman² – most complaints are resolved between the parties with COSL's facilitation, which is the preferred outcome of a successful ADR scheme.

MFAA reiterates that there is no evidence that an umbrella arrangement would enhance COSL's already successful operation for members and consumers. On the contrary because of industry sector and cultural differences, such an arrangement is more likely to create a bureaucracy which is:

- Lacking in industry knowledge
- Not have a sense of involvement
- Significantly less flexible
- Not capable of responding quickly to changes in the market.

² Advice from COSL Dec 07