



Competition and Consumer (Price Inquiry— Home Loans) Direction 2019

I, Josh Frydenberg, Treasurer, give the following direction to the Australian Competition and Consumer Commission.

Dated 14/10/ 2019

A handwritten signature in blue ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke.

Josh Frydenberg
Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Price Inquiry—Home Loans) Direction 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Competition and Consumer Act 2010* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

Australian credit licensee has the meaning given by the *National Consumer Credit Protection Act 2009*.

authorised deposit-taking institution has the meaning given by the *Banking Act 1959*.

exempt supply has the meaning given by subsection 95A(1) of the Act.

goods has the meaning given by subsection 95A(1) of the Act.

home loan means a loan secured by a mortgage over one or more residential premises.

inquiry has the meaning given by subsection 95A(1) of the Act.

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price has the meaning given by subsection 95A(1) of the Act.

residential premises has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

services has the meaning given by subsection 95A(1) of the Act.

State or Territory authority has the meaning given by subsection 95A(1) of the Act.

supply has the meaning given by subsection 95A(1) of the Act.

the Act means the *Competition and Consumer Act 2010*.

Part 2—Price inquiry into the supply of home loans

5 Commission to hold an inquiry

- (1) Under subsection 95H(1) of the Act, the Commission is required to hold an inquiry into the market for the supply of home loans. The inquiry is *not* to extend to any of the following:
 - (a) the supply of a good or service by a State or Territory authority;
 - (b) the supply of a good or service that is an exempt supply;
 - (c) the conduct of the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission;
 - (d) the conduct of a mortgage broker.

Note: The matters referred to in paragraphs (c) and (d) fall within scope of other inquiries.

- (2) For the purposes of subsection 95J(1), the inquiry is to be held in relation to goods and services of the following descriptions:
 - (a) home loans supplied by authorised deposit-taking institutions;
 - (b) home loans supplied by Australian credit licensees;
 - (c) home loans supplied by a person who would be covered by paragraph (a) or (b) apart from an exemption in force under the *Banking Act 1959* or the *National Consumer Credit Protection Act 2009*.
- (3) Under subsection 95J(2), the inquiry is *not* to be held in relation to the supply of goods and services by a particular person or persons.

6 Directions on matters to be taken into consideration in the inquiry

Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (a) the prices charged, since 1 January 2019, by suppliers covered by subsection 5(2) for providing home loans, including:
 - (i) differences between the prices advertised and the prices actually charged or paid, with particular regard to interest rates published by suppliers and the interest rates paid by customers; and
 - (ii) differences between the prices charged to, or paid by, existing customers as compared to new customers; and
 - (iii) supplier pricing decisions following changes in the Reserve Bank of Australia's target for the cash rate (which is the overnight money market interest rate), including:
 - (A) the extent to which any resulting price changes were due to changes in suppliers' access to, and costs of, finance; and
 - (B) the timing of suppliers' announcements of price changes and their implementation of those changes; and
- (b) the extent and existence of supplier practices and strategies that create an impediment to existing home loan customers refinancing to an alternative supplier (commonly referred to as 'switching'), including impediments resulting from product features and the effect of product bundling; and

Part 2 Price inquiry into the supply of home loans

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- (c) other impediments to existing home loan customers refinancing to an alternative supplier, with particular regard to:
 - (i) consumer behaviour, including consumer decision-making, biases and choices; and
 - (ii) the availability to the public of information about prices actually being charged, or paid, for home loans.

7 Directions as to holding of the inquiry

Under subsection 95J(6) of the Act, the Commission is directed to do the following in holding the inquiry:

- (a) have particular regard to the activities of those with the largest shares of outstanding home loans by market value; and
- (b) give to the Treasurer an interim report on the inquiry by 30 March 2020.

8 Period for completing the inquiry

For the purposes of subsection 95K(1) of the Act, the inquiry is to be completed, and a report on the matter of inquiry given to the Treasurer, by no later than 30 September 2020.

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Competition and Consumer Act 2010

Competition and Consumer (Price Inquiry–Home Loans) Direction 2019

Section 95H of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may require the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into a specified matter or matters.

The *Competition and Consumer (Price Inquiry–Home Loans) Direction 2019* (the Direction) is made under subsection 95H(1) and provides a direction to the Chairperson of the ACCC requiring the ACCC to hold a price inquiry into the market for the supply of home loans.

The inquiry will support the Government's commitment to promoting competition and good consumer outcomes in the home loan market, including by bringing more transparency to the pricing practices of the banks. As such, the Treasurer is requesting the ACCC hold a price inquiry into the market for the supply of home loans.

Part 1 of the Direction provides the machinery provisions of the instrument, including the definitions.

Part 2 of the Direction provides the terms of reference for the inquiry and guidance on the matters to be taken into consideration. The ACCC must have particular regard to the activities of those with the largest shares of outstanding home loans by market value.

The ACCC must give the Treasurer an interim report on the inquiry by 30 March 2020 and provide a report to the Treasurer by no later than 30 September 2020.

In accordance with section 17 of the *Legislation Act 2003*, the ACCC has been consulted on the terms of this Direction.

The Direction is a legislative instrument for the purposes of the *Legislation Act 2003*. However, the instrument is not disallowable and does not sunset (see *Legislation (Exemptions and Other Matters) Regulation 2015*).

The Direction commences the day after the instrument is registered.

A statement of Compatibility with Human Rights is at Attachment A.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Competition and Consumer (Price Inquiry–Home Loans) Direction 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 95H of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may require the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into a specified matter or matters.

The *Competition and Consumer (Price Inquiry–Home Loans) Direction 2019* (the Direction) is a direction to the Chairperson of the ACCC to hold a price inquiry into the market for the supply of home loans.

The Direction sets out the terms of reference for the inquiry.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.