FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

4 October 2019

Manager
Financial Service Reform Taskforce
The Treasury
Langton Cres
Parkes ACT 2600

Email: ConsumerCredit@treasury.gov.au

Dear Sir / Madam

Mortgage broker best interest duty and remuneration reforms

The Financial Planning Association of Australia[1] (FPA) welcomes the opportunity to provide feedback in response to Treasury's consultation on National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019 and associated regulations.

The FPA supports a system of regulation that is simple and robust and benefits both consumers and financial services professionals. While it is important to provide appropriate protections for consumers, the Government should also be mindful to reduce duplication and inconsistency in regulation as a method of reducing compliance costs for business.

The FPA supports the creation of a best interest duty for mortgage brokers. Best interest duties are now commonplace in the financial services sector and are an important part of consumer protection. To the extent that a professional in the financial services sector can be covered by multiple best interest duties in their interactions with their clients, the FPA recommends that the Government takes a consistent approach in the creation of these duties.

For example, financial planners are already covered by the following best interest duties. Section 961B of the Corporations Act 2001, in relation to the provision of personal advice:

> *"The provider must act in the best interests of the client in relation to the advice."*

Standard 2 of the FASEA Code of Ethics, in relation to a relevant provider authorized to provide personal advice to retail clients in relation to relevant financial products:

> *"You must act with integrity and in the best interests of each of your clients."*

Principle 5 of the Tax Practitioner Board's Code of Professional Conduct in relation to tax (financial) advisers:

> *"You must act lawfully in the best interests of your client."*

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[1] The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- We are recognised as a professional body by the Tax Practitioners Board.

The proposed best interest duty for mortgage brokers for inclusion in the *National Consumer Credit Protection Act 2009* (Cth) is drafted in similar terms:

> *"The licensee must act in the best interests of the consumer in relation to the credit assistance."*

It is appropriate that these best interest duties are set as broad statements of principle and that they apply to financial services professionals as a personal duty. While the drafting of the various duties is similar, their operation in practice is often governed by additional guidance from regulators on how to comply with the duty. It is at this stage that it is vital that regulators take a consistent approach to the extent that it is possible. To be consistent it is also important that the proposed best interest duty for mortgage brokers is crafted as a personal duty on the broker, rather than only as a duty on the Australian Credit Licensee. Complying with materially different regulatory standards adds cost to financial services which is ultimately borne by consumers through higher prices.

We would welcome the opportunity to discuss with Treasury the issues raised in our submission. If you have any questions, please contact me on ben.marshan@fpa.com.au or 02 9220 4500.

Yours sincerely

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