David Collett

4 August 2018

The Hon. Matthew Kean MP,

The purpose of this letter is to respond to your consultation paper, titled "Easy and Transparent Trading – Empowering Consumers and Small Business". This response is limited to section 2.4 Trailing Commissions on pages 40, 41 & 42.

Unfortunately, it appears that the three proposals and the reasoning behind them have been written with little to no understanding from a mortgage broker perspective, or, if there has been active consultation with the mortgage broking industry, then it may be deliberately misleading and deceptive.

The citation of "*NSG Services Pty Ltd v NSG Services Pty Ltd [2017] FCA 345*" is itself incorrect and is not relevant to mortgage brokers. Did NSG Services Pty Ltd take themselves to court and then to trial? The case was ASIC vs NSG Services Pty Ltd. This case was about financial planners, not mortgage brokers and therefore has no relevance to mortgage brokers.

"The problem of trailing commissions is that they result in sellers of products continuing to receive income, irrespective of the level of service they are providing to consumers. This increases costs for consumers. Indeed, sellers have little incentive to apply their skills to improve the situation of people to whom they have already sold products. Additionally, where the fees are paid by consumers, it can be unclear for consumers what the total cost of the commission will be for the life of the product."

The above quote from your consultation paper on page 41 is addressed by the following four points:

1. Trail commission for a mortgage broker is an incentive to continue to do the right thing by the client.

There is a significant difference between life insurance products provided by financial planners and home loans organised via mortgage brokers concerning trail commission.

How often do you see life insurers advertising how much the premium will be for a 35-year-old non-smoker with no children to take out a $1,000,000 policy?

I bet your answer is: never.

How many times in the past week have you seen a bank advertise the interest rate on their home loan product?

Your answer is likely: many times.

Because consumers regularly see advertising from the various lenders about their latest interest rate offer, mortgage brokers need to ensure their clients have a competitive home loan product over time. Otherwise, the client is likely to look for an alternative broker and refinance across to a different home loan product.

The situation is entirely different with financial planners providing life insurance. There is a much lower chance a client with a life insurance policy is ever going to see advertising to suggest that they would be better off switching their policy to a new insurer.

2. *"Indeed, sellers have little incentive to apply their skills to improve the situation of people to whom they have already sold products. "*

The statement above is completely false when it comes to mortgage brokers.

As mentioned in the point above, because lenders are spending millions of dollars each year advertising their home loan products directly to consumers (which is not the case for life insurance products), a mortgage broker has an incentive to do the best thing by their clients so that they don't seek an alternative service provider.

If there is any concern that some brokers are not adequately reviewing the appropriateness of the clients' home loan products over time, it wouldn't be too difficult to add the requirement that brokers need to offer their existing clients a home loan health check every once in a while and keep a record that the offer was made to the client.

3. *"Additionally, where the fees are paid by consumers, it can be unclear for consumers what the total cost of the commission will be for the life of the product".*

The above statement is not relevant to mortgage brokers.

Trail commission is not an additional fee imposed on the customer that would not be there if they had gone with the bank directly. Also, the upfront and trail commission is disclosed on both the credit proposal disclosure document provided by the broker and in the loan offer document supplied by the lender.

The real question here is whether you're trying to kick mortgage brokers in the guts, or whether you're wanting to increase transparency to the consumer.

It is true that the current disclosure requirements do not specify what the total trail commission will be for a home loan product over its life. However, the trail commission is disclosed, so it's only a small addition to add the total life amount.

Have you suggested the lender should disclose the total interest the consumer is going to pay on the home loan?

No, you haven't. Why not?

4. *"This increases costs for consumers."*

With respect to mortgage brokers, the above statement is false.

Trail commission is a marketing expense by the lenders. It is not a fee added to a loan that would not be there if the customer had approached the same lender directly.

If trail commission to mortgage brokers is simply cut, do you believe the lenders are going to pass that saving on to consumers?

Are you going to legislate to force the lenders to pass that cut through to consumers?
If we cut the staff admin cost in your office by 25%, would you pass that saving back to taxpayers, or would you spend it on something else?

What's likely to happen is that broker volumes to the lenders will reduce and the lenders will then need to spend more on advertising to acquire new business.

Reform suggestions

Reform suggestion 1: "*Amend the Fair Trading Act….etc"*

The above is not necessary, for the reasons described in points 1,2 & 4 above.

Unless you can legislate that lenders will pass the full trailing commission amount through to consumers and that the upfront commission should increase by the same amount the trail has decreased, you are simply cutting mortgage broker revenue by roughly 25% and giving it to the banks, not the consumer.

Reform suggestion 2: *"Require all intermediaries who refer…."*

The trail commission is already disclosed in writing to the consumer.

If the requirement that the total trail commission over the life of the product is going to be added, then by the same reasoning it's worth adding the total interest the consumer will pay to the lender over the life of the loan.

Reform suggestion 3: *"Prescribe that a trailing fee…etc"*

Trail commission is already disclosed to consumers during the process of obtaining a home loan. Please go to your local mortgage broker and ask him or her to show you a (de-identified) example.

Kind regards,

David Collett