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Date: 23 December, 2005

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Pamela Criddle
National Project Officer
Department of Consumer and Employment Protection
Locked Bag 14
Cloisters Square,
WESTERN AUSTRALIA 6850

Dear Ms Criddle,

RE: UNIFORM CONSUMER CREDIT CODE – NEW AMENDMENTS

I refer to the discussion paper “Credit & Financial services: Solicitor lending, instalment contracts and the Consumer Credit Code Consultation package” (the paper) and your invitation to forward comments with respect to its contents. Thank you for the opportunity to comment on the above discussion paper.

I confirm email advice that the Legal Services Commission has been granted an extension in time to forward comments to you.

The proposed amendments of the Code are of direct relevance and interest to the Commission since our legal advice service, offered via the telephone and on a face-to-face basis, includes the provision of advice and information to consumers on a wide range of transactions including consumer credit matters.

The Commission welcomes any legislative changes which extend the protection and disclosure provisions of the Consumer Credit Code to consumers, especially those vulnerable members of our community.

VENDOR TERMS CONTRACTS

Instalment contracts for the sale of land were abolished in South Australia pursuant to s 6 of the Land & Busines (Sale and Conveyancing) Act (1994)

6. (1) A contract for the sale of land or a business that provides for the payment of part of the purchase price of the land or business (except a deposit) before the date of settlement is void.
- (2) Money paid under a contract that is void under subsection (1) may be recovered by action in any court of competent jurisdiction.

The Commission endorses the proposal to ensure the protection and disclosure provisions of the Code apply to these contracts. However as they are void in South Australia it may be appropriate to insert in the proposed clause 9A

Not applicable in South Australia pursuant to s6 of the Land & Business (Sale and Conveyancing) Act (1994)

SOLICITOR LENDING

The solicitor lending market is uncommon in South Australia with only two cases of solicitor lending have been cited by advisors at the Commission.

The practices alluded to in the report by Nicola Howell entitled *Solicitor lending to consumers : a study of interest only loans and asset-based lending practices in Victoria* highlights the need to protect vulnerable consumers particularly with regard to the paucity of enquiries as to capacity to pay and the requirement to sign the business purposes declaration thereby avoiding the application of the Code. Given the drastic outcomes for these consumers the recommendations are to be commended

The Commission takes the view that solicitor lending can expose both the individual investor and the borrower to unnecessary risk where they may not be protected from less than scrupulous tactics. Further, it is considered that proposed legislative protection will provide no barriers to otherwise responsible and ethical South Australian practitioners.

TINY TERMS CONTRACTS

The Commission endorses this proposal as it brings such arrangements within the protection provided by the Code

Yours Sincerely,

Hamish Gilmore
Director