

20 March 2020

Mortgage Broker BID
Australian Securities and Investments Commission
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Submission on Consultation Paper 327: Implementing the Royal Commission recommendations: Mortgage brokers and the best interest duty

The Mortgage & Finance Association of Australia (**MFAA**) is pleased to have the opportunity to comment on Consultation Paper 327 'mortgage brokers and the best interest duty' and the Draft Regulatory Guide.

We have taken this opportunity to comment on the areas where we believe the Draft Regulatory Guide and Consultation Paper can be improved to better reflect what the MFAA understands as the legislative and policy intent of the National Credit Act and the Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2019 Measures)) Act 2020.

We also focus on areas where the Consultation paper and Regulatory Guide (RG) are currently silent, particularly in regard to conflicted remuneration, and recommend a number of inclusions.

We have also sought to answer the questions posed in the CP 327 consultation paper (see attachment 1), however recommend that the answers to these questions should be read alongside this submission.

This submission also suggests specific solutions to the current drafting issues in the form of alternative drafting suggestions. Where this is undertaken it is to be found at the end of the related subsection.

About the MFAA

With more than 13,500 members, the MFAA is Australia's leading professional association for the mortgage broking industry, with membership covering mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. The stated purpose of the MFAA is to advance the interests of our members through leadership in advocacy, education and promotion. To achieve this aim, the MFAA promotes and advances the broker proposition to a range of external stakeholders, including governments, regulators and consumers, and continues to

demonstrate the commitment of MFAA professionals to the maintenance of the highest standards of education and development.

1. Coverage of the guidance

CP 327 states “This consultation paper sets out our proposals for guidance on the best interests obligations that will be inserted into Pt 3-5A of the National Consumer Credit Protection Act 2009 (National Credit Act).”¹ It is, however, silent on the conflicted remuneration provisions of the Act and regulations. The MFAA believes that further regulatory guidance on the remuneration provisions of the Act and regulations would be useful to the industry to ensure that the interpretation of these does not go beyond the policy and legislative intent. As such this submission highlights the areas relevant to monetary and non-monetary benefits where we believe greater clarification could be of use.

2. Considering cost

RG 000.049 states that:

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.

The MFAA notes that while cost of a credit product is an important factor to the outcome a consumer achieves, we believe it has potentially been over-emphasised in the regulatory guidance, and as such could lead to poor consumer outcomes. Whilst a broker’s value proposition is partly driven by being able to produce a lower cost for the consumer based on their given needs and circumstances, it is often not the consumer’s primary driver and very often not the first aspect that a consumer will ask a broker to look at (particularly new customers).

A broker’s business is dependent on a robust relationship model, where the referrals received are based on the quality of the solutions the broker has previously provided (which includes the price achieved). In addition to this relationship model, there are other control mechanisms in the form of clawback and the loss of trail which incentivise brokers to seek the most appropriate outcomes for their customers. If a consumer is not satisfied with the pricing on their loan and seeks to refinance in the first 18 to 24 months, this results in a clawback of upfront commission from the broker and a loss of trail which provides a strong incentive to ensure that the initial pricing achieved is appropriate.

Many consumers that approach a broker are either new borrowers or borrowers with complex circumstances who may have been turned away from their incumbent lender. On completion of the customer needs analysis, a broker will often consider the suitability of a potential loan in the below order. Providing credit assistance using the below regime aligns with consumers’ best interests. It is important to note that price is **a** factor but not **the** factor:

1. **Credit policy and profile** (There is no point in recommending a lender that won’t approve the loan and/or be able to understand the consumer’s profile and appropriately cover their circumstances).
2. **Timing/delivery** (Obtaining an approval prior to auction or ensuring a loan completes and funds are available before an impending settlement date can be the top priority for many borrowers).

3. **Features** (e.g. offset, fixed/variable Interest only/principal and interest etc. all of which impact price and will be considered alongside the cost of the loan by many consumers).
4. **Pricing, rates, fees** (The rate of interest for the loan is only one consideration when looking at the overall cost of the loan).
5. **Customer service levels.**
6. **Other considerations** (e.g. socially responsible banking practices)

The cost or price of a loan will often only be considered by a consumer once these other priorities have been satisfied, and the comparison presented by the broker will often be amongst products which share the features prioritised by a consumer.

Cost can also be misleading and drive poor behaviour and outcomes that at times can be difficult to unpack. Some lenders for example provide honeymoon rates or initial cashback deals but then may change to a poor Revert Rate after a period in order to recover the initial cost of the offering. Cost will also not necessarily correlate to long term pricing/organisational stability at times of economic disruption when credit spreads are widening and liquidity is becoming challenging for certain lenders as is the case at present time.

Cost should therefore be an important factor, but not “the” important factor. To achieve this the MFAA recommends that clause RG 000.49 be deleted or amended.

3. **Range of credit products and providers**

The concept of ‘panel’ has been introduced into the legislation and explanatory memorandum to ensure that brokers are only required to recommend products from lenders with whom they are accredited. It would place an impossible obligation on a broker and make the BID unworkable should a broker be required recommend beyond their panel. This point has been acknowledged by Government on a number of occasions, and as such we are confident that the intent of the legislation is to ensure that brokers do not have to make ‘off panel’ recommendations to discharge their BID obligations.

RG 000.102 states that *“You are not necessarily required to recommend a specific product outside of your panel”, however it greatly confuses matters by further stating that “you may look beyond your panel when considering whether other products exist that better suit your consumers’ needs.”*

This statement is extremely problematic as it suggests that brokers should compare off panel products with those for which they are accredited before making a recommendation.

The broker value proposition is based on choice, experience, providing credit assistance and making recommendations from the panel of products and lenders for which a broker is accredited. A broker will never be accredited for all lenders and products and expecting a broker to make recommendations for products that extend beyond their panel imposes an unreasonable obligation in the same way it would be unreasonable to expect lenders to recommend products beyond their own offerings.

It would also be impossible for a broker to make such an assessment, as in the absence of being accredited for these products a broker could only make the most basic of

comparisons, and certainly not one which would enable the broker to satisfy themselves that the off panel product “better suits (their) consumers’ needs”.

RG 000.101 states that:

You should have an awareness of the **most price competitive products** on the market, and the **general features and products** that may be available. You should be able to engage in informal benchmarking with the options available on your panel of credit providers, which may assist you to satisfy yourself that your panel and/or accreditations are sufficient for you to act in your consumers’ best interests.

This clause introduces the concept of off panel “informal benchmarking” and goes beyond just focussing on “general features and products” but also requires the broker to focus on “the most price competitive products on the market”. Whilst we acknowledge that a broker will not be able to act in a consumer’s best interests if they do not have a specific product on their panel that is required by the consumer (e.g. a Reverse Mortgage), requiring a broker to benchmark against the most price competitive products in the market, on any given day, will inevitably require regular off-panel recommendations which is not a reasonable expectation.

This undermines the broker value proposition which has always been confined to the choice of available products and lenders on a broker’s panel and has never held a broker out as presenting the entire industry or producing a solution that represents the best product, best outcome, best assistance, or lowest price in the entire market.

It is also inconsistent with CP 327 Clause 55, which states *“We do not propose that mortgage brokers be required to recommend a specific product outside their panel. We note that some credit providers may choose not to deal with certain brokers.”*

Even if off panel “informal benchmarking” was a reasonable expectation, it would be impossible to determine whether the consumer is compliant with the off-panel lender’s credit policy, or whether that lender will be able to complete the loan in an acceptable time frame. As we have mentioned previously in this submission, a consumer will often only consider the price or cost of a product after it has been determined whether they meet the lender’s credit policy, or whether the lender can provide them with the loan finance in time to complete their settlement. As such, this concept of informal price comparison will be meaningless to many consumers.

Rather than fulfilling what we see as the policy intent by recognising the importance of broker accreditation in assisting a broker to make recommendations which are in a consumers’ best interest, off panel “informal benchmarking” significantly undermines the policy intent by asserting that a broker should be able to make sufficient comparisons off-panel *“when considering whether other products exist that better suit your consumers’ needs”*.

The MFAA has consulted widely on the current drafting which appears to require a broker to perform off-panel benchmarking with the prioritisation of price and cost over other features. There are concerns that it **does not align with ASIC’s competition mandate** or to the Government’s intent and could have the following negative impacts:

- **Restricting the viability of mortgage broking and raising barriers to entry for new brokers and aggregators.**

- Requiring a broker to refer business off-panel to meet a BID based on the most price competitive products in the market may require frequent off-panel recommendations which will impact broker income and viability.
- A large panel will become an imperative and new brokers will struggle to gain a foothold in the industry and reach critical mass to make their business viable if they are required to turn away a sizeable portion of their business until all accreditations are in place.
- This will become a major barrier to entry for the industry which will ultimately impact competition in the home lending market.
- Brokers could be forced to desert smaller/boutique aggregators with modest panels in favour of the larger ones such as AFG and Connective which would be a poor overall outcome for competition in the aggregator services that a broker has access to. It would also create raised barriers to entry for new aggregators trying to enter the market.
- **Cost to competition will be high**
 - Lenders currently compete by differentiating their products on a range of features with not every lender being in a position to offer the lowest price in the market. Methods of differentiation include service, features, credit turnaround, social responsibility, sustainable banking practices, community support, regional accessibility, stability etc.
 - By requiring brokers to focus on the “most price competitive products” will invariably force them to recommend the lender with the lowest cost of capital or distribution cost (online lenders) effectively penalising those with a higher cost of capital or distribution costs.
 - Brokers will have a reduced ability to recommend smaller and regional lenders that differentiate their offering in ways other than on price. Larger lenders can cross-subsidise to grow market share and then reprice the back book. Smaller lenders (particularly those where activities are limited to mortgage lending) don’t have the opportunity and so focus on service and features in their product design. Already smaller ADIs are disadvantaged by increased risk weighting. A strong focus on price will come at a high cost to competition in the mortgage lending market for all consumers and not just those that use a mortgage broker. It will also impact the availability of financial services in rural and regional areas.
 - As currently drafted, the regulatory guidance could mean that brokers will have to recommend an online offering that doesn’t even distribute through the broker channel but has the lowest rate (noting that the variable rate offerings from various specialist online lenders tend to be below those available through either the broker channel or through lender branches).
 - As the broker channel is rationalised, smaller lenders will also have less brokers through which to distribute their product. This is likely to benefit the market share of the major banks thereby impacting competition and consumer choice.

As a solution, the MFAA believes that brokers should be required to meet the BID from the products/lenders on their panel (unless they do not have a specific feature or product type) without having to be constantly be second guessing themselves as to whether their panel is appropriate or whether they risk \$1,050,000 for each possible contravention in the process.

To achieve this the MFAA recommends that clauses **RG 000.100 to 104** be deleted and replaced with the following:

As a mortgage broker, you must be satisfied that the credit products you can access and recommend are sufficient to allow you to act in your consumers' best interests.

You are not necessarily required to recommend a specific product outside your panel. However, if you do not have a product on your panel which suits your consumers' needs, you should inform your consumer that you cannot make a recommendation from your panel of credit providers.

If a consumer is interested in a product from a credit provider that is on your aggregator's marketing material, but you do not have access to that provider, you should tell the consumer this.

You should make it clear to consumers that the finance you can arrange will be limited to the products and lenders on your panel.

We also believe that **RG 000.052** and similar clauses should be amended to be limited to the broker's panel (i.e. the lenders and products for which a broker is accredited).

4. Mortgage Managers/Servicers

Mortgage Managers hold themselves out to be lenders and generally exercise some of the rights and obligations of lenders. If they cannot place their proprietary Mortgage Manager product with a consumer then some may adopt the role of intermediary or broker to find an appropriate solution for the consumer. This could be via an aggregator or through their own direct accreditations with lenders.

Applying a BID to Mortgage Manager lenders would be inappropriate in the same way it would be inappropriate to apply a BID to any other lender.

The s15B(1)(b) and (2)(b) exemption applies to licensees who perform the obligations and exercise the rights of a credit provider in relation to the majority of those contracts.

A Mortgage Manager may not perform all the obligations or exercise all the rights and sometimes it may not be in relation to the "majority" of the contracts.

We believe the intent of the legislation is that Mortgage Manager lending activities should not carry a BID and their broker activities should do so.

There is also a risk that servicers of special purpose funding entities such as servicers of securitisation vehicles are also caught under the 15B mortgage broker definition and therefore fall under the BID.

We propose the following wording to be included in the Regulatory Guide in order to clarify:

"The section 15B(1)(b) and (2)(b) exemption will apply to servicers of special purpose funding entities such as servicers of securitisation vehicles. It will also apply to licensees and credit representatives who hold themselves out as a lender and do not promote their credit activities as a mortgage broker. The exemption in s15B(1)(b) and 15B(2)(b) applies to these businesses even if they only perform some of the obligations, or exercise some of the rights, of a credit provider.

If these licensees do not have a product that is appropriate for a consumer, they can act as a mortgage broker and the best interests duty will apply."

5. Packaged products

RG 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.

The MFAA is concerned that whilst the above requirement appears reasonable in theory, there are a number of practical impediments to the broker successfully completing the obligation. Firstly, we believe that there is a risk that RG 000.114 could be interpreted as requiring an individual assessment of each product in the package in comparison to other standalone equivalent products. This is an impossible task as in many cases the key features of a packaged product, including pricing, are only finalised once the application for the package is made.

In this regard we note that in the commentary to example 10 where the broker is providing credit assistance on a new credit card, the broker will need to ensure that the new credit card with the package is in the consumer’s best interests. It goes on to state that because Sofia already has a credit card, at a minimum this may involve:

- a comparison with her existing credit card; and
- a holistic assessment of the outcomes that may be achieved if Sofia takes out the combined package (i.e. relative to the standalone home loan products that are available).

We agree with the guidance provided in the commentary to example 10 however it would be helpful to understand how that would change if the consumer did not have an existing credit card? Specifically, to what extent does the broker need to compare the subsidiary credit card to other stand-alone credit cards? We believe that the solution is to consider it as part of an overall package assessment, which would be a more achievable result as brokers do not have the systems capability to access the full details to be able to compare subsidiary products on a stand-alone basis.

RG 000.115 states “Forming a view on these matters will require you to compare the package to other packages available to the consumer, and to standalone home loan products without other packaged credit products. In some instances, it may be helpful for you to base your recommendations on an assessment of the package as a whole”.

This appears to contradict **RG 000.114** and it would be helpful to understand in what circumstances one could assess the package against another package as a whole.

We are also concerned that there may be a view that Aggregators have a panel of Credit Card providers, which is not correct. The absence of such a panel makes the standalone assessment of one credit card over another extremely difficult. This is compounded by the fact that in many cases a component of the credit card cannot be removed from the packaged credit card offered, nor is it a feature which is driving the selection. The card is almost always ancillary to what the consumer is seeking and a package with a credit card included is often recommended because taking the card will provide the consumer the benefit of a discounted mortgage interest rate for the loan.

Indeed, prior to lodging a consumer's credit application, brokers mostly do not have access to the specific terms, conditions, loyalty point arrangements and pricing of the cards available. Whilst brokers must always ensure that they comply with responsible lending obligations in relation to the credit card, whether or not the card is ultimately included tends to be determined by being part of a "professional package" and driven by the consumer's decision and choice.

The MFAA recommends that an additional example be included after example 10 which clarifies that when the consumer does not have a pre-existing card, that the credit card included in the package is considered as part of an overall package assessment and not as a comparison to other standalone equivalent products.

6. Non-mortgage standalone credit

Whilst **RG 000.112 to 000.117** provides guidance on what recommendations to consumers should identify and consider, for each product within the package, no such guidance is provided for recommendations on non-mortgage standalone credit products. Our comments above in relation to the absence of an aggregator panel for the assessment of standalone, non-mortgage credit applies acutely to these products.

Our concern is that consumers may expect that the BID will be discharged by a broker in the same way for standalone credit products as it is for home loans, with a wide variety of alternative products considered, and in-depth analysis of features considered. The reality will be quite different. It is unusual for a broker to be accredited to multiple lenders for standalone credit products, and no sophisticated software is used for analysis.

We are concerned that brokers will withdraw from selling standalone credit as they are unsure that they can fulfil their BID obligations without posing risk to their businesses.

We recommend that further guidance be considered in this area to clarify the differing obligations to home lending and to ensure that the BID on standalone non-mortgage credit provides a reasonable obligation on the broker that is aligned to the capability they are likely to have. It is important to recognise that the interest rate and features of standalone credit products are often priced for risk and so the cost and features will not be known until the application is completed. The broker should then ensure the consumer understands the cost and the features and wants to proceed.

We would suggest that the guidance require disclosure of the limited accreditations that a broker has for a particular non-mortgage credit product and that the BID is scaled to be an assessment of only the products/lenders for which a broker is accredited.

7. When the duty applies/Top-ups/Other variations

RG 000.105 and **000.106** state that:

The best interests duty applies any time you provide credit assistance to the consumer, based on the information available at the time.

It does not matter whether you have provided credit assistance to the consumer before. For example, if you provide credit assistance suggesting that a consumer remain in a home loan you previously helped them obtain, you will need to act in the consumer's best interests when making that suggestion.

The MFAA believes that linking the best interest duty to a point in time being “any time you provide credit assistance to the consumer” is appropriate and will make the BID both workable and effective.

It does however lead to questions around which broker activities constitute credit assistance and which don't. This guidance relies on Section 8 of the National Credit Act, which focuses on the suggesting and assisting activities of brokers, for guidance. There are still some instances where the status of various activities in our mind are unclear. For example, if a consumer asks the broker to arrange an increase or ‘top up’ of an existing loan for the purposes of a renovation six months after a loan is first taken, is a full BID assessment required where the consumer doesn't request one? Other circumstances may be where the consumer wishes to change from variable to fixed, or change payment frequency, or change payment date.

RG 000.107 says *“If you choose to review the consumer’s circumstances, or you are contacted by a consumer you previously assisted, then the best interests duty will apply to any credit assistance you provide at that time.”* **RG 000.108** also states *“It may be a breach of the duty if the broker suggested the consumer remain in their current home loan when they could refinance to a cheaper product as the broker did not want to incur the consequent liability to the [credit provider] when their commission payments were clawed back.”*

In the same way as when a consumer approaches a broker to negotiate a lower rate with their lender, they will commonly seek small principal increases, or other variations that are usually just a case of carrying out the consumer's instructions. In these circumstances if a BID applied and there was a marginally better deal available with another lender then the broker could be required to recommend the consumer refinance with another lender.

The first scenario has been exempted as not being viewed as credit assistance, however guidance is sought on the loan ‘top-up’ and other variations that occur at the instruction of the consumer. We believe that following the consumer's instructions on ‘top-ups’ aligns with best interest (subject of course to satisfying responsible lending) because consumers typically want speed and ease to access the additional funds. We ask for the guidance to address this and similar situations.

8. Materiality/Responsible-broker test

Whilst **RG 000.054** provides guidance that suggests that cost savings from a refinance should exceed refinancing expenses, we note there is no mention in the regulatory guide regarding the materiality of benefit required.

As Treasury has noted in the past, “refinancing is not a costless exercise with real costs for both lenders and borrowers”¹ and these costs also extend to brokers.

Example 8 deals with a consumer asking if her loan is still appropriate and appears to suggest that staying in the same product would be in the consumer's interest if there is “no benefit” in changing.

However, consideration also needs to be given as to circumstances where there is an immaterial benefit to refinancing. For example, a consumer currently has a home loan rate of 3.20% and approaches the broker after 4 months for a top-up at which time there is a rate of 3.18% available with another lender. In this example even if there is a net benefit to the

¹ Treasury Background Paper 24 clause 259

consumer we do not believe it to be sufficiently material to reasonably justify refinancing the loan with another lender and to justify the costs that the current lender, broker and aggregator are likely to incur in doing so.

A materiality threshold or reasonable broker test in these circumstances would be helpful.

9. Conflict Priority Rule

RG 000.121 states that:

As a mortgage broker, you must prioritise the interests of the consumer if you know, or reasonably ought to know, when you provide the credit assistance, that there is a conflict between the interests of the consumer and the interests of:

- (a) the credit licensee;
- (b) the credit representative;
- (c) an associate of the licensee;
- (d) an associate of the credit representative;
- (e) another representative of the licensee; or
- (f) an associate of another representative of the licensee.

RG 000.123 goes on to state that:

To comply with the conflict priority rule, you must first identify what interests you or your related parties have. You may then consider what a mortgage broker in your position but without a conflict of interest would do.

The MFAA is unclear as to the actual scope of the conflicting associations (related parties) under the guidance. For example, is a supplier of product (lender) with whom a broker is accredited considered to be an associate of the credit rep/licensee and therefore a related party or is only where there is a related shareholding?

We are also unclear as to whether the CPR only applies to credit products the broker may assist with. While the General Principles articulated in RG 000.013 (e) and (f) seem to focus on credit assistance and credit products, RG 000.129 and 000.130 appear to suggest a wider application. RG 000.124 also says “you must not recommend a product or service of a related party that will create extra revenue for yourself...”.

Would this also capture referrals by mortgage brokers or other product such as unregulated loans and add on products such as insurance (Home and contents insurance, Life Insurance, Mortgage Protection Insurance).

Greater guidance and further examples in this area would be appreciated.

10. Remuneration

The MFAA believes that regulatory guidance on the following aspects of remuneration would be of great assistance to industry to ensure that the interpretation of these aspects does not go beyond the policy and legislative intent.

Lender monetary contributions to education and training

It has been common practice for lenders to join with other parts of the industry in contributing towards the cost of providing aggregator education and training events for brokers. The monetary benefits are provided at an aggregator level (rather than to the broker) and typically involve multiple lenders for each aggregator event. All industry parties and consumers benefit from improvements to broker knowledge and conduct generated by these programs.

We are concerned that the draft Regulations do not explicitly allow for the continuation of this support, particularly given that without this exception such funding may be construed as influencing the credit assistance provided under section 158N of the Bill. We are therefore seeking guidance as to whether our interpretation is correct and in the absence of such guidance are concerned that lenders may withdraw these contributions which would be a poor outcome for our industry and the consumer outcomes it produces.

Tiered servicing

It is noted that no reference has been made in the draft Regulations to tiered servicing models provided to brokers by credit providers.

Tiered servicing models are non-monetary benefits that primarily benefit the consumer through providing brokers with faster approvals, direct broker access to loan assessors and broker access to upfront valuations. Whilst the benefits are primarily aimed at the consumer, it could be argued that tiered servicing influences the credit assistance provided and is accordingly a non-monetary benefit that is deemed to be conflicted remuneration under 158N.

Greater guidance is sought to ensure that consumers can continue to benefit from the benefits of tiered servicing.

Infrequent monetary benefits under \$300

The rules applying to infrequent non-monetary gifts should not apply to Aggregators as the provision of these non-monetary benefits by Aggregators does not create or promote a lender choice conflict.

11. Potential Impact of COVID-19

As the coronavirus pandemic continues, the impact is now also being felt in the mortgage broking industry with client contact becoming increasingly challenging and all industry in-person education and training events having been cancelled for the coming months.

At this stage we are working with our lender, aggregator and broker members to assess what the overall likely impact on the industry will be and how it may impact our ability to prepare for legislation that is due to commence on 1 July 2020. However, our primary initial focus has to be on supporting the many consumers who are facing difficulty right now and to assist them as best we can through this period.

Once we have a greater understanding of the overall impact of COVID-19 and any impact that may have on our industry's ability to cope with a 1 July 2020 commencement date we will reach out to ASIC, Treasury and Government to discuss.

Once again, the Mortgage & Finance Association of Australia (**MFAA**) is pleased to have the opportunity to comment on Consultation Paper 327 'mortgage brokers and the best interest duty' and the Draft Regulatory Guide. The MFAA is keen to continue to work collaboratively with ASIC to ensure this guidance assists in enhancing the workability and effectiveness of the BID.

Yours sincerely

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

Mike Felton
Chief Executive Officer
Mortgage & Finance Association of Australia

See below attachment

Attachment 1 – MFAA answer to CP327 questions

- **B1Q1** - Do you agree with our approach to structuring our guidance around the mortgage broking process?
 - **Answer** – Yes, we agree this is an appropriate approach
- **B1Q2** - Are there any steps or processes not covered in the draft guidance which are of particular relevance to the best interests duty?
 - **Answer** – We believe that broadly categorising the process under gathering information, making an individual assessment, and presenting information and recommendations is an appropriate approach.
- **B2Q1** - What additional specific issues (if any) do you consider should be addressed in the draft guidance? Why is guidance on these issues needed?
 - **Answer** –
 - Guidance on meeting a best interest duty on standalone non-mortgage credit e.g. car finance would be of great assistance (see point 6 above).
 - Additional guidance on packaged credit as obligations are not yet clear (see point 5 above).
 - Guidance on how the BID applies to Mortgage Managers and Servicers (see point 4 above)
 - Guidance on a materiality threshold or reasonable broker test for the BID (see point 8 above)
 - Guidance on the impact of cash back deals on a brokers BID
 - How should a cash back deal be assessed against a competing option and over what period should the comparison be made (life of loan or 5 years or 2 years)?
 - Also, how should the upfront cash amount be evaluated when there is no clarity on what the Revert rate will be once the honeymoon is over?
 - Some guidance would be of assistance as lenders are increasingly providing these cash back deals.
 - Guidance and examples on impact of LMI on BID (Given it is not a credit product).
 - Further guidance on what a “basic understanding of tax implications” is as RG 118 to 120 do not make this clear.
 - Further guidance on at what point credit assistance is considered to have been provided (e.g. when the recommendation is communicated to the consumer) and is a BID dependent on the consumer acting upon the recommendation – we believe it should be.
 - Guidance on various aspects of remuneration (see point 10 above)
 - Lender monetary support of industry education and training at an aggregator level.
 - Tiered Servicing arrangements.
 - Infrequent benefits under \$300 paid by aggregators.
 - Additional examples on Conflict Priority Rule (see 9 above).
- **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?
 - **Answer** – A broker would generally do a full needs analysis of the client covering all aspects of a consumer’s requirements, objectives and financial

position including required amount of credit, deposit, term of loan (and exit strategy if relevant), objectives/loan purpose/property being financed, income/expenses, assets/liabilities, credit history, capacity to meet loan repayments, desired loan features, priorities, other preferences, likely future lifestyle changes/requirements.

- **B3Q2** - When should mortgage brokers make further inquiries into a consumer's circumstances to act in their best interests?
 - **Answer** –
 - When the consumer appears to have conflicting goals.
 - Where insufficient information has been provided to be able to assess what is likely to be in the consumer's best interests.
 - Also, where the broker has not been able to verify certain information or in the process of doing so has come up with information that is inconsistent or points to previous information being inaccurate.
 - Where the consumer's circumstances change during the process.
- **B4Q1** - Do you agree that mortgage brokers should consider products holistically in assessing whether they are in the consumer's best interests?
 - **Answer** – Yes, we believe in meeting a principled Best Interests Duty requires a holistic approach.
- **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?
 - **Answer** - As many consumers that approach a broker will either be new borrowers or borrowers with complex circumstances that may have been turned away from their incumbent lender, a broker will often consider a transaction in the below order. Doing so aligns with consumers' best interests:
 - **Credit policy and profile** (There is no point in recommending a lender that won't approve the loan and/or be able to understand the consumer's profile and appropriately cover their circumstances).
 - **Timing/delivery** (Obtaining an approval prior to auction or and ensuring a loan completes and funds are available before an impending settlement date can be the top priority for many borrowers).
 - **Features** (e.g. offset, fixed/variable, social responsibility/sustainable banking practices etc. all of which impact price and will be considered alongside the cost of the loan by many consumers)
 - **Pricing, rates, fees** (The rate of interest for the loan is only one consideration when looking at the overall cost of the loan)
 - **Service levels**
 - **Other considerations**
 - It is important to note that price is **a** factor but not **the** factor.
- **B5Q2** - Do you agree with our expectations about how cost and non-cost factors should be considered by brokers when making a product assessment?
 - **Answer** – We believe that costs has been too highly prioritised. Sometimes just getting approval is the priority or getting it by a certain date. Complexity gravitates to the broker channel and it is often less about price than other factors (see our response to B5Q1).
- **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?

- **Answer – See B5Q1**
- **B6Q1** - Are there any other factors relevant to the presentation of information that we should consider including in our guidance?
 - **Answer – No comment**
- **B6Q2** - If you are a mortgage broker, how do you typically present information to consumers? Does this information take a particular form?
 - **Answer – No comment**
- **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)?
 - **Answer – Yes, we agree that it is important to ensure that the consumer makes 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?
 - **Answer - From discussions with brokers, it is evident that consumers with greater complexity of circumstances often approach a broker when they are unable to arrange credit directly and this can at times result in there being limited or only one option being available. Generally, we agree that a broker should provide more than one option if it is 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?
 - **Answer – The broker should clearly articulate and make records of why the product the consumer has selected is not in their best interests and why the broker recommendation is in their best interests – in order that the consumer may make an informed decision. Provided reasonable efforts have been made to allow an informed decision, then the broker should be able to freely implement the decision that the consumer has made.**
 - **We believe that RG000-92 and 70-76 should be amended to make it clear that acting in accordance with the consumer's direction as outlined in these clauses 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?
 - **Answer – No comment**
- **B7Q2** - Are there any other requirements of the National Credit Act that interact with the new obligations and require further guidance?
 - **Answer – No comment**
- **B8Q1** - Should mortgage brokers be required to consider products provided by parties outside their panel of credit providers?
 - **Answer – A broker should not generally be expected to meet the BID from outside of the products/lenders on their panel.**
 - **Requiring a broker to benchmark based on the most competitive price in the market severely undermines the broker value proposition which has always been confined to the choice of available products and lenders on a broker's panel and has never held a broker out as presenting the entire industry or producing a solution that represents the best product, best outcome, best assistance, or lowest price in the entire market.**
 - **A broker will never be accredited for all lenders and products and expecting a broker to make recommendations for products that extend beyond their panel imposes an unreasonable obligation in the same way it would be unreasonable to expect lenders to recommend products beyond their own offerings. If the current panel structure is effectively outlawed by best**

interests, consumers will lose because they will increasingly be forced to deal with lenders direct who do not and cannot have consumers' best interests as a priority.

- Requiring a broker to make off-panel recommendations based on benchmarking to the most price competitive products in the market **does not align with ASIC's competition mandate** or to the Government's intent and could restrict the viability of the mortgage broking industry and come at a high cost to competition favouring those with the lowest cost of capital (big banks) or lowest distribution cost but at the expense of the rest of the market. This would be a poor outcome for consumers (See point 3).
- **B8Q2** - If you are a mortgage broker, does the software you currently use present you with options that you are not accredited to recommend?
 - **Answer – No comment**
- **B9Q1** - Do you agree that the best interests duty should apply at the time of the assessment?
 - **Answer – Yes, but it would be helpful to define exactly when that is assessed. Should this be at the time the recommendation is made? Also it would be helpful to obtain guidance as to whether a BID only applies where the consumer has acted on the recommendations.**
- **B9Q2** - Do you agree that when making subsequent assessments brokers cannot necessarily rely on the initial assessment?
 - **Answer – They cannot rely on the initial assessment in its entirety but there will be aspects that are unlikely to have changed and that can be more easily understood/verified than in the initial assessment. While responsible lending will apply to principal increases, a BID should not apply to consumer directed principal increases to existing loans and other variations unless it is clear that to implement that request is not in the consumer's best interest.**
- **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?
 - **Answer – Yes, provided there is a focus on "reasonably". If the broker asks a young family whether they intend having children in the next 5 years and the answer in "No" then the broker should not be held accountable should they for some reason decide to start a family earlier than anticipated.**
- **B10Q1** – If you are a mortgage broker, on what basis do you typically recommend a package to a consumer?
 - **Answer – N/A**
- **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?
 - **Answer – N/A**
- **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?
 - **Answer - N/A**
- **C1Q1** - Do you agree with our general approach to administering the conflict priority rule?
 - **Answer – Yes, we broadly agree.**
- **C1Q2** - Are there any other factors relevant to the prioritisation of consumers' interests that we should consider including in our guidance?
 - **Answer – Does it affect referrals? Does it impact non-credit products such as insurances? (see point 9 above).**

- **C1Q3** - Are there other types of activities or conduct that would contravene the conflict priority rule where ASIC should provide guidance?
 - **Answer** – [If it extends to referrals and or non-credit products then further guidance would be helpful.](#)
 - **C2Q1** - Do you agree with our expectations about record keeping?
 - **Answer** – [We agree with the expectations](#)
 - **C2Q2** - Are there any other examples of types of records that could be referred to in our guidance?
 - **Answer** – [No comment](#)
 - **C2Q3** - How long should records be kept for?
 - **Answer** – [No comment](#)
 - **C2Q4** - If you are a credit licensee, do you already require the mortgage brokers you authorise to keep standardised records? If you do, what form does this take?
 - **Answer** – [No comment](#)
 - **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?
 - **Answer** – [No comment](#)
 - **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?
 - **Answer** – [No comment](#)
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