

9 December 2005

Pamella Criddle
National Project Officer
Uniform Consumer Credit Code Management Committee
Locked Bag 14
Cloisters Square, Western Australia 6850

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

Dear Ms Criddle,

Submission - Inclusion of Solicitor Lending, Vendor Finance and Other Instalment Contracts under the Uniform Consumer Credit Code

Thank you for the opportunity to provide our thoughts on the inclusion of solicitor lending, vendor finance and other instalment contracts under the *Uniform Consumer Credit Code* (UCCC).

The NCUA is responsible for representing the interests of member credit unions to appropriate government departments, authorities and parliamentarians, as well as advising members of all appropriate legislative and related developments and requirements.

Credit unions are financial co-operatives, owned and controlled by their members. Credit Unions operate in the financial sector and generally provide financial product advice, deal in deposit products, non-cash payment facilities, and general insurance products. Credit unions are required to hold an Australian Financial Services Licence under the Corporations Act authorising these activities. Credit unions also undertake a banking business and offer loans, and as such are an Approved Deposit Taking Institution (ADI) under the *Banking Act 1959*, and a lender under the UCCC.

The NCUA believe that all business providing consumer credit should be required to meet similar requirements to financial institutions such as credit unions. A level playing field for all lenders providing consumer credit should be the objective of a *uniform* legislative scheme. Accordingly we are supportive the proposed amendments to the UCCC.

Sale of Land by Instalment

Such arrangements arise where the purchase price is payable in instalments and the purchaser is entitled to possession but title does not pass until payment of the final instalment, irrespective of whether the vendor discloses the charge for the provision of finance.

We are concerned that in this situation consumers may not be aware that they are being charged extra over and above the purchase price for vendor finance.

We do not have any issues in relation to the proposed provision dealing with "Sales of land by instalments" (s.9A). We believe that the approach of adopting the "cash price"

mechanism ensures that it operates consistently with other provisions of the UCCC, namely s.10, however we do envisage difficulties in determining the “cash price” of the land. This difficulty will have a flow on effect to other concepts that rely on the concept of a “cash price”. For example the “charge” for providing credit (proposed s.9A(2)(d)) may be difficult to determine. The lack of certainty may increase the risk of manipulation by the Vendor.

The issue with applying the amended definition of “cash price” to land is that all properties are unique. This is generally recognised in law by the availability of specific performance as a remedy for breach of a sale of land contract. The concept of “cash price” may be difficult to determine as the “lowest cash price” will be the market value. This is not readily determinable by the vendor in calculating the “charge” under s.9A(2)(d) and may potentially be subject to manipulation.

Sale of Goods by Instalment and ‘Tiny terms’ Lending

We understand that a sale of goods by instalment arrangements arises when the purchase price is payable in instalments and the purchaser is entitled to possession but title does not pass until payment of the final instalment. “Tiny terms” lending is an arrangement where the cost of credit is incorporated into the cash price and the goods are sold by instalment without any express credit charges or interest.

We believe that the provisions in the proposed s.9B successfully bring conditional sale of goods and “tiny terms” lending under the UCCC. Our comments in relation to the difficulties with the definition of “cash price” does not apply in the case of generic goods. We believe that paragraph (b) of the revised definition will ensure that an appropriate price is adopted.

Solicitor Lending

We understand a solicitor lending arrangement to be a situation where a solicitor acts as an intermediary or deals with payments on behalf of investors or clients.


Whilst we can appreciate the need to specifically regulate such arrangements, we fail to see how it is different to a situation where an accountant or some other finance professional or mortgage broker acts as an intermediary or deals with payments on behalf of investors.

We submit that it may be more appropriate for the amendments to operate on a functional basis rather than make reference to a particular professional group. Should a person’s function be to arrange finance in a similar fashion to solicitor lending, they should be equally regulated. The full scope of such a provision must be fully investigated, as there is potential for it to inadvertently impact on activities that were not intended to be regulated.

Please feel free to contact us should you require any further information.

Yours sincerely,

National Credit Union Association Inc.



Philip Elliott

Chief Executive Officer