Ms. Tara Marshall
Senior Lawyer — Credit, Retail Banking and Payments
Financial Services Group
Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, 3000

20 March 2020

Dear Ms. Marshall

The Combined Industry Forum (CIF) welcomes the opportunity to provide feedback in relation to the *Consultation Paper 327: Implementing the Royal Commission recommendations: Mortgage brokers and the best interests duty and the associated Draft Regulatory Guide: Mortgage brokers: Best interests duty.*

The CIF has a long-standing focus and commitment to the interests of the customer. In its Response to *ASIC Report 516: Review of mortgage broker remuneration* the CIF noted in its terms of reference that it places *'better consumer outcomes at the centre of its approach'.*

The CIF is supportive of the introduction of the Best Interests Duty (BID) and the associated Conflicts Priority Rule. There are a number of specific areas that CIF members are seeking further guidance on, and areas where broader risks have been identified.

Finally, we would like to thank you for the opportunity to be consulted, and trust our feedback is of assistance. We are also keen to contribute to the development of the Regulatory Guidance in any way possible and the CIF is happy to respond to any further inquiries you may have.

Yours sincerely,

Anthony Waldron

Chair, Combined Industry Forum &
Chief Customer Officer - Acting
Consumer Banking, National Australia Bank Ltd.

Mark Haron

Deputy Chair, Combined Industry Forum &
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Combined Industry Forum feedback for Mortgage Brokers and the Best Interests Duty.

1. Mortgage Broker Best Interests Duty and Conflicts priority rule

The CIF is supportive of the application of a best interests duty to be applied across mortgage broking as laid out in s.158LA, LB, LD and LE in the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020.* Members did note their concerns in a number of broader areas as well as more specific areas, which have been addressed in appendix 1, which directly responds to the questions in CP327.

At a broader level, members noted their concerns regarding the operability and/or interpretation of the following:

- Timing and implementation of the best interests duty.
- Materiality and reasonableness
- Cost as a priority factor
- Broker product considerations & panel operation
- Packaging and consideration of other products
- Monitoring and supervision
- Design and distribution obligations
- Conflicts of interest and the conflicts priority rule
- Other considerations and guidance sought

Members are keen to see that feedback would assist regulators in ensuring industry interpretations of the best interest duty is clear and consistent. The CIF's feedback notes the final Legislation and seeks to align the legislative intent, with the mortgage broking industry's focus on good customer outcomes and the best interests duty.

1.1 Timing and implementation of the best interests duty

CIF members have raised their strong concerns in light of the COVID-19 virus about the feasibility of implementation by 31 July 2020. These concerns are centered on:

- The extensive efforts government and organisations have undertaken to limit the spread of the virus including reducing numbers in workplaces and encouraging staff to work from home, as well as redirecting resources (this includes operational, technology and broader human resources) to work on critical functions within organisations. This also extends to bans on face-to-face meetings, which directly impacts on the ability to compile relevant information for responses to government.

- Critically, the ban on mass gatherings and prudent considerations by aggregators and industry associations in relation to training and education such as Professional development days (most of which have been cancelled or are being delivered on line, which is accompanied by technical limitations) has meant that assisting brokers to understand their responsibilities under the best interests duty, and to implement and imbed appropriate practices has been significantly impacted.

- Given the recent government announcement that restrictions will be in place for some time, it is difficult to be able to determine when the required activity (both operationally and education wise) can recommence. When CIF members are able to resume work once the restrictions are removed (noting that there is no timeframe), it is likely to take some time to reallocate resources and provide the necessary training on the new requirements. As a positive, the delay may mean some costs are saved as the training will be based on final guidance.

Noting the above, The CIF requests that Treasury and ASIC consider a 12-month relief period on commencement of the best interests duty and conflicts priority rule until 1 July 2021. Members have noted that implementation would need to be finalised and operational as early as practicable, before this time.

1.2 Materiality and reasonableness

The CIF has previously noted that the best interests duty has no materiality threshold and could be supported by a test along the lines of 'what a reasonable broker would do' to assist in broker compliance. This test is intended to give further context for brokers when 'using their judgement', and considers whether a peer broker would reach the same conclusions based on the needs and considerations of the customer.

Specifically, such a 'materiality and reasonableness' test would assist in addressing circumstances such as:

- Best interests duty – would a broker in a similar position, when considering the relevant factors deem it in the customer's best interests to change lenders?
- Conflicts of interest – would a broker in a similar position without the conflict recommend the same options for the customer?

BID and materiality

The materiality component proposed refers directly to aspects of the customer assistance that are either inconsequential or do not materially alter the credit assistance provided.

The definition of credit assistance contained in the NCCP (Div3 Section 8) suggests that credit assistance requires the customer to acquire a new credit contract, increase an existing limit or be advised to retain their current contract. On this basis, the BID should apply for any credit assistance consistent with these factors.

Such examples may include the following:

BID applies	BID does not apply
• top ups • hardship reviews	• change repayment, • change pricing, • redraw, • fixed conversion, • change repayment cycle.

With respect to the circumstances where the BID would apply, the materiality would need to be considered. Where the top up is a nominal amount to undertake a renovation (e.g. such a circumstance may be where a customer has recently purchased the property and finds an issue with the property that requires immediate attention), a full assessment may not need to be undertaken.

It is also important to note that the time sensitive nature of the customer transaction may impact on how the broker proceeds, and will reflect the individual circumstances. If for example, the customer is seeking a top up to purchase an investment property and the auction is in 3 days, the customer could direct the broker that do not want to change banks, are not interested in other options and need the access to the credit as soon as practicable, the broker may consider it is in the best interests of the customer to act on their request given the circumstances and customer's needs.

Materiality and reasonableness will also apply to the conflicts priority rule, which is covered under heading 2.

BID and customer direction

CIF members also noted that in meeting a best interests duty, the wishes of the customer are central, and that requests of the customer will often drive broker's credit assistance. Whether a particular factor is material and reasonable will be determined by specific instructions from the customer, and the professional judgement of the broker upon making a recommendation.

> ***It is recommended that:***
>
> ***ASIC consider incorporating materiality and reasonableness test that would reflect the behaviour of a reasonable broker to add clarity to the best interests duty and the conflicts priority rule.***
>
> ***ASIC add specific examples (as identified above) that assist in determining how the definition of credit assistance NCCP (Div3 Section 8) would apply when considered with the best interests duty.***

1.3 Cost as a priority factor

The CIF notes the regulatory guidance's position of prioritising cost in relation to other factors that need to be considered for a broker when meeting the best interests duty:

> *RG 000.49 The cost of a credit product can significantly affect the outcome the consumer achieves, as well as their other objectives that are unrelated to the credit product. For that reason, we generally expect the cost of a credit product—such as interest rate, fees and charges and the size of repayments—to be factors that mortgage brokers should prioritise.*

While the importance of cost of their loan to the customer is not questioned, there a number of other areas that depending on the customer's circumstances should be weighted equally. This is particularly the case where factors such as access to an offset account would change the nature of the recommendation. The CIF considers that this focus should be broadened to consider **value** as the factor that should be prioritised. This would more appropriately align to the circumstances such as those identified in Paras 53 and 54.

For example, while first home buyers may consider that the lowest rate is the most important factor when initially requesting a loan, other factors that would improve the value to the customer such as amount of deposit, where they wish to buy, the type of security, the amount borrowed, etc will become more important as the broker becomes aware of the customer's needs.

in keeping with the above, *Report 628 Looking for a mortgage: Consumer experiences and expectations*, noted when *"we refer to the 'best' home loan, we are generally referring to a home loan that offers the consumer the best value taking into consideration what a consumer desires in a home loan.*

> ***It is recommended that:***
>
> ***Rather than prioritising cost over all other factors, that the regulatory guide capture value in a more prominent way, reflecting ASIC report 628 that suggests a home loan that offers the consumer the best value takes into consideration what a consumer desires in a home loan (those elements that a customer requires and prioritises).***

1.4 Broker product considerations & panel operation

The CIF wishes to note concerns in respect to the range of credit products and credit providers.

Brokers have access to a range of loan products which they hold accreditation for. Those engaged through an aggregator have access to these products through a broker's Lender Panel, which is a subset of different loan products available to brokers associated with that aggregator to offer to customers (provided they have relevant accreditation).

000.101 refers to brokers having an awareness of the most price competitive products on the market. As noted above, this point should be more explicit and refer to brokers obligation to review the specific products that they have access to via there panel, and are accredited for. It is unlikely that this access will represent all the products in the market but provide a broker with a reasonable number of options that would align to the customer's needs and requirements.

As currently drafted, the Consultation Paper and draft Regulatory Guidance could be interpreted as requiring a broker to consider and analyse lenders that are not on their panel and to prioritise the lowest cost provider in the market or face significant penalties. This may make brokers more risk averse, which may have the following impact:

- impact on the viability of mortgage broking and
- potentially raise barriers to entry for new brokers and aggregators as they try and acquire product knowledge in the early part of their career.
- Reduce distribution services and competition in the mortgage lending market impacting all lenders other than lenders (or the lender) that competes on having the lowest price. This has the potential to create market distortion and reward the lender/s with the lowest cost of capital (which may increase market concentration or distribution cost (e.g. online lenders who may not even distribute through the broker channel) This may have the effect of penalising those with a higher cost of capital or distribution cost such as small or non-bank lenders.
- Limiting the incentive for loan product innovation as products with additional features are discriminated against on price considerations.
- Aligning to the above, a broker may be unable to recommend smaller and regional lenders that differentiate their offering in ways other than on price. This could damage competition in the mortgage lending market for all customers regardless of whether they choose to use a mortgage broker to access a home loan.
- The availability of credit in rural and regional communities may also be impacted as a result.

We understand the practicalities and importance of needing to have a range of “general features and products” on the broker’s panel to be able to meet a consumer’s needs and objectives. For example, if a consumer is seeking a reverse mortgage product and the broker does not have such a product on their panel, they will not be able to assist the customer. However 000.101- 000.103 when read with 000.48 would indicate that the broker is indeed required to recommend products and credit providers that are not on the broker’s panel and that such recommendation may be based on an awareness of not just general features and products but the most price competitive product(s) in the market as a benchmark. As previously stated, this has the potential to significantly impair competition in the home lending market.

It should be noted that the in response to *ASIC report 516: Review of Mortgage Broker Remuneration*, CIF members have chosen to individually adopt reporting to the customer that captures lenders available to the broker, and those that they are accredited for.

It is recommended that:

The regulatory guidance notes that the expectation on brokers to assess products relate to the specific products that the broker has access to, and is accredited for.

1.5 Packaging and consideration of other products

The CIF notes 000.13(f) and 000.115 in the regulatory guidance refer to the requirement to compare a loan package for a home loan with a comparable package and a standalone home loan product, and supports the approach that allows a broker to look holistically at the loan package to determine that it is in the customer’s best interests.

3.26 in the explanatory memorandum, in addition to 000.114 and references to standalone credit products (as stated in 000.110) appear inconsistent with this approach and require that an assessment of each product in relation to the best interests duty and a comparison with other products be undertaken.

000.114 states that the broker “needs to identify and consider for each product within the package”

(a) how those products will meet the consumer's needs, objectives, priorities and preferences; and
(b) whether (and why) suggesting the consumer take out that product would be in the consumer's best interests.

There is a risk that the above could be interpreted as requiring an individual assessment of each product in the package in comparison to other standalone products. Given the breadth of the credit options available, this is an onerous task as brokers often don't have access to pricing until after an application is made.

CIF members considered that brokers may have limited systems capability and lender coverage when considering non-mortgage packaged products with those outside the packaging of home loans. As an example, where a credit card form part of 'package' products, mortgage brokers do not generally advise on credit cards solely and it would be incorrect to think of a broker as having a panel of credit card providers. This means for example, that they do not have sufficient information to determine a monetary value to frequent flyer points against a current card a consumer may have.

It is recommended that:

The regulatory guidance is reworded to reflect:

- ***that a broker will consider a loan package holistically to determine what is in the best interests of the client, rather than undertaking a comprehensive assessment of the value of each component, and***
- ***That a comparison of the loan package with a similar loan package, and or the package to a standalone home loan product is sufficient.***

1.6 Monitoring and supervision

The CIF notes that the best interests duty will likely require a significant increase in the documentation and reporting requirements as part of the credit assistance process. Aggregators and individual ACL holders will likely be the best placed to monitor compliance and take any actions that would be required in relation to broker behaviour.

The proposed changes to the breach reporting requirements present an expectation to report a situation that a licensee reasonably ought to know may be significant. The CIF notes that the best interests duty would require additional monitoring and access to information that would only be available to the aggregator or ACL holder.

Further detail is required in relation to how the expectation of monitoring the best interest will be required, noting the clear statement in 000.47 that *"The assessment of what product(s) would be in the consumer's best interests is a point-in-time assessment".*

It is recommended that:

ASIC acknowledge that the monitoring and supervision of broker's activities to meet their best interests duty obligations will need to be undertaken by the group undertaking their day to day compliance.

1.7 Design and distribution obligations

CIF members have noted that the addition of design and distribution requirements at 000.023 adds further complexity to the expectations on brokers. More specifically, the 'reasonable steps' that a broker must take should now consider the responsible lending requirements, the best interests duty, the design and distribution obligations (if the customer fits within the product's target market determination).

Because the Broker Best Interest Duty imposes a higher standard than design and distribution obligations (DDO), requiring mortgage brokers to comply with DDO (noting that financial advice has been exempt the DDO requirement) adds an additional compliance burden on industry without achieving any additional consumer benefit.

It is recommended that:

ASIC add further detail that clarifies the interaction of the DDO regime in addition to existing content relating to responsible lending and the best interests duty.

ASIC continue to engage with CIF and industry association's to provide further understanding of the operations of the DDO regime.

2. Conflicts of Interest and the conflicts priority rule

CIF members support the conflicts priority rule, however, are concerned that identifying all potential conflicts of all related parties can be onerous and that disclosing in many circumstances does not assist with compliance. The CIF has previously introduced ownership disclosure guidelines to individual members have chosen to adopt, at the time it was noted by a number of brokers that while they operated through a particular aggregator, the fact the aggregator was partly owned by a lender, had no bearing on how they interacted with their customers. They report this ownership to customers, but note it raises questions that are not relevant to the customer's needs and objectives or the broker's remuneration for providing those services.

Further, members noted that the related parties may be at an institutional level and have no bearing on the day to day operation of the broker due to their arm's length nature. It is not clear to what extent such arrangements would influence a broker to not act in the best interests with respect to the credit assistance.

In many circumstances a relationship with a third party (paid or otherwise) will have no influence on the product recommended (i.e. a real estate agent that the broker has an arrangement with). The CIF suggests that the *identification* of a conflict arises only when it is directly related to the credit assistance that is being provided to the customer loan package they are seeking.

Consistent with 000.123, introducing a materiality and reasonableness test as noted in 1.1 above may assist in clarifying expectations for a conflict of interest.

It is recommended that:

- ***Identifying a conflict of interest should relate directly to whether the interest could be seen to influence the broker's behaviour, and that a 'materiality and reasonableness' test be added that provides context in relation to the conflicts' potential to influence any recommendation to the customer that would not be in their best interests.***
- ***ASIC provide examples relating to how the conflicts of interest would apply, such as the impact on arms-length ownership structures (i.e. materiality).***

3. Guidance sought on conflicted remuneration

The CIF notes that ASIC have advised that they will not be issuing standalone regulatory guidance for conflicted remuneration.

As such there are two areas that need further clarification that the CIF would encourage ASIC to consider including in this guidance relating to areas that were not specifically excluded from conflicted remuneration:

- Lender support for education and training – Lenders often provide financial support for education and training of brokers. This is seen as an important process for lenders and brokers, and industry is keen to see that this can continue, and
- Tiered servicing arrangements – such arrangements are assessed on a balanced scorecard basis, produce better outcomes for customers through faster turnaround times for loan approvals and settlements, direct broker access to loan assessors or broker access to upfront valuations.

It is recommended that:

- ***ASIC incorporate content relating to lender support for education and training, and tiered service arrangements.***

CP327 questions: Mortgage Brokers Best Interests Duty

The following provides further feedback to the questions identified in CP327. Where a specific reference has not been noted, the concerns are general in nature and relates to definitions and the operability and/or interpretation of the duty and conflicts priority rule[1].

It should be noted that beyond the statutory requirements, brokers have a range of different approaches to the information that is gathered and how it is interpreted. The responses from brokers represent a comprehensive coverage of the detail, however they do not represent a 'baseline or common' approach. The approach taken by the broker will likely be modified to adapt to the customer's needs and circumstances.

Ref.	Question	Response
1, 1.6	B1Q1 Do you agree with our approach to structuring our guidance around the mortgage broking process?	• The CIF is supportive of the application of a best interests duty however noted their concerns in number of broader areas • Noting that the test is principles based, there are still concerns in relation to the scope and breadth of how far the duty extends. Specifically, that brokers should only be held to the duty in relation to loan products they have access to through their bank lender panel (or have direct access to via the lender). <u>Suggested clarification</u> • Further guidance should be provided in regard to reasonable steps and the broker's obligations with respect to responsible lending, the best interests duty and design and distribution obligations. • There are complex loan structures (e.g. bridging loans or interest only loan structures) that may need further explanation as to how the best interests duty would apply. We request ASIC include examples in the RG about such complex loan structures.
1,1.3, 2.	B1Q2 Are there any steps or processes not covered in the draft guidance which are of particular relevance to the best interests duty?	• Further clarity is sought in relation to the disclosure of relevant information from the customer to the broker. • How conflicts of interests for related or third parties operate particularly at an institutional level. • Brokers usually do not also have approval to offer financial advice so there is a risk when asking them to give general observations outside the establishment of a mortgage secured by residential property. <u>Suggested clarification</u> • Further examples of how the conflicts priority rule would apply especially in relation to related and third parties when receiving payment. • 000.118-120 That brokers are not expected to provide any financial advice unless qualified to do so.

[1] Where a para is noted this refers to CP327. Where 000.xx is noted this refers to the regulatory guidance.

Ref.	Question	Response
1.1	B2Q1 What additional specific issues (if any) do you consider should be addressed in the draft guidance? Why is guidance on these issues needed?	• Para 35, if bank credit policies and assessments are designed to reflect responsible lending, the CIF suggests clarity is needed as to whether the broker be required to identify in each case how they have gone further than the lender's requirements (i.e. note best interests considerations separately). Suggested clarification • This will create a structural misalignment in systems inconsistent with 000.149. and needs to be determined how this will operate in practice.

	B3Q1 If you are a mortgage broker, what information do you typically gather from a consumer before considering products? What steps do you take to verify this information?	• Living expenses, income type, income amount, assets, liabilities, any potential changes to future circumstances, preferences for various types of products, objectives, specific financial goals and objectives, details of credit history issues, and deadlines if any.
		• Brokers collect the following documents to verify information (assuming they are relevant to the customer's situation):
		  ○ Pay slips
		  ○ Tax returns
		  ○ Business financial statements + NOA
		  ○ Tax portal statements
		  ○ Evidence of ATO debt payment arrangement
		  ○ Bank statements (e.g. savings, loans, business accounts) – 3 months for all accounts
		  ○ Evidence of asset ownership (e.g. rates notices, superannuation, share portfolio)
		  ○ ID
		  ○ Lease agreement or rental management account statements from agent if investment property owned
		  ○ Letter of employment
		  ○ HECS statement
		  ○ Equifax soft credit check performed after initial meeting to help avoid clients missing debt disclosure
		  ○ Preferences or otherwise of any lending institutions
		
		• If any of the information is unclear or incomplete or there are competing priorities the broker should make further enquiries.

Ref.	Question	Response
1.1	B3Q2 When should mortgage brokers make further inquiries into a consumer's circumstances to act in their best interests?	• When the consumer has not provided sufficient information. Note there are circumstances where the customer may not provide all information to the broker, as it has prejudiced a previous application. There will be circumstances where the broker could not reasonably know this. • Some brokers noted they have a list of additional questions they ask which cover a customer's "intentions" that may not be disclosed throughout the process – this list then forms a specific declaration the client signs before they proceed (this can be provided upon request) • Brokers also noted that when dealing with some customers, they may get a sense they are withholding information (i.e. potentially the customer is vulnerable to pressure from an outside party, etc.) In such circumstances they will either ask more questions and do more research, or decline to offer assistance. <u>Suggested clarification</u> • 000.39-000.42 ASIC should provide further clarity as to which circumstances a customer's actions mean the broker must decline to provide advice, due to incomplete / inaccurate information. This clarification could be achieved by way of examples in the RG.
1.4	B4Q1 Do you agree that mortgage brokers should consider products holistically in assessing whether they are in the consumer's best interests?	• Yes, although the definition of 'holistically' is unclear. It is unreasonable to expect a broker to assess a range of products that are not specifically related to the loan. Holistically should be determined on a like for like basis, where a bundle is compared with no bundle and a similar bundle rather than a comprehensive analysis of each component of a recommendation i.e. all relevant credit cards in the market. This type of expectation does not exist in other industries. • Brokers noted they would consider the loan and possibly the offset account as the most important factors (as they are the largest components). Other products like credit cards are seen as secondary to the main considerations • While it is the brokers responsibility to ensure any credit card limit is affordable (largely falling under responsible lending regulations) a comparison between existing and a comprehensive analysis of proposed credit cards is unnecessary and/or unworkable. Such comparisons can quickly become so onerous that it is no longer commercial for brokers to process some loans. These will likely be for consumers wanting pre-approvals (brokers are remunerated on settlements only) or small loans. <u>Suggested clarification</u> • That ASIC qualify the meaning of holistic in relation to mortgage lending to cover a comparison of like vs like or a standalone mortgage secured by residential property, and • That a broker will consider a loan package holistically to determine what is in the best interests of the client, rather than undertaking a comprehensive assessment of the value of each component.

Ref.	Question	Response

1.2	B5Q1 What factors and product features do you consider are most relevant to assessing whether home loan products are in an individual consumer's best interests?	• An overall position of value to the customer, which reflects their needs, objectives and financial situation. Prioritising one factor (lowest cost) over overall value may distort what best interests duty represents. This may lead to vanilla products that are only price-oriented but offer little other value.
		
		• CIF members consider the most relevant factors in assessing whether a home loan product is in a customer's best interests are:
		  ○ The credit profile and the likelihood of a lender approving the loan for the customer
		  ○ The timing and when the customer needs access to the funds
		  ○ Pricing and cost of the loan
		  ○ Whether the loan is appropriate for the customer over the long term, particularly in relation to serviceability.

1.2	B5Q2 Do you agree with our expectations about how cost and non-cost factors should be considered by brokers when making a product assessment?	• Cost considerations should be part of the consideration of overall value and should be confined to the existing panel and accreditations incumbent on the broker. It would be appropriate to prioritise value (rather than lowest cost) to a customer, which would be more aligned to best interests duty.
		• CIF members are concerned that the broker is expected to determine whether non-cost considerations would result in a realistic possibility of a "net benefit" to the customer. The relative benefit of a cost vs a non-cost factor cannot be easily (or in some cases, meaningfully) directly compared, making "net benefit" difficult to determine. The existing other phrase of "good value" is more appropriate.
		
		<u>Suggested clarification</u>
		• There needs to be consideration (amongst others) that:
		  ○ There are non-cost options to consider when looking at saving customers money over time. e.g. loan term, timeframe, repayments, cashbacks, etc.
		  ○ This is at a point in time. e.g. a current low interest rate by a lender versus the propensity over time for the same lender to increase rates (honeymoon rates).
		• 000.65: Requires clarification of "greater value". This needs to be sufficiently clear to allow for a broker to explain 'value' without the need of a dollar metric. E.g. How would brokers quantify factors such as better online service, frequent flyer points, etc.
		• Remove the phrase "net benefit" in terms of the broker assessment of non-cost vs cost considerations, and replace with greater value.

1, 1.2	B5Q3 Are there any other factors or circumstances relevant to determining whether a product is in the consumer's best interests that our guidance should	• Factors that ASIC will consider in their monitoring and data collection requirements. This will help develop compliance structures, controls and audit questions for supervision and monitoring. • Para 39 is unclear. If a broker prioritises cost but is then penalised for consistently writing loans to the lower cost product, there is a risk that products will become progressively vanilla.

Ref.	Question	Response
	discuss? If so, what are they and why is guidance needed?	• Para 42 is a concept applied to financial planners that may not translate. In financial planning, planners had to undertake training and often had to have a certain level of experience before they could offer more complex products, such as MDAs or derivatives. This may be more of an issue when bundling products, and new to industry brokers but is not consistent with broker practice. • CIF members noted that non-cost considerations such as a lender's branch presence or digital offering may be relevant considerations for some consumers (and thus should be given priority to meet the customers stated requirements) depending on their needs. <u>Suggested clarification</u> • ASIC provide further detail of the information they intend to request from brokers in relation to best interests duty compliance • Rather than focusing on lower cost loans, the focus should relate to the value provided to the customer. This will be more likely to encourage product innovation.
1.3	B6Q1 Are there any other factors relevant to the presentation of information that we should consider including in our guidance?	• Para 48 could be inconsistent with Para 28 (point in time). While it seems the intention is that the broker's role extends throughout the process of establishing a loan, this could be interpreted to mean the best interests duty may extend to a change in circumstances after assistance has been provided. <u>Suggested clarification</u> • That similar references be modified from 'extends to assisting the consumer to apply for a credit contract' to state 'extends to assisting the consumer until they have applied for the credit contract'.
	B6Q2 If you are a mortgage broker, how do you typically present information to consumers? Does this information take a particular form?	• Brokers noted they generally presented a document to clients at their first meeting showing various purchase/refinance scenarios so they could work through the customer's main objectives and agree on the most appropriate loan amount and loan structure. After which, they email the customer with confirmation of the scenario to be applied for on their behalf, along with a list of documents required to lodge the application. • Depending on the client's circumstances, 'information' can include lender product information, details of Government grants (FHOG), and property profile reports. The form / format of this can be in brochures, printouts, web address links, detailed emails, etc. • At recommendation stage, depending on whether the client is face-to-face or remote, these documents may be presented in physical hardcopy, or in soft copy via email or other secure web portal systems. • Communication with customers can take a range of forms but is usually in writing via e-mail: ○ an Excel spreadsheet capturing both interest rates and fees showing the total cost over a set period – usually 3 years. This is provided with the intention of creating a true comparison rate for the consumer

Ref.	Question	Response
		- Diagrams and freehand notes that include their stated goals is emailed to the client with action steps. Formal loan comparisons and a funding summary is attached. Once the client confirms they wish to proceed, date and time stamped documents which detail my “intentions” questionnaire and a client declaration is emailed to the client . - If the client is opting or considering a fixed rate loan, further information around break costs might be pertinent to provide as well. - Comparison rates provided by lenders are, at times, misleading with the rate being based on a $150,000 loan over a 25-year term. The average new loan size in Australia is approx. $400,000 and the majority of loans are written over a 30-year term <u>Suggested clarification</u> - ASIC to clarify if they have requirements for the presentation of information in addition to compliance documents such as the Credit Guide, Credit Proposal and Preliminary Assessment?
1,3.	B6Q3 Do you agree that mortgage brokers should educate consumers and help them to understand potential implications of different choices (e.g. the nature of credit products and their features)?	- The broker should educate customers to the extent that it impacts on the customer’s ability to understand the recommendations presented to them, but broker’s should not be held accountable for a customer’s level of financial literacy. - Further, this is a difficult metric to assess a broker on from a compliance perspective. - It is not reasonable to expect a broker to explain all aspects of the loan establishment process, particularly as this is part of the brokers role in establishing a loan and their role in meeting best interest. RG628 noted that many people choose to use a broker for the convenience factor, which may be negated if there is an onerous education requirement placed in every interaction. <u>Suggested clarification</u> - That ASIC qualify the expectation to educate a customer only extends to the features relevant to the loan options presented. - The RG should clarify whether a failure to educate the customer in this way is considered a breach of the duty itself as indicated in 000.92, 000.140 and page 39. It should be further noted that Page 39 of the RG states that it may not be in the customer’s best interests if *“you have not equipped and educated the consumer to make informed decisions.”* Inferring that not educating the customer would be considered a breach.
	B6Q4 If you are a mortgage broker, in what circumstances would you only provide one product option/recommendation? Do you agree with our view that consumers should	Brokers have noted: If the customer only qualifies for one loan based on a particular set of circumstances, there is little value in informing the customer about details of a product that would not qualify for in the first place (e.g. they are purchasing a residential property smaller than a certain size),

Ref.	Question	Response
	generally be presented with more than one option?	• This could also be the case if there was a clear recommendation given about the customer's circumstances (i.e. A regional lender offers a strongly favorable product for customers in the local area. If no other loan is as aligned, then the customer should be informed of the reason why the product was in their best interests, but there is little value in comparing lesser alternatives. • Clients may qualify for many products; however a specific requirements and objectives match can often limit this to a few. Suggestion is too generalised and could be worded more like "where more than one solution meets a client's circumstances and requirements, they should generally be presented with more than one option. • Broker members also noted that as a credit adviser, they have always offered suggestions as to the best fit solution of those considered, using a features and benefits analysis. • They have also noted it is common for a consumer to be provided with more than one option. • Despite this, there are circumstances where only one option will be available. An example might be a credit impaired customer or a situation where multiple valuations are commissioned for a security property and only one is suitable. It may also be that a broker has only one lender on their panel that will accept the client based on specific credit policy or product niches. <u>Suggested clarification</u> • ASIC should consider noting circumstances or an example where presenting the customer with one loan option is appropriate such as a credit impaired customer or a product niche. • Where only one solution is offered, commentary around this recommendation should be included in the document (e.g. Preliminary Assessment)
	B6Q5 How can a mortgage broker act in a consumer's best interests when assisting them to apply for one credit product when the broker recommended another?	• Brokers noted ultimately they are acting in the customer's best interest and would need to take reasonable steps to ensure that the customer makes an informed decision. Further the broker needs to be clear with the customer and in their records, that in their professional judgement another product is more aligned to their interests. If a customer specifically requests a different product other than the one recommended, then finalising the transaction would be consistent with the intent of Para 48. Note in Financial planning, it was acceptable to fulfil a request from a customer as a transaction only activity, but you still had to document your efforts to meet best interest, and that the customer specifically directed you to undertake the activity. <u>Suggested clarification</u> • That ASIC recognise that there are circumstances where a customer expressly requests a product over the one recommended, and that provided the broker has made their it clear that they feel there another product may be more aligned to their best interests (and documents this), they should be able to proceed with the customer's choice on an execution only basis.

Ref.	Question	Response
1.5	B7Q1 Do you require further guidance on the distinction between your obligations under the new best interests duty and the existing responsible lending obligations?	• Further clarity is required on which parties undertake the role of monitoring. It should reside with the aggregator/ACL, but this is unclear where there is a breach reporting obligation on third parties <u>Suggested clarification</u> • Monitoring of the best interests duty should take place at the aggregator/ACL level, noting that lenders are only required to meet responsible lending standards
1.4	B8Q1 Should mortgage brokers be required to consider products provided by parties outside their panel of credit providers?	• No. It is not reasonable to expect a broker to have awareness, and undertake research into thousands (one member estimated that there are over 2100 available) of individual products (many of which will not be accessible or relevant for the customer based on their needs, objectives and circumstances). Further, expecting brokers to have an awareness of products and features on the market needs to be better defined and be related to what they could reasonably know. In practice this will be driven by the research and information available to them on their available panel. As the legislation and RG also consider that bundled products need to be assessed, this becomes a task that may not be reasonable met, particularly where products such as credit cards are involved. A broker with a strong working knowledge of the products on their panel is reasonable and consistent with meeting their best interests obligations. • There is a risk for a broker to also be required to educate customers on products outside mortgage broking. <u>Suggested clarification</u> • That broker's considerations be confined to the loans on their bank lender panel they are accredited for, and a general investigation of package products that are directly linked to a loan. The latter is not an extensive comparison and should only be part of the holistic assessment of a loan package. • 000.100: Make it clearer that it is the broker's accreditation that must be sufficient. • 000.101: Propose to reword "awareness of general features and products" to – "brokers should be accredited with a reasonably representative panel, and use that panel accordingly".

	B8Q2 If you are a mortgage broker, does the software you currently use present you with options that you are not accredited to recommend?	Brokers have noted:
		• This is dependent on the individual aggregator:
		  ○ Some may require product comparisons to be presented as part of the total recommendation, while others may choose to simplify information presented to the customer and not include these comparisons.
		  ○ It is unlikely that brokers would be able to present information on products not on their panel or they are not accredited with. This may reflect legal issues with finalising such a transaction.
		• The lender systems will likely not allow transactions with ACL's that they do not have an existing legal arrangement with.

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		• Software may allow this; however, brokers noted they turn off the ones that they are not accredited with. These may be small lenders who are only active in other states, or alternate brands of the same lender, so this would be duplication. • Generally, the software will present all options on the panel and does not recognize accreditations for individual brokers. It is important to note that in many cases the software will only provide standard rates and it is prudent for the broker to approach lenders individually and obtain additional discounts/ features for each individual consumer. • While brokers will have access to lenders, in circumstances where they are not accredited and seeking further information about a particular product from the lenders portal for example, it is often the case that it is not possible to access all information as the broker will lack the relevant access. <u>Suggested clarification</u> • that ASIC suggest a declaration to client that the recommendations are based on those lenders broker currently hold accreditation with.
	B9Q1 Do you agree that the best interests duty should apply at the time of the assessment?	• Yes. The broker can only make recommendations based on the information that they have available to them that relates to the customers circumstances. Given the dynamic nature of the credit assistance process, the best interest duty should reflect the products considered at a point in time being the time at which credit assistance is provided.
1.1	B9Q2 Do you agree that when making subsequent assessments brokers cannot necessarily rely on the initial assessment?	• This is subjective and reflects the materiality of any change in circumstances and the timing. Where the customer has had a change in their needs and circumstances (i.e. the customer has had a windfall gain since the initial conversation which they intend to use for principle and thus reduce their LVR) <u>Suggested clarification</u> • The broker can only rely on the initial conversation if the customer’s circumstances have not materially changed, and if the options in the market are still consistent with the customer’s best interest.
1.1	B9Q3 Do you agree that changes which occurred after the recommendation, which were reasonably foreseeable when the recommendation was made, should be relevant in considering whether the best interests duty has been complied with?	• This is subjective and reflects the materiality of any change in circumstances and the timing. • If the circumstances were reasonably foreseeable, the broker would have likely included them in the assessment. <u>Suggested clarification</u> • That ASIC consider adopting the language relating to materiality and reasonableness to considerations of what is foreseeable.

Ref.	Question	Response
	B10Q1 If you are a mortgage broker, on what basis do you typically recommend a package to a consumer?	• Brokers noted they would first work through the most appropriate loan amount and loan structure for the customer, then present them available options. Pricing (rate and fees) are then a strong influence, along with service levels, product features and standard of after-sales service. The customer's incumbent bank is also a strong driver when determining which lenders to offer. • Being able to demonstrate adequate / sufficient capacity to service the proposed commitment is a key preliminary factor for product selection. It is also important to the lender, and ultimately to the recommendation made to the customer. • It is critical that a broker reviews and references the customer's stated needs, objectives and preferences as they formulate their recommendation to ensure they are as aligned as possible. In addition, they consider which lenders the customer would like to look at, or would prefer not to use. The broker then also considers previous dealings with the lenders, treatment of their customers, (e.g. rate movement behaviour, customer service experience) and the lenders' preparedness to support customers ongoing relationship with the broker, to support the customer's needs. • Packages are normally recommended on the basis of discounts that apply to fixed and variable rates (potentially higher than non-packaged products), offset accounts, credit cards and waived ongoing administration/ renegotiation fees. The particular package would need to be a match to the customers' requirements and objectives. • The package offered by the lender would also need to be suitable from a credit policy perspective – servicing, policy niches etc. Service levels and post settlement support also need to be considered. Suggested clarification • ASIC could clarify if they have a particular expectation around the 'basis for a recommendation' that will underpin and help satisfy a broker meeting BID.
	B10Q2 If you are a mortgage broker, do you typically compare a range of packages that are available to you? Do you currently compare packages available to standalone home loan products? If so, how?	• A broker should compare the home loan part of the package and make recommendations based on that. If there are two identical home loan structures, then we will look at other product features (and other considerations) to influence our recommendation. If there are multiple options that would qualify for consideration (subject to the steps noted under B10Q1), then comparison can take into account more incidental aspects such as - customer preference for bank vs non-bank or even a particular lender, customer need or desire for additional products (e.g. credit cards), terms of lender special offers etc. • Advice and goals are sought relating to the mortgage product, so that is what the solution is assessed on. Other product offerings may come with it as part of a loan package but are peripheral. Brokers noted they would always show customer what these are, but not compare them in isolation. (Some are requirements of lender packages, so no choice if you want that loan at that price). Sometimes a customer may ask for a package that includes a certain card level with frequent flyer

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		access for example, however that is considered as secondary to mortgage product features. This then becomes a requirement, but do not currently compare rates, or terms of credit card itself. • Some brokers noted they endeavour to present a customer with 3 or more suitable options. This is likely after the broker has considered lenders in addition to the 3 or more options presented. These options will be presented after analysis to confirm they meet the requirements and objectives of the consumer. • The comparison between packaged loans and standalone home loans is the preference for an offset account. In most circumstances an offset account is only available with a packaged loan which includes some sort of ongoing fee. As noted above, we currently consider other products like credit cards secondary to the main objective, that is the loan and an offset account. <u>Suggested clarification</u> • ASIC could provide clarification as to whether or not brokers are expected to specifically compare like with like or not i.e. package loans to be compared just with comparable package loans to meet BID or, they must also be compared with non-package loan alternatives.
2	B11Q1 If you are a mortgage broker, what do you generally do if a consumer seeks tax advice from you? What other matters outside your expertise do consumers seek guidance on?	• Brokers noted that if the customer asks for specific advice about their circumstances, they would likely refer them to their accountant, but would explain general concepts such as negative gearing and how that could affect the serviceability of an application (e.g. When a bank will or won't consider debt deductible and how that affects borrowing capacity). They also noted that they are often asked about insurance, which we refer to financial planners or insurance brokers depending on the requirement. • Customers also often ask about property advice (suburbs/type of property etc.). Some brokers noted that they have access to property intelligence services such Core Logic, and may provide suburb and individual property reports. • Feedback noted that the brokers are very clear about demarcation of area of authority / expertise. The broker can advise the customer they can assist them to structure the borrowing arrangements to best support the tax effectiveness strategy they have determined with their accountant. The broker needs to be very cautious not to offer any advice they do not have the appropriate qualifications for. • If a consumer seeks tax advice it is important to refer the customer to their accountant or financial planner and if they don't have a relationship with a professional refer them to a professional that the broker deems suitable to assist.

Ref.	Question	Response
		<u>Suggested clarification</u> • ASIC could provide clearer guidelines around the limitations regarding areas of expertise i.e. brokers per se cannot give tax or financial advice, unless they hold appropriate qualifications and/or authorisations to do so. • ASIC to provide an example to assist such as a comparison of interest only vs principle and interest on an investment loan. The structure has a different application to a customer's tax position and many customers expect a broker to identify these differences.
	C1Q1 Do you agree with our general approach to administering the conflict priority rule?	• The conflicts of interests may be difficult to identify particularly if they exist at an arm's length, institutional level. <u>Suggested clarification</u> • Identifying a conflict of interest should relate directly to whether the interest could be seen as influencing a broker's behaviour, and that a materiality and reasonableness test be added to provide context in relation to the conflict's potential to adversely influence any recommendation to the customer.
2	C1Q2 Are there any other factors relevant to the prioritisation of consumers' interests that we should consider including in our guidance?	• The purpose of the *prioritisation* as noted in 000.121 is to ensure that the broker continues to act in the best interests of the consumer. <u>Suggested clarification</u> • The approach to prioritisation could be clarified through a 'materiality and reasonableness' test
	C2Q1 Do you agree with our expectations about record keeping?	• As technology progresses and the new obligations of brokers becomes clear, there is scope for documentation to become streamlined. <u>Suggested clarification</u> ASIC should ensure that the record keeping requirements reflect possible streamlining of documents in the future (noting that they must capture the required information.)
	C2Q3 How long should records be kept for?	• Section 95 of the NCCP states records must be kept for 7 years, however, a loan duration may extend past this time. <u>Suggested clarification</u> • Records should be kept for 7 years after the closure of the loan.

Ref.	Question	Response
	C3Q1 Do you agree with our general expectations about the practical steps credit licensees should take to comply with this obligation? Are there any other relevant factors?	• The CIF notes the reference to ‘reasonable steps to prevent contraventions’ in 000.148. Work is currently underway to develop Key Risk indicators across CIF respondents that monitor broker conduct, but it is important to note these are not intended to operate as, or become performance measures. They are as the name suggests, indicators that a behaviour requires further investigation. <u>Suggested clarification</u> • 000.148**:** Requires further clarification on ‘reasonable steps to prevent contraventions’. Prevention may be difficult to implement as a credit licensee. It is suggested the term mitigate be used in place of prevent.
	C3Q2 If you are a credit licensee, how do you currently monitor your authorised mortgage brokers? How do you intend to monitor compliance with the best interests obligations?	• Credit licensees have a range of compliance and monitoring systems in place to maintain visibility on a broker’s activities. Members have indicated that systems will be updated to reflect the broader expectations of the Best Interest Duty over the existing responsible lending expectations where necessary.