



Submission to the Australian Securities and Investment Commission on Consultation Paper 309

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Introduction

Loan Market Pty Ltd (“**Loan Market**”) (ACN 105 230 019 Australian Credit Licence number 390 222) is one of the largest and fastest growing retail mortgage brokerages in Australasia. Loan Market was established in 1995 and is proudly family-owned and operated. Loan Market is part of the White Family Group of Companies comprising of Loan Market, Wealth Market, Home Now, and Ray White. Loan Market works with a panel of 35+ lenders and supports a network of over 650 brokers across Australia and New Zealand.

Loan Market is committed to transparency when interacting with clients to facilitate the provision of credit assistance advice placing the interests of clients first.

Loan Market supports the initiative to provide additional guidance to Licensees to outline clearer inquiries and verifications steps that ASIC consider important for Licensees in complying with their Responsible Lending obligations.

In particular, Loan Market seeks to gain further clarity and guidance on:

- The expenses categorisation breakdown and the steps brokers should take on living expense analysis;
- The possibility of moving towards standardisation of lender requirements and approach;
- The interaction between credit provider and credit assistance provider and the specific obligations of each participant as part of the loan application process. Particularly, in relation to making reasonable inquiries and verifications.

Response

Verification of consumer’s financial situation

The primary obligation is to conduct an assessment that the credit contract or consumer lease is “not unsuitable” for the consumer.

At the outset Loan Market would note that this verification process should be acknowledged as a point in time activity.

Reference in support of this proposition is found within the current provisions of RG209.3 ie “ A credit contract or a consumer lease will be, and must be assessed as, unsuitable where, at the time of the assessment etc”

Brokers realistically should not and cannot be held accountable for future contingencies that are out of their control as well as the existing and prospective customers.

It is acknowledged that the broker must and needs to undertake a process to identify issues that may impact existing and prospective customers.

Further, a suggested breakdown of life exigencies is proposed along the lines of foreseeable vs potential.

Accordingly, it is put forward if as a consequence of the verification activity an issue ie foreseeable is identified ie to start a family/pending retirement this be recorded as part of the interaction with the

client. For the other category potential ie redundancy, marital breakdown, illness or injury then a broker should not and cannot be held accountable for these outcomes.

Loan Market notes the clarification about understanding the consumers' requirements and objectives proposed by ASIC. Loan Market considers it is a good practice to provide documented requirements and objectives which are in turn validated by the customer to reconfirm that the relevance and accuracy of the information.

Loan Market confirms requirements and objectives are included together with a level of specificity in its Client Preliminary Assessment document to reinforce the alignment to client circumstances.

Loan Market would appreciate further guidance on the information that should be included in the written assessment in order to maximise its effectiveness for existing and prospective customers.

Enhancement to the content and extent of information provided will contribute to the prospective and existing clients being able to make a fully informed decision.

Fraud Risk

The requirement to undertake additional review processes on potentially identified fraud issues is imperative.

However, the capability and the relative resources to conduct an investigation at this level is at issue.

An acknowledgement of the enhanced capacity of Credit Providers generally, ie Systems, Resources and including dedicated personnel needs to be taken into consideration

For example, in the scenario of wage staging identified in the Royal Commission hearings it is difficult for a Credit Assistance Provider to obtain unequivocal verification because of lack of access to relevant account information. This should be contrasted with Credit Providers who can and do obtain full, complete and relevant data in order to form an objective assessment on the activity of placing regular deposits in an account to produce a record to presenting like a recurring salary credit.

The resourcing 'gap' could be addressed by prescribing the sharing of information between Credit Providers and Credit Assistance Providers. Currently, Lenders provide an insight into the occurrence of potentially fraudulent activity. In most instances, this is not supported by hard evidence that might enable the Credit Assistance Provider to take definitive action.

One of the challenges that presents itself to the examination of issues related to fraud is the degree of involvement and complicity of the parties ie the broker, the client and an external party. A scenario may be identified, but is the key protagonist the broker, the client or an external party or a combination of collusion between these various parties.

Income and expenses inquiry and verification

Providing a list of verification documents would be useful. However, ASIC should note that Brokers shouldn't be required to obtain all readily available information from the list in the Regulatory Guide.

Loan Market acknowledges that more supporting documents may be needed to verify customer's financial situation. However, it is also important to note that the due diligence exercise should not become a full audit of consumers' affairs and be considered as too invasive to the prospective or existing client.

If the list of readily available information is to be provided within ASIC Regulatory Guide, ASIC should also specify:

- the period in which Brokers and Lenders should obtain to make it more consistent (i.e. payslips for the last 3 months, bank statements for the last 3 months, etc.);
- the minimum supporting documents required for different type of product type (i.e. home loan, car loan, personal loan, etc.).

Loan Market acknowledges that the benchmark, i.e. HEM, is not a replacement for making inquiries about consumers' actual income and expenses. However, it can be a useful tool to determine whether the income and expenses declared by customer are reasonable and whether further inquiry and verification should be made. When using the benchmark to compare the income and expenses, it should be adjusted for customers circumstances. Loan Market requires its Brokers to obtain information on actual income and expenses and obtain supporting documents to verify the information.

It would be appreciated if further clarity was provided on the use of the HEMS measure and if an adjustment was required ie gross up the relevant HEMS measure by (say) 20% to make reference to it more relevant.

Expense categories

Loan Market position requires Brokers to undertake a comprehensive analysis of the customer household expenditure breaking down the various categories of living expenses. However, different Aggregators and Lenders have a different expenses categorisation and varying levels of expenses analysis required. This has resulted in a reduction in efficiency in the interaction with existing and prospective clients for an integral part of the process.

Loan Market notes the LIXI Limited (LIXI) recommendations on the living expenses categorisation. In February 2019, LIXI had expanded the living expense categories (10 core categories expanded into 21 in total) as a relevance update to HEM. LIXI expense categories also include expenses that was not included in HEM such as private schooling and tuition, land tax, Strata/body corporate, child maintenance, and rent. Loan Market believes that more consistency on expenses categorisation together with how far Brokers need to go into the expenses analysis would be useful to eliminate further confusion and ease both a resource and cost burden to Brokers.

Therefore, ASIC should consider incorporating best practice expense categorisation into Regulatory Guide 209 to make drive and enhance consistency within the industry.

Loan Market also acknowledge that LIXI expense categories do not reflect the distinction between discretionary and non-discretionary expenses. In analysing the expenses, Loan Market considers it is important to differentiate the discretionary and non-discretionary expenses as customer should not be penalized for discretionary expenses that is inflated for one-off transactions on their supporting documents (i.e. doctor expenses, expenses on fixing motor vehicle, travelling, etc.).

If the discretionary expense is for one off expense, this should not be included in the expense analysis. If customers are in a position to consider other alternatives (i.e. sending the children to public school instead of current private school tuition), then Brokers should specify the current amount of those expenses and the amount the customer considers they could reduce those expense to if required.

Therefore, Loan Market also seeks further clarification from ASIC on the inquiry and verification steps taken for discretionary vs non-discretionary expenses.

Inconsistency between Lenders requirements and approaches

With the Royal Commissions, changes in regulatory requirements and customers' expectation, Lenders have made changes over the last few years to their requirements regarding:

- Customer's requirements and objectives;
- Customer living expenses inquiries and verifications;
- Supporting documents requirements.

As a result, Lenders requirements have become reasonably inconsistent and diverse. This has caused confusion, delay and additional costs to the Brokers in the servicing of clients and ultimately the finalisation and completion of loan applications.

In addition, Brokers must familiarise themselves with multiple lender requirements. For instances:

- some Lenders require 1 month income payslip 1 month bank statements;
- some Lenders require 3 months' payslips and 6 months bank statements;
- each Lenders have different expenses categorization

There are more occasions in the industry where customers are going away from one Broker as Broker asked for too many supporting documents while other Broker or Lender only require minimum supporting documents.

Loan Market considers that Lenders working in conjunction with the Regulator should set clear and consistent expectations on what is the minimum requirements, the periods that they should obtain the supporting documents, and set a common standard for assessment and presentation of income and expenditure details.

Credit Provider vs Credit Assistance provider

Regulatory Guide 209 notes that that the amount of reasonable level of inquiries and verification depends on the nature of the services provided to customer. However, with the Royal Commission raising the bar and increased regulator expectation and Lenders expectations of credit assistance providers to verify any customers financial situation has shifted.

A possible mechanism which could be applied would be to provide a clearer distinction between the function of the Credit Provider vs the function of the Credit assistance Provider. Currently, the Credit Assistance Provider makes a preliminary assessment. It follows that the Credit Provider undertakes what would be categorised as the final assessment.

Therefore, it is appropriate for the level of inquiry and verification assessment between a Credit Assistance Provider and Credit Provider would be differentiated. Accordingly, the Credit Provider should conduct a more onerous level of due diligence compared to that of a Credit Assistance Provider.

It should also be noted that Credit Providers have an enhanced accessibility to customer information above and beyond what would otherwise be available to a Credit Assistance Provider.

Generally, Credit providers can access systems and processes which make them uniquely positioned to undertake the process to a standard which could not otherwise be actioned by a Credit Provider.

For any Credit Assistance Provider to replicate and conduct the same level of inquiries and verifications as the Credit Provider would result in significant costs.

Increased clarity around the division of responsibility between a Credit Provider and a Credit Assistance Provider would assist in the focus of time input and resourcing to enhance interactions with prospective and existing clients.

Royal Commission Recommendations

Loan Market acknowledges the importance of the various recommendations which have arisen from the recent Royal Commission.

In particular, Loan Market would appreciate further guidance if possible, around Recommendation 1.5 relating to Mortgage Brokers as financial advisers. The recommendation is as follows.. "After a sufficient period of transition, mortgage brokers should be subject to and regulated by the law that applies to entities providing financial product advice to retail clients."

This potentially would include a revision to the existing requirements relating to brokers including the necessity to provide the equivalent of written statements of advice and enhanced education requirements.

Loan Market is keen to understand the developments in relation to this recommendation and is also available to participate in any working groups which may be organised to provide input.

Conclusion

Loan Market supports the initiative of the Regulator in the revision of Regulatory Guide 209 and is committed to ensuring that in the engagement of our broker network with existing and prospective clients the interests of those clients are put first and foremost.