



Government & Regulatory Affairs
Level 22, 100 Queen Street
Melbourne Vic 3000

Phone +61 3 9273 6323
Fax +61 3 9273 4899
www.anz.com

4 March 2008

The Hon. Linda Burney MP
Minister for Fair Trading, Minister for Youth, Minister for Volunteering
C/o Senior Project Manager (Credit)
Policy & Strategy Division
NSW Office of Fair Trading
PO Box 972
PARAMATTA NSW 2124

By e-mail: policy@oft.commerce.nsw.gov.au

Dear Minister

Re: National Finance Broking Scheme Consultation Package

Thank you for the opportunity to provide comment on the *National Finance Broking Scheme Consultation Package—November 2007* (Consultation Package) prepared by your department on behalf of the Ministerial Council of Consumer Affairs (MCCA).

Financial services markets have become increasingly national rather than regional or state-based in nature as a result of changes in technology and consumer behaviour and preferences. Consumers today shop for goods and services largely without regard to State and Territory borders and they have gained from this through lower costs, greater efficiency and increased choice.

As a result it is important that the regulation of financial services, including finance brokers, is nationally consistent. I note that an intergovernmental agreement to maintain consistency and currency of regulation will be formulated in parallel with the development of the legislation. This agreement will be crucial to ensure that regulation is truly harmonised across jurisdictions. The agreement will also need to include mechanisms for ensuring ongoing uniformity is maintained.

While ANZ supports the proposed legislation in principle we would like to offer the following comments.

Definition of Finance Broker

Section 5.2 suggests that a person provides a finance broking service if the person provides advice or assistance to the consumer or acts as an

intermediary between the consumer and a credit provider, for the purpose of securing credit for the consumer.

This definition is very broad and has the potential to capture parties who may not engage in finance broking, including accountants, bank managers or lawyers who simply assist a consumer to get a loan. It also has the potential to capture other independent third parties who simply refer the consumer to a credit provider.

For example an employee of a credit provider who provides advice or assistance to a customer to secure credit with that provider directly would appear to be classified as engaging in finance broking under this definition. Similarly a sporting club which merely refers a member to a credit provider in exchange for a commission, but does not act as an intermediary thereafter, would also be covered.

For this reason ANZ recommends that the MCCA consider a more specific definition which provides participants within the financial services industry with certainty as to who the legislation is intended to cover. This could be done in one of two ways.

Firstly the MCCA could maintain the existing definition but 'carve out' specific activities which are clearly not intended to be covered. As noted above such carve outs should include authorised deposit taking institutions, their employees and agents, as well as mere referrers¹.

Alternatively, the MCCA could narrow the definition sufficiently to ensure that unintended parties are not covered. It should be noted that the legislation already contains provisions (Section 5 (2)(c)) to broaden this definition by regulation in the event that some finance brokers were using the narrow definition to avoid the application of the legislation to them.

Liability of the Credit Provider

Section 29 makes the credit provider liable to consumers for 'compensable conduct' if they provide a loan to a consumer referred by an unlicensed broker.

As the proposed legislation places the onus on the credit provider to ensure that the finance broker is licensed, ANZ believes it will be important for regulators to ensure that there are clear mechanisms in place to allow us to confirm the licence status of a referring broker.

The Consultation Package states that a register, established by the States and Territories (potentially through a third party operator) will be made available to industry and other stakeholders to provide up-to-date information about both brokers licensed and those authorised by the licensee as authorised representatives. ANZ believes that credit

¹ This would be similar to the current FSR regime where mere referrers are exempted from holding an AFS license as set out in s911A(2).

providers should be able to rely on the integrity of this register to ensure they have fulfilled their obligations under the legislation and protect them from liability under Section 29.

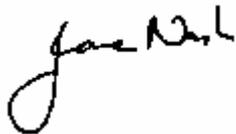
For this to be effective there should be a clearly established process which outlines when a credit provider should check the licence status (for example on application or at settlement) as well as having the ability for the credit provider to obtain a record from the register that the broker is licensed. There should also be protections where a lender will only be liable for an unlicensed person if the person has never been licensed, or at least three months has expired since the person ceased to be licensed or ceased to be a broker's representative.

ANZ is also concerned that the balance of liability seems to be weighted heavily towards the credit provider. A credit provider could be liable for 'compensable conduct', and this extends significantly beyond that which a customer could claim from a properly licensed broker.

We believe that the credit provider's liability should be restricted to specific loss caused by the fraudulent or negligent behaviour of the unlicensed broker. In addition the credit provider should be able to pursue the unlicensed broker for damages.

ANZ would be pleased to provide further information on this issue and I can be contacted on 03 9273 6323.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jane Nash', written in a cursive style.

Jane Nash
Head of Government and Regulatory Affairs