

## **The Great Debate- Possible solutions to the National Finance Broking Regulation.**

This debate has been going on for some time now and no doubt as it draws nearer to the end deadline set for submissions I get the feeling that a majority within the finance industry would all like to see a consultative approach to achieve the required outcomes and to ensure we all get it right first time. After reading numerous articles and submissions on this matter I feel there is a very strong need from the regulatory bodies, industry bodies and their members to come up with an effective regulatory resolution that will enable all authorised finance providers to operate under one national regulation which covers all companies and persons involved within the finance lending industry.

One of the first issues that providers of finance must address is do they clearly understand what advice is and do they really think that they are giving advice or not. Financial advice is defined in the act to mean,

- a recommendation or a statement of opinion or a report of either of those things that is intended to influence a person or persons in making a decision
- Or could reasonably be regarded as intended to have such an influence.

Financial Product Advice is defined in two forms;

- Personal advice- this takes into account one or more of a person's objectives, financial situation and needs.
- General Advice- is financial product advice that is not personal advice.

If we look at the main Industry bodies, Code of Practices associated with the Finance/Mortgage Industry Associations being the FBAA and the MIAA they clearly state the following;

- FBAA- "To provide for our clients the most appropriate facility(s) for their needs (given their particular circumstances)."
- MIAA- "Approved Finance Section 21- A residential Loan Member must suggest or recommend to an applicant only those arrangements for mortgage finance that the Member genuinely and reasonably believes are appropriate to the needs of that applicant."

Given the industry bodies have given clear instructions in their respective codes and given what is described as giving advice one could clearly establish that to be able to ascertain what the most appropriate product to meet the clients needs are, you would first have to take into account one or more of the persons objectives, financial situation and needs are and hence that would clearly place you in the position of giving personal advice.

The line between Personal and General Advice is a really grey area, as we must all admit that we would only occasionally encounter a client that comes to us and requests a particular product from a particular funder.

People within the finance industry also struggle with the concept that Financial Planners should be licenced as they give advice and that wrong advice from them can see client loose money. We must remember at this point in time the Financial Services Industry is strongly controlled and regulated by ASIC and since the introduction of Financial Services Regulation it has made it easier for Financial Advisors to operate as the boundaries are more defined and while there has been some issues with over compliance burdens, these issues are being progressively addressed. There are plenty of checks and balances in place to ensure the client is protected with advice given and product recommended.

If we take the current Finance Broking Industry as it is now we have besides the normal home, investments, commercial, Chattel, Hire Purchase Loans, Debt Reduction Schemes etc, there are now Low Document Loans and Foreign Currency Home Loans and no doubt other innovative finance packages entering the scene and contrary to what a lot of people think and feel Mortgage Brokers, Finance Brokers, Intermediaries etc involved in providing finance to clients could also contribute to a clients loss, if the wrong product or advice is provided. Coupled with the fact that there is no National or Regulatory Licencing controls in place one would think that the clients dealing in the areas of finance would currently be exposed to a greater danger than in the regulated Financial Services Industry environment.

The current twelve issues as identified in the current National Finance Broking Regulation discussion paper can easily be resolved and accounted for in the existing compliant documentation as is currently used in the already regulated Financial Services Industry. There is also a lot of misunderstanding that when regulation comes into play the following issues will arise;

- **Smaller brokers will disappear-** yet with regulation in the Financial Services Industry boutiques Financial Services businesses continue to grow and flourish.

- **There is a lot of extra paper work to complete-** Most of the process that a lot of brokers use today is part of the 9 step process in place under regulation and clear guidelines have been set to enable you to operate in a regulated and structured environment. Computerisation also enables the completion and printout of the Statement of Advice (SOA) document which clearly sets out the product being supplied, fees, charges, break costs, etc coupled with some new and other already existing documents currently being used in the industry.
- **I have been in the industry for many years why do I have to study to get my licence-** This is also another concern for many existing loan writers and given all Registered Training Organisations (RTO) that are accredited to deliver Certificate IV Financial Services(Finance/Mortgage) must offer this pathway. Both the FBAA and MIAA consider a minimum of two years for the experience component of the prior learning application. It is interesting to note in the regulated Financial Services Industry (Financial Planning) environment the actual prior experience requirement is the last 5 out of the past 8 years as a minimum requirement. For those who have not been part of the industry for the at least two years, the requirement to complete Certificate 1V (Finance/Mortgage) is a must along with any other relevant requirement that currently is a requirement of your state or Professional Body.

It is timely to also consider how each state can be regulated with one national regulation to allow all companies and writers to compete on a level playing field. Thought must be given to how the Regulatory controls will be administrated should it look something like this;

- Fall under the control of ASIC and those who want to obtain their own Licence be required to apply for an Australian Finance Service Licence (AFS) which is adapted to meet the needs of the Finance/Lending Profession.
- Or should it stay under the control of the Consumer affairs in each state with National regulations in place, then perhaps all those wishing to apply for their Licence be issued with an “Australian Finance Licence” (AFL).
- It is also probably timely to accredit writers under licence holders and their designation could be “Authorised Finance Consultants” (AFC). Controls and ongoing monitoring of the performances, accreditation and ongoing training to rest with the licence holders. This can be outsourced where required to ensure the compliance and training are ongoing.

A major issue that comes through in the discussion paper is that Mortgage and Finance Brokers, Mortgage Managers, Intermediaries are mentioned but Commercial and Chattel Brokers are not mentioned and hence bring all the groups under one regulation with certain certification levels to suite the respective groups as required. By naming them Authorised Finance Consultants (AFC) would certainly make it a fairer playing field for all and companies and consumers would feel more comfortable knowing they were dealing with a properly accredited person, of a Licence holder.

The Collins Dictionary has the following meanings for the following words;

**Broker-** A person hired to act as an agent in making contracts or sales. (Brokers are not agents of the banks/Lenders and should that terminology be used in today's environment?)

**Consultant-** An expert called on for professional or technical advice or opinions.

While this subject is passionate to us all and discussions could go on fore ever, if I leave you with this thought, the road ahead is not a difficult one and by everyone playing under the same National rules and regulations everyone involved in the process, will benefit.

Disclaimer: This article represents only the views of the author and is not to be considered as advice. Jeff Mazzini is the Managing Director of AAMC Training Group Pty Ltd. Jeff holds the following designations FAIBF, FTIA, FPNA, GAICD, AMIAA, CFP, Licenced Finance Broker.