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Ms Pamela Criddle  
National Project Officer  
Uniform Consumer Credit Code Management Committee  
Department of Consumer and Employment Protection (WA)

Email: [credit@docep.wa.gov.au](mailto:credit@docep.wa.gov.au)

Dear Ms Criddle

**RE: CREDIT & FINANCIAL SERVICES SOLICITOR LENDING, INSTALMENT CONTRACTS.**

Thank you for the opportunity to make submissions in relation to the recent Consultation Package. The MIAA is the peak mortgage industry body. The views expressed below have been developed by a committee and do not necessarily reflect the view of a majority of our members.

### **Sale of land by instalments**

*Ensuring "standard" contracts are not affected by the proposals.*

It is common practice in standard sale contracts to provide that if the purchaser does not complete the purchase on a specified date that the purchase price will increase by an amount calculated by reference to an interest rate. This will not be (and should not be) captured by the proposals because standard sale contracts will not fall within the definition of a *land terms sale contract*.

A land terms sale contract is defined as a contract for sale of land under which the purchaser is bound to make a payment (other than a 10% deposit) without being entitled to receive a conveyance. Under a standard sale, the purchaser receives a conveyance when the balance purchase money is paid.

There is a risk that some structured sales which are not typical terms sale contracts may be unintentionally caught by these provisions, such as where a deposit in excess of 10% is payable. However, these structured sales should ordinarily be excepted from the UCCC because they are not with individuals or predominantly for private purposes. Accordingly, this risk is outweighed by the benefit derived from having proper disclosure

for purchasers under terms contracts. The proposed simplified Schumer Box is desirable to ensure this disclosure is effective.

#### *Assessing the charge for credit*

Under the proposals, the amount by which the total payable by the purchaser (other than for outgoings) exceeds the *cash price* is the charge for providing the credit.

Terms contracts may or may not have an interest rate running on the unpaid purchase price. Any interest would be included in the amount of the excess, but the proposed legislation should make this clear. Is it proposed that interest must be identified separately?

#### *Disclosure of cash price*

The proposal requires the disclosure of the *cash price* being:

- (a) the lowest price that a cash purchaser might reasonably expected to pay the vendor; or**
- (b) if the land/goods are not available from the vendor for cash but is available from another vendor, the lowest cash price of that other vendor; or**
- (c) if the land/goods are not available for cash from any supplier, the lowest price a purchaser might reasonably be expected to pay.**

It appears (b) will never have any application to a sale of land, as land is usually available from one vendor. That vendor could frustrate the intention of the proposal by maintaining that its cash price is the same as its terms price (which for terms contracts carrying an interest rate, will often be the case).

In any event an accurate value is often very difficult to determine in relation to real estate. It is unlikely that a mortgage wrapper would insert the price for which the mortgage wrapper purchased the land because the mortgage wrapper would argue that it acquired the land below market value. If the intention is to require a vendor of the terms contract to disclose the vendor's acquisition price, then that needs to be expressly legislated, but may be misleading.

We have grave reservations about the commercial objectives being achieved by requiring the disclosure of the cash price for goods or land, because of the difficulty in fixing that price.

#### **Sale of goods by instalments**

Although an interest rate is usually disclosed for real estate terms contracts, often an interest rate is not disclosed when goods are sold on terms. Instead, the buyer is simply told that instalments have to be paid (in effect the purchase price is inflated).

*Comment:* We support the disclosure of interest charges to buyers of sale goods by instalments, but are not convinced the proposals will achieve the commercial objectives for the following reasons.

1. The initiative does not capture loans by third parties or unsecured loans.
2. Under the proposal, the amount by which the total payable by the purchaser exceeds the *cash price* is the charge for providing the credit. Any interest would

be included in the amount of the excess, but the proposed legislation should make this clear. Is it intended that interest should be identified separately?

3. The requirement to specify the "real" cash price will be difficult in practice. For example, must the price you can buy the goods on eBay be taken into account?
4. There are problems in establishing the *cash price* which may make the proposals unworkable - see above re sale of land by instalments.

### **Solicitor lending**

Some mortgage brokers and other intermediaries match borrowers with lenders in the same way as solicitors. These initiatives should apply equally to those intermediaries and not be limited to solicitors. If this suggestion is adopted, the only loans to which the UCCC would not apply are private loans arranged directly between a borrower and a lender or through an intermediary who does not arrange loans as part of or incidental to a business.

The proposals contemplate that the credit provider will be the law practice. We do not understand how will this will work as the lender is in fact the client, as the deeming is not limited to the disclosure regime. In any event, we consider these loans (and therefore the actual credit provider) should be wholly subject to the UCCC.

The objective is to provide protection to consumers and this can only be done by ensuring that anyone who is conducting an enterprise (a rather broader concept than conducting a business) in relation to the provision of credit is obliged to comply with the UCCC.

### **Conclusion**

There are also major opportunities for avoidance of the protection offered for all three initiatives by use of third party credit providers, and third party loan intermediaries. Even if better disclosure is desirable in these areas (as we think it is), it is unlikely these proposals will achieve that objective.

Yours sincerely



**PHIL NAYLOR**  
CHIEF EXECUTIVE OFFICER