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4 January 2006

Ms Pamela Criddle
National Project Officer
Uniform Consumer Credit Code Management Committee
Department of Consumer and Employment Protection
Locked Bag 14

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Dear Ms Criddle

**Solicitor Lending, Instalment Contracts & the Consumer Credit Code
Consultation Paper & Draft Legislation**

The Australian Finance Conference (AFC) appreciates the opportunity to contribute to the consultation phase of these proposals. In general, we see merit in their implementation. Our submission examines aspects of the proposals relevant to AFC member operations.

Instalment contracts

Consistent with the views we expressed in 1998 to the Post-Implementation Review of the Consumer Credit Code ("the Code"), AFC supports the proposed amendments as they clarify that such contracts are within the Code's jurisdiction. In our view, the initial policy and drafting of the Code intended that they be regulated; the current proposals ensure that. Instalment sales of goods or land, in substance, provide credit to consumers and are competing products to loans and the like. Given that the Code is intended to regulate credit transactions according to substance, the proposals should be non-controversial.

"Cash price" – new definition

We have examined with AFC members the revised definition of "cash price". Apart from the revised definition's role with the proposed instalment contract provisions, its main effect in the context of AFC member operations is largely jurisdictional in identifying hire-purchase agreements and consumer leases that are affected by the Code. We therefore, have no current concerns to express about the expanded definition. However, if it is intended by Officials that the definition should have a broader use and application than it currently does (or to what is currently proposed), AFC would greatly appreciate the opportunity for further consultation.

Finally on this issue, just to clarify in the context of the other current uses of "cash price", we also have no concerns with ss. 125(3) and 131(1) of the Code.

“Mortgage” for the purposes of the Code

Schedule 1 to the Code defines mortgage to include “a credit provider’s title to land or goods subject to a sale by instalments”. The consultation package makes no reference to this, yet it is an appropriate outcome of the proposed amendments ensuring the capture of instalment contracts. By way of comparison and background, s. 10 of the Code, in practice, ensures the prohibition of hire-purchase as a form of consumer finance. That is its policy objective. However, to ensure it does not operate unfairly, a statutory form of mortgage applies should a hire-purchase contract be written. The form of that mortgage is prescribed by and set out in Schedule 1 to the Code’s Regulation. It is not a satisfactory form of mortgage from a financier’s perspective, with limited rights against the “secured” goods – this provides another incentive not to write consumer hire-purchase.

However, current proposals with instalment contracts, to our mind, are not directed at their prohibition; merely at ensuring their regulation by the Code. Given the vendor’s (credit provider’s) interest is regarded as a mortgage for the purposes of the Code (but not necessarily other law, e.g. bills of sale or land title), then we would recommend that the current proposals to amend the Code to capture instalments sales also clarify the nature and extent of that mortgage in the context of the Code. As we see it, there are several options available to Officials –

1. amend the current Schedule 1 mortgage (prescribed by the Code Regulation) to cover actual instalment sales of goods, in addition to its current coverage of deemed instalments sales (refer s. 10 of the Code); or
2. introduce a new form of prescribed mortgage to cover instalment sales of goods or land; or
3. introduce new forms of prescribed mortgage to separately cover instalments of goods on the one hand, and land on the other; or
4. rely on the terms and conditions of the instalment sales contract to articulate the rights in the event of default of the parties in relation to the financed goods or land.

Given that it is not a significant issue for AFC members we do not believe it appropriate to express a preferred option at this stage. Our objective is to draw attention to the need for Officials to consider and clarify the Code’s requirements. However, the AFC would be more than happy to contribute the development of an appropriate policy and legislative response.

Solicitor lending

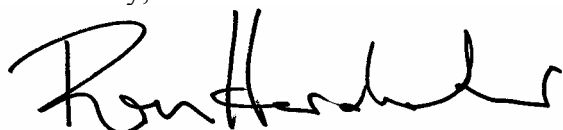
In relation to the reform proposals concerning solicitor lending, the AFC has no firm policy position. However, we do not oppose the proposed reforms as they appear consistent with the Code’s policy objectives.

Conclusion

Consultation of this nature is highly valued by the AFC, and we thank you for it. Should you require further information or have any questions, please contact with AFC’s Consultant, Steve Edwards (email: steve@afc.asn.au), or me (email: ron@afc.asn.au).

Kind Regards & Seasons Greetings,

Yours truly,



Ron Hardaker
Executive Director