Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

1 November 2024

By email: Economics.Sen@aph.gov.au

Dear Committee Secretariat,

INQUIRY INTO FINANCIAL REGULATORY FRAMEWORK AND HOME OWNERSHIP

The Mortgage and Finance Association of Australia (MFAA) appreciates the opportunity to respond to the questions on notice following our appearance before the Committee on 16 October 2024. In our answers, we refer the Committee to our prior submission to this Inquiry for additional context.

The two questions on notice were:

1. How many first home buyers do you think are being knocked out because of the three per cent buffer at the top of the tightening cycle?
2. What are the improvements [in relation to a comment about the National Credit Act and promoting product innovation].[1]

QUESTION 1: HOW MANY FIRST HOME BUYERS (FHBs) ARE BEING KNOCKED OUT BECAUSE OF THE THREE PERCENT BUFFER AT THE TOP OF THE TIGHTENING CYCLE?

Currently, no data exists to identify how many mortgage broker FHB clients are unable to secure finance due to the current serviceability buffer setting. To endeavour to address the question on notice posed by the Inquiry, the MFAA conducted a sentiment survey of its members to obtain their insights and observations of the impact of current buffer settings on prospective FHBs.

The results of our survey indicated that, over the past 12 months, respondents had a median of approximately 50 clients, of which around 16 were FHBs. Among these FHB clients, approximately 6 were unable to secure finance due to the current buffer settings.

We note our survey results suggest that survey respondents likely had a higher-than-average proportion of FHB clients compared to the broader broker population.

Anecdotal feedback from our respondents highlighted that, in the current rate environment, while the current serviceability buffer setting is a primary barrier to securing a home loan, other factors also play a role. Other variables include borrower income, existing liabilities, and property values. Survey respondents also noted that, while current buffer settings reduce borrowing capacity for FHBs, they do not necessarily prevent loan approvals. Instead, these settings often prompt FHBs to adjust their

[1] Australia, Senate Economics References Committee 2024, *Financial regulatory framework and home ownership,* 16 October, viewed 1 November 2024, <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Homeownership/Public_Hearings> page15 and 16.

expectations regarding property type, location, or price, with brokers actively working to help these clients explore options and strategies to obtain finance. Additionally, many respondents emphasised the significant role of first home guarantee schemes in assisting FHBs with their home purchases.

QUESTION 2: WHAT ARE THE IMPROVEMENTS? [IN RELATION TO A COMMENT ABOUT THE NATIONAL CREDIT ACT AND PROMOTING PRODUCT INNOVATION]

MFAA member Dentons, a national law firm specialising in credit law provided expertise on this matter, and with their assistance, the MFAA offers the following opportunities to improve the National Credit Act to promote product innovation.

Recommendation 1: Review the Exit Fees Prohibition

Section 31 of the National Credit Code states that the regulations may prohibit certain fees and charges for regulated loans. Regulation 79A of the National Consumer Credit Protection Regulations 2010 (Cth) (NCCPR) prohibits the charging of a fee or charge on the termination of a contract unless that fee is a fixed rate break fee or a discharge fee (Exit Fee Prohibition).

ASIC *Regulatory Guide 220: Early termination fees for residential loans: Unconscionable fees and unfair contract terms* (**RG 220**) states at 220.29:

> *The Explanatory Statement to the National Consumer Credit Protection Amendment Regulations 2011 (No. 2), which introduced the prohibition, states that:*
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> *The prohibition contained in regulation 79A assists consumers to switch home loan credit providers by banning certain termination fees. These fees include those fees commonly referred to as deferred establishment fees. It also includes other fees that do not reflect costs borne by a credit provider as a result of terminating a loan or that seek to penalise a debtor for terminating a loan early.*

The prohibition contained in regulation 79A assists consumers to switch home loan credit providers by banning certain termination fees. These fees include those fees commonly referred to as deferred establishment fees. It also includes other fees that do not reflect costs borne by a credit provider as a result of terminating a loan or that seek to penalise a debtor for terminating a loan early.

As set out in RG 220, the intention behind the Exit Fee Prohibition was to stop lenders making it harder for borrowers to switch loans by imposing fees as a disincentive. It was not to prohibit product innovation which would permit borrowers to defer the main cost of the credit to the end of the loan term. Such innovation could offer more opportunity for first home buyers to enter the market, who may not necessarily have the funds to meet the full amount of their initial repayments – but can ultimately afford the loan with a different loan structure that will help them enter the market. This is particularly relevant for first time home buyers who have increasing earnings and employment potential.

Recommendation 2: Review the Reverse Mortgage Prohibition

The definition of a reverse mortgage is set out at section 13A of the NCC:

'An arrangement is a reverse mortgage if the arrangement involves a credit contract, except a bridging finance contract, and a mortgage over a dwelling or land securing a debtor's obligations under the contract and either:

(a) the conditions in subsections (2) and (3) are met; or

(b) the arrangement is of a kind declared by ASIC under subsection (4) and is made on or after the commencement of that declaration.

Conditions

(2) The first condition is that the debtor's total liability under the credit contract or mortgage may exceed (to a limited or unlimited extent) the maximum amount of credit that may be provided under the contract without the debtor being obliged to reduce that liability to or below that maximum amount.

Note: The debtor's total liability can exceed the maximum amount of credit because interest and some other fees and charges are not included in an amount of credit: see subsection 3(2).

(3) The second condition is that, if the regulations prescribe any prerequisites for the arrangement to be a reverse mortgage, those prerequisites are met.

Once a product meets this definition, there are certain provisions of the NCCP Act, NCC and NCCPR that must be complied with. Relevantly, one such provision is an age-based limitation.

However, like with the prohibition on termination fees, there may be loan structures where deferral of interest is suitable for younger borrowers – particularly for loans with a term and where interest will capitalise for a defined period of time only and will help customers get into the market, and refinance to a more traditional product once their earning capacity increases.

CLOSING REMARKS

If you wish to discuss this submission or require further information, please contact either me anja.pannek@mfaa.com.au or Naveen Ahluwalia at naveen.ahluwalia@mfaa.com.au.

Yours sincerely

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