Hi,

I have a concern regarding this section:

Division 2—What is conflicted remuneration?

28VA Monetary benefit given in certain circumstances not conflicted

remuneration

(1) This regulation is made for the purposes of paragraph 158NA(b) of the Act.

EXPOSURE DRAFT

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Benefit given by a consumer

(2) A monetary benefit given to a licensee, or a representative of a licensee, is not

conflicted remuneration if the benefit is given by a consumer in relation to a

credit service provided to the consumer by the licensee or representative.

Other mortgage broker and mortgage intermediary remuneration

(3) A monetary benefit given (whether directly or indirectly) to a licensee, or a

representative of a licensee, is not conflicted remuneration if:

(a) the benefit relates to a credit service provided by the licensee or

representative to a consumer in relation to a credit contract; and

(b) the benefit is not a volume-based benefit; and

(c) the benefit is not a campaign-based benefit; and

(d) for a credit contract that relates to:

(i) the provision of credit wholly or predominantly for the purpose of

purchasing residential property; or

(ii) the provision of credit wholly or predominantly for the purpose of

refinancing credit that was provided wholly or predominantly for the

purpose of purchasing residential property;

the benefit is of a kind referred to in subregulation (4); and

(e) the clawback requirements are satisfied in relation to the benefit (if

applicable).

(4) For the purposes of paragraph (3)(d), the benefit must be one of the following:

(a) an amount given on the basis of the credit service provided to the consumer

in relation to the credit contract, without reference to a particular amount of

credit provided to, or drawn down by, the consumer under the credit

contract;

(b) a benefit that is calculated as a percentage of an amount that is no more

than the drawdown amount for the credit contract;

(c) a benefit that is a combination of either or both of paragraphs (a) and (b).

28VB Drawdown amount for credit contract relating to purchase of residential

property

If:

(a) an amount of credit is, or is to be, provided to a consumer under a credit

contract; and

(b) the credit is provided, or intended to be provided, wholly or predominantly

for the purpose of:

(i) purchasing residential property; or

(ii) refinancing credit that has been provided wholly or predominantly for

the purpose of purchasing residential property;

the drawdown amount for the credit contract is so much of the amount of credit

as is used for that purpose within 90 days after the day on which the credit

contract is entered into by the consumer.

**Details of concern:**

What if the purpose of the loan was predominately for another purpose? Eg: purchase of non-investment assets other than residential property (eg: car, boat, caravan), funds for home improvements, funds for other personal use (eg: holiday or other expenses)? Loans for these purposes are currently captured by the NCCP Act 2019, yet are omitted in this Amendment

The specific description of the purpose being **ONLY** for the **“purchase of residential property”** therefore excludes all other purposes, thus causing commission payments for other purpose loans to be regarded as “conflicted remuneration”

This section must be amended to remove the specific purpose for the loan. Instead, the wording should be as such to provide for the exclusion of the commission for **ANY** loan purpose.

I suggest something like this:

(d) for a credit contract that relates to:

(i) the provision of credit which is regulated by the NCCP Act 2009; the benefit is of a kind referred to in subregulation (4); and

 (e) the clawback requirements are satisfied in relation to the benefit (if applicable).

The NCCP Act 2009 already provides description for loan purposes which cause the loans to be regulated by the Act. This Part is an amendment to the Act, thus ONLY those loans which are regulated by the Act are affected. The particular description in this Draft amendment circumvents the description already provided in the Act and thus causes the commission payments for loans already covered under the act as “conflicted remuneration”. This amendment, therefore, **MUST** carry the same definition for those loans captured in the NCCP Act 2009.