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Ms Pamella Criddle
National Project Officer
Uniform Consumer Credit Code Management Committee
Department of Consumer and Employment Protection
Locked Bag 14
Cloisters Square, WA 6850

By email: credit@docep.wa.gov.au

Dear Ms Criddle

Pre-contractual disclosure consultation package

AAPBS represents the building society industry at the national level and therefore has a significant interest in legislative developments that impact on the operations of its constituent members.

We appreciate your invitation to comment on the draft Consumer Credit Amendment Bill 2005 and Consumer Credit Amendment Regulation (No) 2005, and make the following observations:

1. We make the preliminary but important point that the amendments being proposed will have significant systems, training and cost implications for credit providers, particular smaller ones such as building societies. The cost of implementing government regulation falls disproportionately on smaller financial institutions as they are not able to achieve the economies of scale enjoyed by larger credit providers.

Regulation is a major cost to business in terms of diverting scarce resources and imposing compliance costs. It is of course also a tangible cost to consumers on whom these costs are necessarily passed, and to governments which administer it.

It is therefore of particular concern to us that there are no plans to test the proposed scheme by simulation or survey prior to its implementation. Nor, as we understand it, is there an intention to undertake a regulatory impact statement to ascertain if the benefit to consumers, if any, outweigh the cost to business.

Consumer advocates themselves are now publicly questioning what protection disclosure in fact provides¹ and whether or not detailed and prescriptive disclosure actually improves consumers' understanding².

¹ "Beyond the Consumer Credit Code – the case for truly national, truly effective regulation of credit",
- Tim Gough – Consumer Law Centre of the ACT

² O'Shea and Finn, Journal of Banking and Finance Law and Practice, Vol 16, March 2005.

Indeed, Access Economics has identified the Uniform Consumer Credit Code as a classic example of regulators overestimating their ability to influence outcomes through regulation and develop regulations that aim to achieve more than is achievable, resulting in worse outcomes than in deregulated markets³. This flaw is typically seen when regulation is overly prescriptive, overreacts to current 'hot' issues or is imposed but cannot be enforced.

Poor regulation occurs where:

- there is no market failure or risk to be addressed;
- if there is market failure, the regulation is aimed at a much broader group than required;
- a one-size-fits-all approach is adopted;
- there is regulatory duplication or overlap;
- no genuine cost/benefit analysis is conducted;
- there is an over-reliance on the proposition that consumers' interests are always best served by more disclosure; and
- legislation is enacted without industry consultation; or
- if industry is consulted, their views are disregarded or given little weight.

It is trite to say that even where business is consulted on proposed new regulations, it is often after the government has already decided to regulate, and business input has limited impact on the eventual outcome.

We consider that legislative proposals must be grounded in thorough consultation, especially among market participants, and rigorous cost/benefit analysis. A thorough analysis of perceived market failures is necessary before legislative proposals are put forward.

2. The draft Consumer Credit Amendment Bill 2005 and the Consumer Credit Amendment Regulation (No) 2005 purport to reflect the policy intention of the recommendations flowing from the PIR and NCP Review in respect of pre-contractual disclosure. As the PIR Final Report was completed in December 1999, we query if the recommendations are still valid after 6 years. Clearly the credit market has evolved dramatically over this time and the recommendations may not have contemplated the credit products and trends prevailing in 2006. We consider that this is all the more reason why the proposed scheme should be tested by simulation or survey prior to its implementation, and a regulatory impact statement prepared to ascertain if the benefit to consumers, if any, outweigh the cost to business.
3. It is noteworthy that one of the criticisms of the current regime is that there is too much information and that some consumers are intimidated by either the amount or complexity of the documentation. The proposed introduction of the *financial summary table* and *summary of other information* will only increase the amount of information required to be provided to consumers and, consequently, is unlikely to address this criticism.

³ Benefits & Costs of Regulation (Access Economics Report)

4. As we understand it, the PIR recommended that the financial table be converted to a simplified 'Schumer Box' format containing "essential financial information", and that other essential information should be provided outside the 'box' and consumers must be informed that other important information is contained in the credit contract. This does not suggest to us that the financial summary table and summary of other information should necessarily be a separate document to the credit contract.

Further, we can see no reason why the pre-contractual statement should not be attached as the front page of (but not forming part of) the contract document. This will also assist in terms of evidentiary requirements (should a customer subsequently allege that they did not receive the pre-contractual statement), as the credit provider would have on file the signed contract with the pre-contractual statement affixed. This would also assist in proving that each person signing the contract has had the opportunity to review the pre-contractual statement.

5. The prominent statement required to be provided pursuant to clause 13B(1) - warning the debtor that the summary of other information is to be read with the financial summary table, the credit contract and the information statement given to the debtor - should not require a reference to specific provisions in the credit contract. Given that credit contracts may not always be standard, it would be onerous if the statement was required to refer to provisions that may vary from contract to contract. Consequently, we consider that it should be made clear that the statement required by 13B(1) need only be a generic statement.
6. We do not consider that it is appropriate for the proposed legislation to prescribe the length of the pre-contractual statement as this may stifle product innovation and flexibility, given that there is still a reasonable amount of information, and number of warnings, which must be given. The "clearly expressed" requirement should suffice in terms of ensuring the customer is able to understand the information presented. If a maximum length is to be prescribed, then further research should be undertaken to ensure that the length is appropriate and able to facilitate more complex products.
7. It is ill-advised to require the new precontractual document to refer to "upfront" and "ongoing" credit fees and charges, in circumstances where the credit contract continues to refer to "retained" and "non-retained" credit fees and charges. We consider that there is every likelihood that consumers will be confused by the different terminology, which in turn will require staff of credit providers to be further trained to explain the distinction to consumers.

Further, we submit that consumers are also likely to be confused because the sum of the fees and charges in the pre-contractual statement will not be the same as those appearing in the contract document.

8. The definition of "up front credit fees and charges" refers to those "payable before the first regular payment is to be made under the credit contract". We consider that this definition is ill conceived and fails to account for products which may not require such a regular repayment. For example, under a reverse equity loan, there is not requirement to make a regular repayment – only one final repayment. We expect that other products may have similar issues. For example, "HomeStart" type products may be repayment-free for a substantial up-front period.

Similarly with construction loans where the lender is prepared to capitalise interest until the loan is fully drawn or reaches a certain balance.

In addition, the "before the first regular payment" concept may cause problems as there may be timing / systems issues. For example, if the first payment will be payable on the first monthly anniversary of drawdown, it may be difficult if not impossible to know exactly which fees will be required to be paid before that date, since the exact drawdown date may not be known at the time the precontractual document is prepared. Similarly, what about government fees which often change on 1 July? A great deal of work was put into making the current fee disclosure regime workable. It would be preferable not to have to revisit those issues.

9. The examples in the Consultation Package themselves suggest that the proposals are not straightforward. For the "standard variable home loan" the example table refers to an initial interest rate of 5.5% (0-12 months) and 6.9% (12 months +). Under "Repayments" it simply states "\$1698 per month". Does this relate to the repayments in the initial discount rate period, or those in the variable period (assuming that the variable rate doesn't change)?
9. A lengthy transition period will be required. We would favour an approach whereby credit providers may comply with either the old or new regimes during a certain period (at least 12 months) rather than setting a particular date on which credit providers must change over. This is particularly the case for home loans where difficulties have previously arisen with legislative changes taking effect on a certain date due to the time delay between up front disclosure / contracts being entered into and settlement.

Please feel free to contact me should you wish to discuss these matters further.

Kind regards



Raj Venga
Executive Director