25 March 2020

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Re: SUBMISSION ON CP 327 – IMPLEMENTING THE ROYAL COMMISSION RECOMMENDATIONS: MORTGAGE BROKERS AND THE BEST INTERESTS DUTY

Connective welcomes the opportunity to comment on ASIC's proposals outlined in CP327 and its proposed regulatory guidance on the new best interests duty imposed on mortgage brokers. We acknowledge the work ASIC has done to this stage and appreciate that they have endeavored to consult broadly amongst the industry before circulating CP327 and the draft Regulatory Guide for public consultation.

What is critical from our perspective is that ASIC's regulatory guidance implements the legislative and policy intent of the National Consumer Credit Protection Act 2009 (Cth) (the **NCCPA**) as amended by the Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2019 Measures)) Act 2020 (Cth) (the **BID Act**). ASIC's regulatory guidance regarding the practical application of the BID must also recognize that mortgage brokers currently assist Australian consumers with over 55% of all home loans and that any guidance must also ensure the continued strength and viability of the mortgage broking industry to allow it to focus on delivering good consumer outcomes and fostering competition in home loans.

1 About Connective

1.1 Connective is Australia's leading home loan aggregator with approximately 3,600 individual mortgage brokers holding Connective membership. This represents approximately 20% of all home loan mortgage brokers in Australia and 1 in 8 home loans being written by a Connective mortgage broker. Membership with Connective provides mortgage brokers with access to approximately 60 lenders Connective has on its panel.

1.2 Connective sits in a unique position where we see the daily efforts mortgage brokers take towards providing a valuable service to their customers and achieving good consumer outcomes for these customers, whilst remaining compliant with applicable laws and regulations. There has been a steady and constant growth in the share of all home loans arranged through mortgage brokers over recent years.[1]

1.3 Mortgage brokers are essentially small businesses, with the average broker business at Connective having approximately 1.88 mortgage brokers per broker business. These

[1] Based on MFAA data, mortgage brokers arranged 44.2% of all homes loans in Q1 2013. In Q1 2019, this market share grew to 59.7%. In Q4 2019, mortgage brokers arranged 55.3% of all home loans.

businesses expend very little, if anything, on marketing to attract new clients. Instead, they are heavily reliant on repeat business and referrals from their existing customers. If a mortgage broker was not already servicing customers at a standard equivalent to BID, it is unlikely that the mortgage broker would have a viable business to operate. The fact that mortgage broker share of home loans continues to grow, peaking at 59.7% in Q1 2019, is clear evidence that customers trust and value mortgage brokers and, more importantly, that mortgage brokers are already acting in their customer's best interests.

1.4 Mortgage brokers are critical in promoting competition in the home loan market which benefits all customers regardless of which channel they use. It is critical that any regulatory guidance from ASIC provides clear direction to mortgage brokers on performing their function in a compliant manner without adding unnecessary or excessive costs or uncertainty to the process. Ultimately, a balance must be struck between delivering good consumer outcomes through strong responsible lending guidelines whilst ensuring competition is not adversely affected. Without competition, key elements such as price and service may suffer which ultimately hurts every home loan consumer.

2 Key issues and observations

2.1 In addition to our responses, on behalf of our member finance brokers, to your specific questions in section 3 below, there are some key themes and observations that we would like to raise. We cannot stress enough that the value of a mortgage broker to an individual consumer is much deeper than just sourcing the cheapest available loan.

2.2 Consumer lending is not a commoditised product. Our mortgage brokers operate in a complex and diverse landscape made up of many lenders with different risk profiles and tolerances, individual consumers with unique needs (generally not primarily driven by cost) and a multitude of products with different features, nuances and requirements. Consumers utilise the services of mortgage brokers for so many reasons other than cost, one of which is to navigate this complex environment. This could include assistance with financial literacy, personal circumstances that are too difficult to navigate by themselves or where their day to day bank is unwilling to lend to, and consumers who are just time poor and need someone to do the "heavy lifting" for them.

2.3 Similarly, the important role mortgage brokers play in fostering and ensuring competition in the residential lending market needs to be reiterated. It is critical that any regulatory guidance which does not recognise the many ways in which mortgage brokers provide value and service to consumers, and which imposes standards that are difficult or require great investment to comply with, will increase the cost of doing business for mortgage brokers. Our mortgage brokers have observed that the cost of compliance, and the time they need to devote to compliance, has already increased exponentially over the past couple of years due to the enhanced focus on the entire home loan industry (e.g. the Financial Services Royal Commission, updated responsible lending guidance, inconsistent application of credit policy by lenders). Any additional requirements this guidance will impose on mortgage brokers may harm their commercial viability and ultimately increase the cost of consumer finance through reduced competition and reduced choice.

When BID becomes effective

2.4 We note that the BID Act is effective from 1 July 2020. However, in light of the impact of COVID-19 on all aspects of the home lending market, we recommend that ASIC monitor but do not enforce application of the BID Act for a period of 6-12 months. This will allow the industry to deal with the range of economic and social challenges everyone in Australia is currently facing whilst adjusting its operations to ensure compliance with the BID Act.

2.5 As a mortgage aggregator with approximately 1,600 individual brokers operating as a credit representative under our Australian Credit Licence, Connective will need to implement changes to our policies and procedures, and build enhancements to our software platforms to assist our credit representatives (and our other member mortgage brokers who operate under their own Australian Credit Licence) comply with these new laws. In addition, we will need to invest substantially to ensure our supervisory and monitoring resources are capable of meeting our obligations as a credit licensee when these new laws become effective. Considering the massive economic disruption to all Australians are currently dealing with, ensuring Connective and our brokers are BID Act compliant by 1 July 2020 will be extremely challenging.

2.6 Connective has always maintained that the greater majority of our mortgage brokers already operate at a standard that would meet a sensibly defined "best interests duty". What was pleasing was that the first draft of ASIC's regulatory guidance acknowledged this sentiment and much of the regulatory guide does not require a Connective mortgage broker change much of their day to day operations to remain compliant. What may need to change is how our brokers make records of their communications with their customer and the process through which they ultimately determine which home loan to recommend (and more importantly, how that determination is presented to their customer).

2.7 Our concern is that the penalties are steep for failing to comply with the new legislation. In this current climate, new business for mortgage brokers may decrease dramatically due to COVID-19's impact on jobs, the housing market and the economy more generally. Many of our mortgage brokers are spending most of their time assisting their existing customers through financial hardship situations and navigating through these difficult and still uncharted waters for no remuneration (as they only get paid through upfront and trail commissions). Any relaxation on the application of these new rules would ease some burden on mortgage brokers (and consumers) and allow them to focus on assisting their customers through these difficult times.

Cost cannot be THE factor

2.8 Connective acknowledge that cost of a credit product is an important factor from a consumer's perspective. It is also the most objective criteria when trying to compare unique and different products with one another. However, as a test for BID, it cannot be the sole or most important determining factor and as currently drafted, its importance is overemphasised in ASIC's draft regulatory guidance.

2.9 Consumers seek the assistance of a mortgage broker for many reasons. Each consumer has their own unique circumstances which drive specific needs and requirements. Although cost is one of those considerations, this cannot be elevated above other considerations without appreciating the specific circumstances of that consumer. Other factors which are equally as important, and sometimes more important than price, include:

(a) *Timing/delivery*: Can the consumer get the necessary funds in time to meet a deadline, i.e. obtaining an approval prior to an auction or ensuring funds are available for settlement? Lenders are constrained by their personal operational capabilities. The ramifications of missing a deadline could have a materially adverse effect on the consumer. There is no point recommending the cheapest product if there is uncertainty around whether an approval, let alone the funds, will be available at the time the customer needs funding.

(b) *Features*: Does the credit product offer the features the consumer is seeking? Such features could include fixed/variable interest rates, offset account, ability to redraw, interest only etc. Consumers may not necessarily want the cheapest product if it does not provide the features they seek.

(c) *Credit policy*: The cheapest credit product may not be available to a consumer if that consumer's profile/financial position does not fit within the parameters of that lender's credit policy. There may also be circumstances where a consumer may not be able to borrow the amount required due to the application of credit policy. Part of the value mortgage brokers provide their customers is the ability to understand the differences between various lender credit policies and navigate their customer to the appropriate credit product based on their needs, requirements and credit profile.

(d) *Other (often intangible) factors*: There are many other factors that could be seen to be important or material to a consumer. These could range from familiarity with the existing lender and the customer support that lender provides to the social/community focus or ethical reputation of a particular lender which appeals to that consumer. Many of these factors are driven by qualitative factors that cannot be quantified. However, if they are important to a customer, they should not be seen as any less of a priority to cost. It is not the role of mortgage brokers or ASIC to make value judgments in relation to a consumer's clear preferences.

2.10 As part of fulfilling their responsible lending obligations, mortgage brokers are required to understand their customer's needs and requirements. Usually, it is only after the mortgage broker is able to find credit products which meet those needs and requirements does cost become a consideration. All these factors are presented together to the customer as a complete package as part of the product comparison (see the example Preliminary Assessment attached with this submission).

2.11 We recommend ASIC's regulatory guidance more clearly recognise cost is one of many factors that needs to be considered. We believe RG 000.049 should be deleted as it implies a disproportionate emphasis on cost. From our perspective, the focus should be on delivering a home loan that offers the consumer the best value when taking into consideration that consumer's needs and requirements. "Best value" will be determined based on the individual consumer and the emphasis should turn towards how the mortgage broker understood their customer's needs and objectives and how the product selected meets those needs and objectives.

Range of product and panel

2.12 A mortgage broker can only be required to recommend products from lenders with whom they are accredited. Although Connective, as an aggregator, may have 60 lenders on its panel (many of which operate in areas which are not residential lending), our mortgage brokers are not accredited with each and every one of those lenders. Connective allows its mortgage brokers to choose which lenders they are accredited with. Mortgage brokers will select lenders they wish to be accredited with based on various factors including their client base, the focus of the business and their geographical location.

2.13 Each of the lenders on our panel owns their own accreditation process and has sole discretion as to which mortgage brokers they accredit. The accreditation process usually requires the mortgage broker familiarise themselves with the lender's policies and procedures (and retention of that accreditation requires the mortgage broker remain current with those policies and procedures). A mortgage broker may not be able to obtain accreditation with a certain lender for reasons outside their control (for example, a Big 4 bank will not accredit a mortgage broker with less than two years' mortgage broking experience regardless of their quality as a broker). Similarly, obtaining an accreditation with a new lender may take time (as lender training needs to be completed, application processed etc.) and is not something that can be arranged instantaneously.

2.14 We strongly disagree with the statement in RG 000.102 which states "*you may look beyond your panel when considering whether other products exist that better suit your consumers' needs*". It is unreasonable to expect a mortgage broker be familiar with the products of lenders they are not accredited with, especially lenders not even on their aggregator's panel (let alone the broker take the time to remain current with their terms and applicable credit policies). Stating in RG 000.101 that a mortgage broker "*should have an awareness of the most price competitive products on the market, and the general features and products that may be available*" and engage in informal benchmarking implies an obligation beyond focusing on general features and products – we believe this to be an unreasonable obligation for mortgage brokers to assume.

2.15 Accordingly, any standard that is applied to a mortgage broker must be limited to what that broker has available to them, i.e. the products of lenders the broker is accredited with. Connective's mortgage brokers are already required to disclose in their credit guide which lenders they are accredited with (see sample credit guide attached to this submission). Provided the customer is made aware of all the lenders available to them through the broker from the outset of the relationship, a mortgage broker's compliance with BID should only be tested based on the lenders who that mortgage broker is accredited with.

New legislation creates an uneven playing field

2.16 Connective still holds concerns around how the legislation has been drafted, primarily around who is, and is not, a "mortgage broker". The BID Act uses the phrase "*carrying on business*" in the definition of "mortgage broker" without expressly defining what that means. This creates a large amount of uncertainty within the broker community with brokers uncertain as to whether the BID Act applies to them.

2.17 As such, there are possibly situations where a person could provide credit assistance with regards to a home loan and not fall within the definition of "mortgage broker" for the purposes of the BID Act. Surely this was not the intention that some credit assistance with regards to residential lending would not be subject to BID?

2.18 Similarly, once a person is categorised as a "mortgage broker", all NCCP Act regulated lending is subject to the application of the BID Act. When dealing in non-residential consumer lending, i.e. personal loans, car loans, that mortgage broker is now competing against other finance brokers who by virtue of their business are not categorised as "mortgage brokers" and are therefore subject to a lesser standard with regards to their customers.

2.19 Surely it was never the intention to regulate one group of individuals by mere fact that they are categorised as "mortgage brokers" as defined by the legislation, whereas another group of individuals (who are also finance brokers – just not "mortgage brokers") are not similarly regulated but compete with the regulated individuals in the same consumer finance space.

2.20 To the extent possible, Connective submit that in enforcing the BID Act, ASIC apply it solely to credit assistance with regards to residential lending. This approach would align with Commissioner Hayne's recommendations from the Financial Services Royal Commission. Conversely, if the credit product is not residential lending, only the existing NCCP Act provisions (i.e. responsible lending) should apply to avoid creating an unequal playing field amongst brokers. If government feels other consumer credit needs further regulation, they should address this specifically as opposed to indirectly regulating it for some but not all via this new legislation that was always targeted at residential lending. If this approach is not taken, this may lead to unintended negative consequences including persons operating within the home loan space not subject to a BID and mortgage brokers not diversifying their business operations into other areas of consumer credit which potentially hurts their long term viability as a going concern, limits consumer choice and reduces competition in those sectors.

How BID Act and its accompanying regulations and regulatory guide applies

2.21 Following on from the above point, any application of the BID Act and ASIC's regulatory guide must be applied and tested at individual broker level (obviously, our most preferred approach is that application is at individual transaction level, i.e. home loans, but we acknowledge this may be difficult in light of how the BID Act is drafted). We have a number of broker business members who are structured to have a residential lending arm and a separate asset finance arm (with different brokers operating under each arm). If the new legislation is applied at licensee level, every member of that business will be subject to legislation which was intended to apply to residential lending, regardless of the lending they assist with, creating the various issues identified in this submission.

Non-residential lending consumer products (as part of a package and standalone)

2.22 When considering packaged products, ASIC states at RG 000.115 that a mortgage broker is required to "*compare the package to other packages available to the consumer, and to standalone home loan products without other packaged credit products*". We appreciate that this allows a broker to take a holistic view at the loan package offered to the consumer without having to review in detail each individual product and compare it to other available standalone equivalents. However, RG 000.114 seems to conflict with this as it requires "*recommendations to consumers should identify and consider, for each product within the package* …" Mortgage brokers may not have the tools available to compare certain products on a standalone basis. This may include credit cards with certain frequent flyer benefits – aggregators do not have tools to compare such a credit card with other credit cards available in the market. On this basis, the only reasonable approach is the holistic approach and to consider the loan package as a whole and compare it to other available loans (whether standalone or package) and how they best satisfy the customer's unique needs and requirements.

2.23 By operation of the legislation, mortgage brokers will be also subject to BID with regards to standalone, non-mortgage credit products. Unfortunately, the regulatory guidance does not provide specific guidance with regards to these products.

2.24 Home lending relies on a definable set of variables which has allowed unbiased product comparison tools to be developed and made easily accessible to mortgage brokers. Unfortunately, other consumer credit has not evolved as much, and due to the broad range of variables involved, is exceptionally difficult, if not impossible, to create product comparison tools of similar quality as those available in the home loan space. Multiple factors which are unique to the relevant consumer (credit score/ profile), the product features available (e.g. credit card with frequent flyer points or some other membership) or the underlying asset being financed (e.g. a car – is it new or second hand? Mainstream or exotic? Purchase or lease? Personal use only? Salary sacrifice available?) ensure that product comparisons are not necessarily straight forward or possible to objectively build.

2.25 If BID were to apply in these cases, we would recommend that it primarily be based on meeting responsible lending obligations coupled with, where possible, a comparison of products where more than one product for that customer's needs and objectives is available. The tools are not there, nor the range of products which meet the customer's needs and are available to that customer, for the same BID requirements for home loans be applied to non-mortgage standalone credit.

Remuneration for non-mortgage products

2.26 It is evident that the BID Act and ASIC's regulatory guide have been drafted from the perspective of home lending and the long-established remuneration structure mortgage brokers receive in connection with home lending. However, the remuneration brokers receive for non-mortgage products is structured differently and ASIC's guidance needs to take this into account where applicable.

2.27 For example, certain consumer products allow a broker to "flex down" the interest rate of the credit product in order to secure the business from the customer (ASIC will note that in 2017, it banned flex up commissions in the car financing space). Lenders now set the maximum interest rate charged on certain products, allowing brokers to "flex down" the rate by a maximum of 200 bps in order to win the business from the consumer (essentially, discount the remuneration the broker receive). If BID is applicable, does that require the broker to fully flex down the rate to offer the cheapest possible rate to the customer? Is this a reasonable expectation when this adversely impacts the broker financially and the lender's direct channels do not have the same obligation? Compare this to home loans where the mortgage broker receives a largely standardised upfront fee (usually around 65 bps of the drawn amount net of offset upfront commission and 15 bps p.a. trail commission on the amount outstanding). There is no ability to self-discount or reduce the customer's home loan interest rate at the cost of the broker.

2.28 Another example is certain consumer products allow a broker to charge an origination fee at their discretion. Again, this fee is an important component of the broker's remuneration for that product and the parameters of what can be charged (including the maximum amount) are set by the relevant lender. As with the above example, does the best interests duty oblige the broker to charge no origination fee? It is also important to appreciate that for both this and the above example, these credit products usually have a different commission structure to home loans (including smaller overall upfront fee and no trail commission).

2.29 The above examples create confusion from both an application of BID and the conflict of interest test. In our view, if BID must apply to these non-mortgage products, a holistic approach needs to be applied and the all in cost of the relevant product is one of many factors taken into account when determining whether that duty has been met (see section above under the heading "Cost is not THE factor"). What cannot occur is brokers being unable to be fairly remunerated for providing credit assistance to their customer and unfairly penalised because legislation designed specifically for the nuances of home lending inadvertently now applies to other forms of consumer credit.

Materiality

2.30 We ask that ASIC introduce concepts of materiality throughout its guidance to ensure that a broker is obliged, due to application of BID, to act in a manner that does not actually deliver material benefit to the customer. For example, regarding refinancings, moving to a different lender may deliver certain cost savings (i.e. a marginally lower interest rate) but these benefits may be offset to a large extent by the costs associated with the refinancing. Refinancings are not a costless exercise with real costs for both lenders and borrowers. What cannot be forgotten is that these costs also extend to brokers and a large amount of work is performed by the broker in order to facilitate the refinancing. When considering whether such an exercise is worthwhile for the customer, it is not unreasonable to also factor in the cost to the lenders and broker as part of the overall consideration.

2.31 Considering the subjectivity that arises when the concept of "best" is used, any objectivity in the regulatory guide would be greatly appreciated. We support the introduction of a "reasonable broker" test when determining compliance with the new legislation. We would frame this along the lines of "would a reasonable broker, in the same position (including with the same information disclosed to them by the customer, and with the same considerations, obligations and range of loan products available to the broker) recommend the same or similar loan or loan package".

2.32 To assist the mortgage broker industry comply with these new laws, we suggest both a materiality threshold and reasonable broker test be incorporated.

3 ASIC's specific questions

B1Q1 Do you agree with our approach to structuring our guidance around the mortgage broking process?

Yes. We agree with ASIC's general approach to this proposal.

B1Q2 Are there any steps or processes not covered in the draft guidance which are of particular relevance to the best interests duty?

We broadly agree with ASIC's approach to categorize the process under those three broad headings (i.e. gathering information, making an individual assessment and presenting information and recommendations)

B2Q1 What additional specific issues (if any) do you consider should be addressed in the draft guidance? Why is guidance on these issues needed?

We believe further clarity is required around the s15B determination of carrying on a business of mortgage broking. What is the threshold, e.g. one settled home loan, five applications in a month, merely promoting the availability of the service or something else? As flagged above, this ambiguity will lead to an uneven playing field and potential arbitraging consumer protections for vulnerable consumers of personal loans and asset finance products.

We also believe there needs to be further comment on the intersection of the customer best interests duty with the obligations brokers owe to lenders, who are accepting the risk of customer performance over the term of the loan.

Other areas include (some identified above in section 2 of this submission):

- Guidance on meeting a best interest duty on standalone non-mortgage credit (car finance, personal loans)
- Guidance on materiality threshold and reasonable broker test for the best interests duty
- Guidance on the impact of cash back deals and other lender driven campaigns on a broker's

best interests duty (which are becoming more prevalent).

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?

As a licensee, Connective expects our credit representatives to collect information relating to the customer's personal and financial situation including:

- Income
- Living and other expenses
- Other debts and commitments – both the quantum and quality of their conduct
- Assets/liabilities
- Employment
- Dependants
- Proof of identity
- Likely future lifestyle changes/requirements

In addition, we expect that our credit representatives understand their customer's needs and preferences for finance.

Verification of this information can occur in a number of ways including the review of source documents such as account statements (includes physical copy, softcopy and bank statement technology solutions such as CashDeck), payslips, tax returns, employment checks, ABN/ASIC register searches, credit reports.

This general process is to form a view about the customer's goals and character as much as it is to understand their capacity to meet the proposed new commitment.

B3Q2 When should mortgage brokers make further inquiries into a consumer's circumstances to act in their best interests?

- If after following their 'standard' process, they cannot satisfy themselves they are not acting contrary to the customer's best interest
- Customer's circumstances change during the process
- In the process of verifying the information provided by the customer, the broker identifies inconsistencies or inaccuracies

B4Q1 Do you agree that mortgage brokers should consider products holistically in assessing whether they are in the consumer's best interests?

Yes. Any application of best interests duty needs to be based on a holistic assessment.

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?

Numerous factors to consider and really dependent on that customer's needs and preferences. These include, in no particular order:

- Credit policy/consumer profile (will the lender lend the required amount to that customer)
- Timing and delivery (will the funds or approval be available when required)
- Features (variable/fixed, interest only/principal & interest, offset account, redraw facility,

credit card available, internet/mobile options, access to loyalty programs)

- Specific customer preferences (lender type preference (major, regional, non-bank, socially responsible/sustainable banking practices, other emotional choices)
- Interest rates and fees

Critical to note that price is a factor, but not one that should be preferred over others.

B5Q2 Do you agree with our expectations about how cost and non-cost factors should be considered by brokers when making a product assessment?

Currently, costs are too highly prioritized. Often customers who gravitate to mortgage brokers are not solely motivated by price and therefore, this may not even be a priority of theirs. Cost is just one of many factors a broker must consider.

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 discuss? If so, what are they and why is guidance needed?

Please see our answer to B5Q1 above

B6Q1 Are there any other factors relevant to the presentation of information that we should consider including in our guidance?

No. This should ultimately be at the discretion of the mortgage broker as they determine how to comply with their best interests duty obligations taking into account the individual consumer.

B6Q2 If you are a mortgage broker, how do you typically present information to consumers? Does this information take a particular form?

Relevant information is presented in a variety of ways. We have attached examples of output Connective brokers typically use to this submission.

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)?

Yes. It is important that consumers make an informed decision.

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 generally be presented with more than one option?

Situations involving consumers with greater complexity of circumstances may result in limited or only one option being available. Otherwise, we generally agree that mortgage brokers should provide more than one option if available.

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?

The mortgage broker must clearly articulate to the consumer the differences between one credit product and another and why the broker recommended a particular product over the other in order to allow the consumer make an informed decision. Provided the broker has taken reasonable steps to ensure the consumer has made an informed decision, the broker should be free to implement the product selected by the consumer even if that was not the product the broker recommended.

Provided the broker can evidence they have not acted contrary to the customer's best interests the duty should be seen to have been met. Ultimately the customer always has the final say. Consistent with RG 000.70 to 000.75 and Example 3, the broker should be free to act on the customer's direction provided the solution is not unsuitable. We would expect the broker to have documentation to evidence how they have ensured the customer makes an informed decision (as ASIC note at RG 000.92). If the above has been met, the regulatory guide should be amended to expressly state that acting in accordance with the consumer's direction will satisfy the best interests duty.

B7Q1 Do you require further guidance on the distinction between your obligations under the new best interests duty and the existing responsible lending obligations?

Yes. We believe industry would benefit from further guidance and clarification in relation to situations where satisfying the responsible lending obligations would fall short of meeting the best interests duty.

B7Q2 Are there any other requirements of the National Credit Act that interact with the new obligations and require further guidance?

Further to our comment at B2Q1 and generally above, we believe ASIC should provide further examples of how the best interests duty would apply to non-mortgage consumer credit assistance

B8Q1 Should mortgage brokers be required to consider products provided by parties outside their panel of credit providers?

Absolutely not. As set out above, a broker should not be expected to meet the best interests duty from outside of the lenders they are accredited with and products that are available to them. A broker does not market themselves as being able to access the entire market and therefore it is unfair to require a broker conduct informal benchmarking or be aware of other products and lenders which are not available to that broker.

This view is subject to a broker complying with the Combined Industry Forum's recommendations, which Connective has adopted, around disclosing their aggregator's lender panel and then those lenders with whom they are accredited (see sample credit guide attached to this submission). This allows the consumer to form a view about any limitations the individual broker might have and allows the customer to proceed or walk away before committing themselves to a course of action with that broker. ASIC should set this expectation in its guidance.

B8Q2 If you are a mortgage broker, does the software you currently use present you with options that you are not accredited to recommend?

Connective's Mercury software allows brokers to include all residential lenders from Connective's panel in their product comparisons regardless of the broker's accreditation status with a lender. The product comparison tool is only available for home loans, not other consumer credit products.

B9Q1 Do you agree that the best interests duty should apply at the time of the assessment?

Yes. A broker can only be judged on the information available to them and the applicable circumstances at that point in time. ASIC could provide further guidance as to when that is actually assessed? From our perspective, the final point for assessment is when the loan application is submitted by the broker on behalf of their customer.

B9Q2 Do you agree that when making subsequent assessments brokers cannot necessarily rely on the initial assessment?

Yes, a broker cannot rely on their initial assessment in its entirety. There may be aspects that have not changed which the broker can utilize but generally, a broker should undertake a fresh preliminary credit assessment each time credit assistance is provided. We note however that the extent of enquiry and verification should be scaled depending on the recency of the previous assessment and the nature of the transaction.

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?

Yes provided those changes were "*reasonably foreseeable*" at the time the recommendation was made.

B10Q1 If you are a mortgage broker, on what basis do you typically recommend a package to a consumer?

In consultation with our brokers, we understand they would typically recommend a package when it meets the customer's identified needs and preferences. The total dollar cost of holding the product, using rates and fees current at the time of the assessment, is taken into account in the product comparison. Please see the sample preliminary assessment we have provided that shows how this information is set out.

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?

In consultation with our brokers, the product comparison tool we make available to them makes comparisons from the lender panel and identifies a short list. The lenders and products are ultimately chosen to align with the features identified by the customer as being important.

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?

Connective's policy is that although an Australian credit licence does not permit its credit representatives to provide taxation or other advice, we agree that brokers should be free to discuss basic taxation and investment information where that information is freely available (e.g. via the ATO or ASIC).

When specific advice is required, the customer will be referred to an appropriately qualified professional (e.g. accountant, SMSF adviser, financial planner, conveyancer, solicitor) where the broker or their business is not qualified to provide that advice or is otherwise conflicted.

C1Q1 Do you agree with our general approach to administering the conflict priority rule?

Yes

C1Q2 Are there any other factors relevant to the prioritization of consumers' interests that we should consider including in our guidance?

We would appreciate guidance regarding:
- Referrals
- Certain remuneration issues identified with regards to non-mortgage credit products as identified above
- How does it impact non-credit product such as insurances

C1Q3 Are there other types of activities or conduct that would contravene the conflict priority rule where ASIC should provide guidance?

See answer to C1Q2

C2Q1 Do you agree with our expectations about record keeping?

Yes

C2Q2 Are there any other examples of types of records that could be referred to in our guidance?

No. We believe that the guidance should remain principles based as each broker operates differently.

C2Q3 How long should records be kept for?

No comment

C2Q4 If you are a credit licensee, do you already require the mortgage brokers you authorize to keep standardized records? If you do, what form does this take?

Connective's credit representatives are required to use our Mercury system to record and store electronic copies of all correspondence and documents relating to their customer dealings. Connective does not prescribe a standardized form of record-keeping, just that the broker maintains sufficient records to evidence their compliance with applicable laws and regulations.

Connective's NCCP prescribed disclosure documents are standardized.

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?

Yes

C3Q2 If you are a credit licensee, how do you currently monitor your authorized mortgage brokers? How do you intend to monitor compliance with the best interests obligations?

Connective undertakes periodic reviews of a sample of each representative's consumer credit transactions. These are reviews are triggered with the first consumer application then at least annually.

We also review files in response to:
- lender and customer feedback; and
- internal analysis of various sources of data to identify issues of concern.

These reviews test compliance with responsible lending obligations including the timeliness and

accuracy of disclosures as well as the information and verifications relied upon to make preliminary credit assessments. The quality of the broker's record keeping is part of each review.
We anticipate expanding the scope of our periodic file reviews to incorporate a test for best interests. While this is in development and will be informed by ASIC's guidance, this may see us adapt our existing broker checklists and declarations to align with ASIC's expectations

4 Closing

4.1 Connective greatly appreciates ASIC's efforts in broadly consulting with the industry prior to releasing CP327 and its draft regulatory guidance on the best interests duty. It is absolutely critical that the industry understands the regulator's expectations in this space.

4.2 We hope that whatever update ASIC produces achieves the balance of improving consumer outcomes, enhancing the reputation of the mortgage broking industry whilst ensuring mortgage brokers remain commercially viable so as to continue to promote competition and consumer choice in home lending. A weakened mortgage broking industry only hurts competition, which in turn hurts all home loan consumers (regardless of which channel they use).

4.3 It is also imperative that guidance is clear as to when the BID Act applies to other, non-residential, consumer finance. We hope that ASIC takes into account ensuring that there is an equal playing field and consistency in regulation across all consumer products.

4.4 In the home loan space, Connective is confident that its mortgage brokers are largely already compliant with the new best interests duty and subject to minor changes to how they operate, will meet ASIC's requirements.

Connective is happy to make itself available if ASIC have any queries or wish to consult with us further.

Yours faithfully

Daniel Oh
Group Legal Counsel
Connective

Attachments

Sample of the prescribed Connective credit representative:
- Credit Guide
- Checklist & Declaration
- Credit Proposal Disclosure
- Preliminary Credit Assessment