19 December 2018

By Email: policy@finance.nsw.gov.au

Better Business Reforms Implementation
Regulatory Policy, BRD
Department of Finance, Services and Innovation
Level 5, McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

Dear Sir/Madam,

Better Business Reforms

Further to your request for feedback, Mortgage Choice would like to provide its comments on the implementation of the Better Business Reforms Options Paper - November 2018.

Our feedback is mainly in relation to Disclosure of commissions and referral fees, with a specific focus on Mortgage Broking.

Mortgage Choice

Mortgage Choice Limited is a public company listed on the ASX. It holds an Australian Credit License to act as a credit intermediary and a wholly owned subsidiary, and holds an Australian Financial Services Licence that allows its authorised representatives to provide advice to consumers on Tier 1 products.

Mortgage Choice is an aggregator. Aggregators are intermediary organisations that connect lenders with mortgage brokers. Most brokers are credit representatives under an aggregator's credit licence and are provided with infrastructure and support to operate such as technology systems, regulatory and compliance assistance, software, marketing and professional development.

Mortgage Choice distributes credit advice, primarily on residential lending, and financial planning advice services to consumers through a franchise network of 441 independently owned small businesses across Australia, 405 of which are Mortgage franchises and 36 Financial Planning franchises. The company has 580 credit representatives and 38 authorised financial representatives and is one of the largest aggregation businesses in the country.

Mortgage Choice represents a strong financial brand that is well respected in the market, delivering quality service to consumers for 26 years and helping over 600,000 people with their home loans.

Executive Summary

As you have rightly pointed out in your Options Paper, there are some industries such as the Financial Services Industry, in which the Mortgage Broking channel is included, which already regulate disclosure of commissions and referral fees. In fact the industry is in general heavily regulated with the likes of the National Consumer Credit Protection (NCCP) Act 2009, the National Credit Act and the Corporations Act 2001, with requires consistent and comparable financial product disclosure.

While we support the reforms proposed, we believe our industry already has the level of disclosure the Government is seeking. There are already sufficient disclosure requirements in place in the Financial Services industry, in particular those regulating Australian Credit Licence (ACL) holders. Any additional reforms would create additional burden on the industry without additional benefit for the consumer – it would add red tape. In addition, creating legislation that is specific to a state may create confusion and additional operation burden on businesses that operate nationally.

Further, in response to ASIC's Review into Broker Remuneration and the Financial Services Royal Commission interim report, any concerns or perceived gaps in disclosure are being addressed by the Combined Industry Forum, with many of the recommended changes taking effect 1 January 2019. Such changes include increased transparency around gifts and hospitality provided by lenders to mortgage brokers, limits placed on such gifts and hospitality, increased disclosure around ownership structures and upfront disclosure of any broker clubs or special servicing arrangements the broker has with lenders.

While these changes are not regulated, they have been supported by the Combined Industry Forum participants. We believe this, combined with the current regulations in place are sufficient and we respectfully recommend that the Government exclude Financial Services organisations, in particular the Mortgage Broking and Financial Planning industry, from any additional reforms put in place.

Current Disclosure of Broker Commissions and Referral Fees are sufficient

Whilst we do not believe commission or referral fees in themselves incentivise a mortgage broker to make a recommendation or referral to maximise the commission or referral fee, we fully support transparency in disclosure of commission's payable and in fact already do so at Mortgage Choice.

The level of commission paid in respect of lending is outlined in both the Credit Guide and Preliminary Assessment, both of which are legal requirements under the National Consumer Credit Protection (NCCP) Act 2009.

The Credit Guide provides information about the licensee and some of the obligations under the NCCP Act. In this Guide, any commission that the licensee or the credit representative is likely to receive from a credit provider, either directly or indirectly, is required to be disclosed. The disclosure must be a reasonable estimate of the amount of that commission or a range, as well as the method of calculating the commission.

A Preliminary Assessment is required by law before providing credit assistance to a customer in relation to a credit contract. This is to determine whether a contract is unsuitable and includes making reasonable enquiries and verifications about the customer, their requirements, objectives and financial situation. By law, a copy of this document is required to be provided to a customer on request.

The Mortgage Choice Preliminary Assessment discloses commission as a maximum % rate of the loan amount or increase in loan amount and also as a maximum dollar amount for both upfront and trail commission. These amounts are disclosed at both the aggregator and broker level, given that the amount the broker will receive is less than that paid by the lender to the aggregator.

Further, lenders disclose commission paid to aggregators in loan documentation.

In respect of referral fees, it is also a legal requirement that these fees be disclosed to customers. Mortgage Choice requires that any broker receiving or paying referral fees has a process in place to disclose this to customers where relevant. Clients must sign a Third Party Acknowledgement Form if a referral is made, which discloses that a referral fee may be received. This is positioned with the customer at the point of referral. This process clearly advises the customer of the relationship between the broker and party to which they are referring the customer and fee they may receive.

Further changes resulting from the Combined Industry Forum

ASIC conducted an extensive review into Broker Remuneration in 2016, with findings and proposals published in Report 516 in March 2017. The objective of the review was to review the mortgage broking market to determine the effect of current broker remuneration structures on the quality of customer outcomes.

In response to this report, the industry set up a Combined Industry Forum (CIF) to address the outcomes of the review. We firmly believe that the proposals put forward by the group address the concerns raised in the ASIC Review.

The proposals are a result of numerous discussions and after much consideration of various options. The interests of multiple stakeholders have been taken into account, with industry groups, lenders, aggregators, brokers and consumer groups working together to develop proposals that are in the best interests of the industry. The proposals take into account the need to maintain competition in the industry whilst reducing the likelihood of poor customer outcomes.

The recommendations relevant to disclosure of commission and referral fees are summarised below:

1. **Entertainment & Hospitality Registers:**
    - There will be an expectation of greater transparency where lenders entertain or provide gifts to brokers as there could be a perceived or potential influence on a broker's credit advice to a consumer.
    - All loan writers will be required to maintain a register and record all entertainment and hospitality received from lenders (where the value is over $100, up to a limit of $350 per person per event). This must be available to a client on request.

2. **Reporting and Lender Accreditations**
    - As part of increased transparency and heightened governance, it is proposed that a variety of reporting be made publically available at a lender, aggregator and broker level.

- As an example, loan writers will be required to disclose the following:
  - Lender's available on the panel
  - Names of lenders the loan writer is accredited with
  - Number of lenders used by the loan writer in the prior financial year
  - Percentage share of total dollar settlements in the prior financial year across the top 6 lenders the broker wrote with
- This information will be documented in the Broker Credit Guide.

3. Conferences and Education

- Aggregators and lenders will both be working to ensure there is a higher standard of education provided across the industry, with a requirement for 80% of an event to be educational in order be deemed Professional Development.

4. Ownership Disclosures

- The CIF proposals for ownership disclosure pertain to instances where there is greater than 20% ownership of a broker group by a lender, or where a lender may have ownership of an aggregator and also be the funder for their white label product. These disclosures will be included in Credit Guides.

5. Tiered Servicing

- The notion of broker clubs (or tiered servicing) can give rise to the perception of one broker receiving a different level of service to another. At a customer level, this service differentiation could result in benefits to the broker's business but may not align with it being a solution that best meets the customer's needs. As such, there will be a requirement for greater transparency to a customer where a broker has access to tiered servicing, particularly at the point at which credit advice is provided. These will be disclosed in both the Broker Credit Guide and Preliminary Assessment.
- The criteria for these programs will also change, with lenders to move towards a balanced scorecard with factors such as application quality, conversation rates and portfolio arrears performance will be considered as a determinant, not just volume.

Closing Remarks/Recommendations

We fully support the reforms proposed in respect of disclosing the existence of financial incentives for providing or referring goods and services - we believe it is appropriate to ensure customers are aware of such incentives at the time of referral in order to make a fully informed decision.

Whilst we support the reforms, we believe what the Government is trying to achieve is already accomplished through the current disclosure requirements under the NCCP Act and the Future of Financial Advice (FOFA) Act 2012 in the Financial Services industry. These requirements, together with the impending changes from the Combined Industry Forum, provide full coverage and disclosure to customers in the Mortgage Broking industry. Further regulation at the state level will only add red tape.

We therefore recommend that the Government exclude Financial Services organisations, in particular the Mortgage Broking and Financial Planning channels, from any reforms put in place in respect of disclosure of commissions and referral fees.

We appreciate this opportunity to participate in the consultation process and would be available to discuss any of the information provided in more detail.

Regards

Susan Mitchell
CEO, Mortgage Choice