



Wednesday 19 December 2018

## **Regulatory Policy**

Better Regulation Division

NSW Department of Finance, Services and Innovation

Email: [policy@finance.nsw.gov.au](mailto:policy@finance.nsw.gov.au)

## **Better Business Reforms Implementation**

I write regarding the consultation on the Better Business Reforms - Implementation Options Paper. CHOICE is broadly supportive of the reforms; we do not want the commencement of these laws delayed unnecessarily. Of the reforms canvassed in the Options Paper, CHOICE has a particular interest in the changes to disclosure of key terms in standard form contracts and of commissions and referral fees. In relation to standard form contracts, CHOICE is strongly supportive of the NSW Government's new laws, and would like to see these commence as soon as possible.

The reforms relating to commissions and referral fees provide some benefit to consumers, but an opportunity remains for further reform. In particular, banning individuals from receiving commissions for selling particular products would substantially reduce harm to consumers. Additionally, the conflict caused by businesses paying referral fees to other businesses would be better transparently managed by ensuring that:

- all products in the category that the site or service purports to compare are listed;
- referral fees have no impact on the way that products are presented relative to each other;
- referral fees have no impact on the ranking of products; and
- the basis on which products are ranked is clearly disclosed to the consumer.

These are our preferred options for reform in this sector, but requiring businesses to at least disclose the existence of commissions and referral fees is a small step in the right direction, provided this information is conveyed to consumers in a useful way.

## **Disclosure of key terms**

Consumers need to have clear information about products and services in order for competition to thrive. Right now, unnecessarily lengthy and legalistic terms and conditions hide essential information from shoppers. The new law requiring businesses to make consumers aware of key terms that may substantially prejudice their interests is sensible, simple and will help consumers navigate complex markets.

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email [campaigns@choice.com.au](mailto:campaigns@choice.com.au) | [www.choice.com.au](http://www.choice.com.au)

The Australian Consumers' Association is a not-for-profit company limited by guarantee. ABN 72 000 281 925 ACN 000 281 925

CHOICE would like to see the proposed legislation commence as soon as possible. The preferred commencement date of 1 September 2019 allows a generous period of time to consult on and develop regulations and conduct an education campaign for businesses and consumers. This lengthy lead time should support a smooth implementation of the new law.

CHOICE notes that the development of regulations to provide guidance and clarity on the application of the law may be useful for businesses and consumers. However, we do not think it is necessary at this pre-implementation stage to develop regulations exempting certain businesses or industries from the new law, except in the very limited circumstance where it is not possible for a business to simultaneously comply with this and other existing legislation. If other legislation requiring disclosure of terms applies to a sector that has the effect of requiring adequate disclosure of all terms that substantially prejudice a consumer's interests, that in and of itself does not provide an argument for exempting the business from the new law unless it is technically not possible to comply with both legal requirements.

### **Disclosure of commissions**

The Discussion Paper asks whether financial incentives beyond commissions or referral fees should be captured by the new law. Conflicted financial incentives paid to intermediaries are not limited to commissions and referral fees. In the financial advice and mortgage broking industries, 'soft' dollar benefits have regularly been used as incentives for advisers. Common soft dollar benefits include overseas trips or hospitality related benefits. A recent ASIC investigation into mortgage broker remuneration concluded:

“... soft dollar benefits, even if not in the form of a direct monetary incentive, may have an impact on a broker's choice of product or lender, or lead a broker to process a greater number of loans, to obtain the benefit.”<sup>1</sup>

The Future of Financial Advice reforms acknowledged that soft dollar benefits can lead to conflicted advice, and so prohibited them. These sorts of benefits should be brought within the scope of the regulations.

In terms of exemptions from the law for any particular industry or trader, CHOICE is sceptical of these. In our experience in the financial services sector (and indeed many other sectors), industry regularly lobby for carve-outs to ensure they do not have to comply with more stringent protections. As an example, the carve-out for the insurance industry in relation to the unfair contract terms laws has led to serious consumer detriment and calls from consumer advocates to be removed. The new disclosure obligations should be the floor for all intermediaries captured by the legislation as is. Every trader and intermediary should be required to adhere to them. If these are additional or more onerous requirements in other industries then, as with the disclosure of key terms, those requirements should be considered as supplementary and additive to this legislation except in cases where a conflict would result in an inability to comply with both legislation simultaneously.

---

<sup>1</sup> ASIC 2018, Report 516: Review of mortgage broker remuneration, p.79

Yours sincerely,

**Sarah Agar**  
Head of Campaigns and Policy

**57 Carrington Road Marrickville NSW 2204**

**Phone 02 9577 3333 | Fax 02 9577 3377 | Email [campaigns@choice.com.au](mailto:campaigns@choice.com.au) | [www.choice.com.au](http://www.choice.com.au)**

*The Australian Consumers' Association is a not-for-profit company limited by guarantee. ABN 72 000 281 925 ACN 000 281 925*