

5 June 2006

Ms Pamela Criddle
National Project Manager
Uniform Consumer Credit Code Management Committee
Department of Consumer and Employment Protection
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Dear Ms Criddle

Precontractual Disclosure Reform Proposals

This submission has been prepared by us in our personal capacity. All of us are members of the Financial Services Committee of the Law Council of Australia but the submission should not be taken as necessarily representing the views of the Law Council of Australia at this time. We have taken this step so as to provide you with our comments without further delay: we appreciate you accepting this submission beyond the 31 March deadline.

Our submission has two parts. The first sets out our broad policy position and approach to the proposed reforms set out in your Consultation Package. The second part provides some brief technical comments on the draft legislation.

Policy Position and Approach

The Law Council has actively participated in reform of consumer credit law in Australia for many decades, being instrumental in laying the ground work for it back in the 1960s and 1970s. Then, as now, the Council's priority is good regulation that applies consistently across Australia. The Consumer Credit Code is an important part of today's Australian commercial law environment.

Based on this, we are anxious that any reform, particularly affecting the Consumer Credit Code's disclosure requirements, is uniformly applied across Australia.

Also, we are concerned that the proposed reforms do not comply with the legislative review principles of the National Competition Policy Agreement and therefore may not deliver good regulation to Australia's credit consumers and credit providers. The discussion paper in support of the proposed reforms makes it clear that "There are no plans to test the new scheme

by simulation or survey prior to its implementation". To introduce the proposed reforms without establishing whether they will achieve the stated policy objective is, to our mind, a recipe for imposing inappropriate regulation that imposes compliance costs without a discernible benefit.

In addition, the Consultation Package articulates what it states to be a problem with the current approach to the Code's disclosure regime, namely the "length and complexity" of "excessive documentation". Yet, the proposed solution to that problem is to further regulate by requiring an additional layer of disclosure which we suspect will not better inform consumers about their proposed credit dealings.

Accordingly, we think a preferred approach would be to explore ways to improve the current disclosure requirements rather than impose additional ones. We are confident that could be done by taking a collaborative approach with key consumer and finance industry stakeholders, including the Law Council.

However, we consider that it is essential before any reforms are made to the Code's disclosure regime that appropriate and independent research should be commissioned into the way consumers use mandated disclosure and how it can be provided in a way that is actually effective. The fact that the proposed reforms have their genesis in the Post Implementation Review (completed nearly seven years ago) in our view reinforces the need for such research to be commissioned.

Turning now to our specific comments on the reform proposals.

Length Limitation on the Pre-contractual Statement

We consider that the proposed length limitation on the pre-contractual statement (that the financial summary table and summary of other information are to be set out on no more than 2 A4 pages or its electronic equivalent) lacks flexibility and should be changed.

For many existing products, given the required minimum font size, it may not be possible to set out the prescribed information and the prescribed warnings on 2 A4 pages or its electronic equivalent, or less.

Furthermore as indicated in the Post Implementation Review, one of the desired outcomes of the Uniform Consumer Credit Code was to create greater product flexibility and innovation. We are concerned that the proposed length limitation on the pre-contractual statement could stifle product innovation and flexibility by preventing the development of products with product features which would result in the prescribed disclosure information and the prescribed warnings exceeding 2 A4 pages or its electronic equivalent.

We do not disagree in principle with imposing a length limitation for the pre-contractual statement. But we suggest that further research should be undertaken to ensure that the length limitation is appropriate.

Fees and Charges

Under the proposed amendments “up front” credit fees and charges “include” those credit fees and charges “payable before the first regular payment is to be made under the credit contract”. We suggest that more thought is required as to the definition of “up front” credit fees and charges, to take into account:

- (a) products which may not require a regular repayment, for example a “reverse equity” type product; and
- (b) products which are structured such that there are no regular repayments for a (sometimes significant) initial period.

In addition, the “before the first regular payment” concept may cause problems with timing / systems issues. If at the time of the pre-contractual disclosure, the date of the “first regular payment” is not known, there may be issues in knowing exactly which fees may be required to be paid before that date. This could occur, for example, in the case where the first payment is payable on the first monthly anniversary of drawdown and the date of drawdown is not known at the disclosure date.

The examples in the Consultation Package themselves indicate why 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)? In any case, to the extent that proposed new regulation 13A(8)(a) requires that the amount of *each* repayment be inserted in column 2, should not the disclosure state that the borrower is required to make “X” monthly repayments, each of \$1698?

Again, we welcome the opportunity to make this submission and we appreciate you accepting it beyond the 31 March deadline.

Yours faithfully

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