1 July 2008

Financial Services Green Paper
Corporations and Financial Services Division
Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

MORTGAGE CHOICE LIMITED RESPONSE TO FINANCIAL SERVICES AND CREDIT REFORM GREEN PAPER JUNE 2008 ("GREEN PAPER")

Please note that our comments are restricted to the first section of the Green Paper being Mortgages, Mortgage Broking and Non-deposit Taking Institutions.

EXECUTIVE SUMMARY

- Mortgage Choice supports uniform regulation of mortgage brokers on a national basis.
- The draft regulatory provisions proposed as the second option in the Green Paper are largely endorsed.
- The regulatory framework proposed in the NSW Government draft National Finance Broking Bill of November 2007 and referenced is also supported, with some exceptions. A copy of our submission to the review of that Bill is attached as Annexure 1.
- Regulatory reform needs to recognise that it is appropriate that the person providing mortgage advice to a consumer be competent to provide that advice irrespective of whether they represent an Authorised Deposit-taking institution, a non-deposit taking institution or a mortgage broker.
- It is a misconception to attribute excess consumer debt levels to mortgage brokers. Lenders are appropriately responsible for determining the borrowers capacity to repay as they assume the credit risk.

COMMENTARY

As a large and long-established participant in the Australian finance broking market, Mortgage Choice has adopted industry-leading standards and practices since its inception. These are, aimed at ensuring its customers deal only with mortgage finance specialists who are:

- suitably qualified,
- of appropriate character and
• who have protection mechanisms in place in the event that any customer sustains any financial disadvantage through their dealings with the broker.

In doing so, Mortgage Choice has consistently, for many years, publicly advocated the need for the finance broking industry to be regulated, and that this should as far as possible be done on a uniform basis across all States and Territories.

Broker specific legislation already exists in a number of Australian jurisdictions. Mortgage Choice has encouraged compliance with, and where practicable mandated, the standards imposed by that legislation in the remaining States where there is no corresponding legislation. This is intended to ensure that our representatives operate to the highest standards and practices and ensuring a uniform customer experience nationally. As a logical consequence, therefore, Mortgage Choice fully endorses and supports all initiatives, including those outlined in the Green Paper, aimed at achieving standardised national regulation of the industry.

Mortgage Choice supports the extension of the regulatory regime to both mortgage managers and non-bank lenders as contemplated in the Green Paper. This initiative addresses, to some extent, concerns with the draft National Finance Broking Bill, the provisions of which apply only to brokers. Notwithstanding this, it appears from our interpretation of the Green Paper, that Banks have to attain a lower standard than brokers. This is more apparent in light of the fact that Banks carry only a limited range of mortgage products and therefore cannot offer objective home loan advice. All Bank staff responsible for advising customers on their mortgage needs should be subject to the same level of regulatory supervision as brokers and non-deposit taking institutions.

The Green Paper indicates that brokers will be regulated under the existing provisions of Section 7 of the Corporations Act. This may result in brokers being subject to the same standards of individual and organisational competence as investment related financial products. Brokers should be suitably qualified to provide the advice that they give but it is important to note that the risk profile of financial advisors and brokers are significantly different. Consumers of mortgage advice are not exposed to capital loss in the same manner as those consumers of investment product advice. Brokers do not provide advice in relation to the application of the proceeds of the mortgage loans arranged on behalf of customers.

Mortgage Choice has mandated completion of Certificate IV in Financial Services (Finance/Mortgage Broking) by all our broker representatives, together with in-house induction training, AML/CTF training, compliance training and product specific training as and when required (eg Equity Release products). Mortgage Choice believes that this achieves the appropriate level of competency necessary for providers of credit advice.

Whilst supportive of the proposals outlined in the Green Paper, we are concerned that the text does continue to perpetuate misconceptions about the mortgage broking industry. For example the Green Paper states “Inappropriate advice and mis-selling in relation to mortgages and investment loans is likely to lead to excessive levels of debt taken on by consumers.” It is important to note that lenders are responsible for assessing the capacity of the customer to repay their loan. A broker cannot enable a customer to take out a loan that is outside the lending guidelines of the lender in question. We therefore question this misconception that

1 Financial Services and Credit Reform Green Paper, page 7.
brokers are the catalysts of excessive levels of consumer debt. It is appropriate for the broker to actively assess a borrower’s loan servicing capacity against lenders’ defined serviceability criteria in order to prevent inappropriate submissions being made to the lender. However, the final decision to provide the consumer finance and the associated credit is borne by the lender, not the broker. It is important that any regulation addresses the lending standards of both non-deposit taking institutions and Authorised Deposit-taking institutions.

The Green Paper also refers to “the misstatement of applicant’s financial details so they qualify for larger loans that give brokers higher commissions.” If this is indeed the case, such behaviour is fraudulent and is potentially a breach of the Crimes Act. As such, because of its nature, it is unlikely to be prevented by any form of regulatory control.

Whilst Mortgage Choice does not provide non-mortgage loans, we are aware of the MFAA’s views on the apparent regulatory overlap in relation to these matters and endorse that position. Many Mortgage Brokers are developing diversified income streams, which may include other credit products such as personal and car loans. They are also encouraged to cross-sell products such as credit cards with mortgage products. The majority of credit cards and personal loans are also marketed on a national basis. These inter-relationships between credit products are better served by a uniform regulatory regime rather than a fractured federal/state system.

We favour the second option as set out in the Green Paper as we believe that the consistent treatment of all aspects of credit would make for a simpler regulatory system and reduce the risk that any form of credit should be allowed to escape regulatory supervision.

Please do not hesitate to contact me if you require further information. We would also like to take the opportunity to offer our assistance and resources to the process at any time.

Yours faithfully,

MORTGAGE CHOICE LIMITED

DAVID HOSKINS
COMPANY SECRETARY

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2 Financial Services and Credit Reform Green Paper, page 10.
Dear Sir Madam,

MORTGAGE CHOICE LIMITED RESPONSE TO NATIONAL FINANCE BROKING SCHEME CONSULTATION PACKAGE

EXECUTIVE SUMMARY

• Mortgage Choice supports uniform regulation of mortgage brokers on a national basis.
• The draft regulatory provisions are largely endorsed, with some key exceptions.
• Mortgage Choice submits that it is neither feasibly practical nor appropriate for brokers to carry the requirement of verifying loan applicants’ financial and credit history particulars.
• Low doc and No doc lending through brokers will effectively be extinguished if the draft provisions are adopted. We believe this to be anti-competitive.
• If the draft provisions are adopted, the requirements in respect of debt serviceability should be extended to lenders as well as brokers.
• Brokers should be required to present a minimum of three credit proposals (if available) to prospective borrowers.
• Brokers should be able to respond to credit applications within a specified period.

ANNEXURE 1
Brokers must verify that the customer can afford the credit for which any applications are made.

The verification process requires the inspection of documentation and inquiry of third parties. Mortgage managers and other lenders on the other hand are governed by the UDCC, and not the proposed broker legislation, and as a result would appear to be able to continue to write "low doc" and "no doc" loans without "ascertaining" capacity to repay beyond some level of self-certification (refer detailed comments on Clause 5 below).

In relation to those loans which are usually supported by documentation the verification process is performed by the lender. The proposed legislation represents a duplication of that process resulting in greater costs without additional consumer benefit.

Brokers must not fail to put forward a credit proposal if the credit offered meets the customer's requirements, and if the customer has the capacity to repay. The ability of brokers to provide proposals is based on their ability to prove the customer's capacity to repay.
The provisions of the draft legislation are endorsed, other than as noted above, and detailed in the following commentary. We submit, however, that the proposed maximum penalties applicable to breaches of the legislation are excessively harsh in relation to any possible detriment suffered by the borrower. Borrowers have access to FDR schemes and direct legal action to seek redress of any financial disadvantage.

**Detailed Commentary on Specific Provisions**

**Part 3**

**Division 1**

**Clause 33** The provisions of this section, overall, place an onus upon the broker to determine the consumer's capacity to repay the loan sought. Given that the broker (in most instances is not the finance provider and is not responsible for the final approval of the loan sought) it appears that the onus should be shifted to the broker to obtain all information and confirm that

...
Clause 35(3) Part (b) of the proposed clause appears to require the broker to present to the consumer all credit proposals available to the broker that both meet the consumer's requirements and for which the consumer has the capacity to repay. In certain instances, this would require the broker to present a large number of proposals. For example, a married applicant with a combined income of $100,000 p.a., having an available deposit of $50,000, seeking to borrow $350,000 to purchase a property worth $375,000 and requiring a standard variable rate loan, would potentially have up to 27 proposals presented to them by a Mortgage Choice broker under this requirement. Clearly this is excessive and would predictably overwhelm the average consumer.

We submit that an additional part be added to Clause 35(3):

c. if greater than three credit proposals satisfying the criteria in (b) above are available to the broker, the broker must put forward to the consumer a minimum of three such proposals. The broker must inform the customer of the total number of proposals available to the broker.

In summary, we recommend that the words "if more than three credit proposals..."

should be added to clause 35(3).
Clause 38(2) provides that a broker must not act under the terms of an existing agreement or a new financial service agreement if such an arrangement is likely to result in the consumer incurring a larger amount of credit than that proposed in the existing agreement, and the consumer has a greater capacity to repay the proposed credit.

While the protectionist aim of this provision is evident, it fails to recognise the fact that consumers may be motivated to refinance existing credit facilities for reasons other than excess product attributes. It is not uncommon for borrowers to wish to transfer their credit business from one provider due to issues relating to customer service, ease of access to facilities or willingness of the lender to provide additional credit. In such circumstances, the consumer may seek the assistance of a broker in exploring alternative credit proposals that do not strictly satisfy the terms of clause 38(2), but with which the consumer wishes to proceed. Under the terms of the clause, the broker would be precluded from suggesting alternate credit proposals.

We submit that clause 38(2) be amended to read:

Where finance broker puts forward to a consumer a credit proposal that is designed to restructure existing credit arrangements, and

the credit offered by the proposal is not more expensive to the consumer than the credit proposed in the existing arrangement, then the credit offered in the new arrangement is permitted.