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The Real Estate Institute of Victoria Ltd

ABN 81 004 210 897

Real Estate House

335 Camberwell Road

PO Box 443 Camberwell

Victoria 3124 Australia

Telephone 61 3 9205 6666

Facsimile 61 3 9205 6699

DX No. 12430

www.reiv.com.au

reiv@reiv.com.au

Ms Pamela Criddle
National Project Officer
Uniform Consumer Credit Code Management Committee
Department of Consumer & Employment Protection
Locked Bag 14
CLOISTERS SQUARE 6859 WA

Dear Ms Criddle,

**MINISTERIAL COUNCIL ON CONSUMER AFFAIRS
"CREDIT & FINANCIAL SERVICES SOLICITOR LENDING, INSTALMENT CONTRACTS
AND THE CONSUMER CREDIT CODE CONSULTATION PACKAGE"**

The Real Estate Institute of Victoria Ltd (REIV) has pleasure in making this submission on the abovementioned Consultation Package.

The REIV's submission is only made in relation to the proposal to extend the provisions of the consumer credit code to "instalment contracts" for the sale of real estate, commonly known as "terms contracts" in Victoria. In this submission, the REIV has used the phrases "terms contract(s)" when referring to "instalment contracts".

Victorian Lawyers RPA Ltd submission –

The REIV has been provided with a copy of the submission made by the Law Institute of Victoria in relation to terms contracts. The REIV agrees with and fully supports that submission.

Existing Victorian legislation dealing with terms contracts -

The Consultation Package is remarkable in that it only makes passing reference on page 10 to current Victorian legislation governing terms contracts for the sale of real estate. Furthermore, the Consultation Package provides no commentary upon or analysis of current Victorian legislation affecting terms contracts for the sale of real estate.

The Institute is of the view the failure of the Consultation Package to comment on current Victorian legislation dealing with terms contracts of sale or undertake any analysis whatsoever of it, results in the Package presenting a view biased towards adopting a predetermined solution which, in the case of Victoria at least, is out of step with current legislation, is unnecessary to protect consumers and will result in unnecessarily expensive and burdensome regulation on vendors who choose to sell their real estate by terms contracts, or who for technical reasons find their essentially cash contracts of sale classified as terms contracts, if only on a transitory basis.

Sale of Land Act 1962 -

Victoria has had legislation applying strict controls to terms contracts of sale for many years. These controls are set out in the Sale of Land Act 1962 (Act No. 6975/1962).

"Terms Contracts" are specifically defined (section 2) as those for the sale and purchase of land under which a purchaser is (a) obliged to make 2 or more payment to a vendor after

signing a contract and before being entitled to have the ownership transferred, or (b) entitled to possession or occupation of the land before becoming entitled to have ownership transferred.

"Land" is also specifically defined (section 2) as including land of any tenure, and buildings and parts of buildings, and other corporeal hereditaments as well as an undivided share in any estate or interest in land.

The Act contains very specific requirements which must be complied with when a vendor sells land under a terms contract of sale in Victoria. The requirements are set out in sections 3 (basic terms contract requirements to be met by vendors), 4 (right of purchaser to have property transferred and give mortgage back), 24 (protection of deposits), 26 (application of deposits where contract rescinded), 27 (release of deposit monies), 31 (cooling off period), and 32 (vendor statement) of the Sale of Land Act.

The protections provided to purchasers under terms contracts of sale by the Sale of Land Act have worked effectively for many years and are more than adequate to protect purchasers' interests.

Section 32 statements and terms contracts of sale -

A section 32 statement is of particular importance so far as a terms contract is concerned. The statement must contain details of finance to be provided by the vendor including: deposit payable, balance of purchase money including total interest (less deposit), final payment when periodical payments completed, purchase price excluding total interest and deposit if shown in contract, lowest price at which land may be bought for cash where contract does not show purchase price less interest and deposit, number of repayments, amount of each repayment, dates when repayments due, annual percentage interest rate, whether the interest rate is variable, the total interest payable, and charges for late payment.

Failure to provide the details of finance, or providing them in an incomplete or inaccurate form, entitles a purchaser to give a notice rescinding the terms contract (section 32(5)).

A section 32 statement must be provided to a purchaser before a contract of sale – including a terms contract of sale – is signed.

The REIV is of the view the disclosures that must be included in the section 32 statement provide a purchaser with all the information necessary – in an easily understood format - to make an informed decision about whether to purchase under a terms contract of sale.

The REIV does not consider enforcing credit code requirements on vendors under terms contracts of sale will result in any better information being provided to purchasers than that which must currently be provided under section 32 of the Sale of Land Act.

Typical terms contracts of sale -

Terms contracts of sale, in the main, arise in Victoria in the sale of homes and farms. Typically, the traditional terms contract provides for a deposit, followed by an instalment of the purchase price, on the payment of which the purchaser takes possession of the property and assumes responsibility for property outgoings, and the balance of the purchase price is paid off by instalments which include interest at an agreed rate. When the purchaser makes the final payment, the vendor provides a transfer enabling the purchaser to record the change of ownership at the Land Registry. In the interim, it is usual for the purchaser to protect his or her interest in the property by lodging a caveat against the vendor's title.

It is the REIV's experience that traditional terms contracts tend to occur more frequently in provincial Victoria than in metropolitan areas. They serve a very useful purpose, and there has been little complaint about them since they were made subject to the strict controls to be found in the Sale of Land Act 1962.

Often vendors in country towns wish to be able to provide terms in an effort to make their properties more attractive to buyers. It is not an infrequent occurrence for farmers to be prepared to offer terms contracts when selling their properties.

The REIV is of the opinion forcing these vendors to comply with the consumer credit code is unapt and quite unnecessary. Grafting the code onto traditional terms contracts will effectively sound the death knell of a simple and effective form of community lending because vendors will, quite naturally, be unwilling to comply with the bureaucratic red-tape and additional expense involved.

In many instances, particularly in rural communities, being able to offer terms to a purchaser will mean the difference between making or not making a sale, in circumstances where a farmer is selling a property on retirement.

A notable and important feature of terms contracts is that in the main vendors are not in the business of dealing in real estate nor in the promotion of financial schemes and are only involved as private individuals or family companies (in the case of farming properties) disposing of their real estate.

Consultation Package provides a misleading picture of terms contracts -

The Consultation Package is notable in that it refers to instances of what might be termed shady dealings which, in recent times, have come to be identified with organisations promoting get rich quick property schemes – refer "Sales of land by instalment", page 4 of consultation package – and ignores typical terms contracts which by far comprise the majority of this type of dealing between vendors and purchasers.

The impression created tends to mislead the reader into thinking the scenario mentioned is typical when, in fact, it is far from being so.

This impression is reinforced by the highly unusual example provided on page 5 of the consultation package under the heading "Consumer detriment Vendor terms". A highly emotive atmosphere is created by phrasing such as "..Sue was struggling to pay her \$220 week rent..", "...little money left to provide for her children...", "...the vendor foreclosed on the property with two weeks' notice..".

It is clear from the example, the sale contravened the requirements of section 32 of the Sale of Land Act and was thus could have easily been avoided by the purchaser obtaining the most basic of legal advice. As the Law Institute of Victoria has pointed out in its submission, the requisite advice could have easily been obtained at a community legal centre, incidentally free of charge.

The REIV notes the requirement for the purchaser to pay the vendor's legal fees contravened section 42 of the Property Law Act 1958.

Whilst the highly unusual example could possibly suggest the need for additional disclosure and prudential requirements to be placed on property scheme promoters, other than those already contained in the Sale of Land Act, it does not provide a convincing example on which to suggest all vendors under terms contracts of sale should be obliged to comply with the consumer credit code.

REIV answers to questions on page 10 of consultation package -

Qu: Will the proposed amendments enable credit providers to provide the disclosure required in section 15 of the Code?

A: The REIV considers the proposed amendments are unwarranted and the requirements of section 32 of the Sale of Land Act provide adequate, easily understood, disclosure for purchasers under terms contracts of sale

Qu: *Are the proposed laws consistent with other legislation applying to vendor terms such as the Sale of Land Act 1962 (Vic)? If not, why not, what are the consequences and how can the proposals be improved?*

A: The proposals are inconsistent with the requirements of the Sale of Land Act 1962. The reasons for the inconsistency are referred to above under the heading "Sale of Land Act 1962". The REIV is of the view the proposals are unnecessary because the Sale of Land Act already provides adequate protection for purchasers under terms contracts of sale. The proposals should not be adopted.

Qu: *Will the proposed amendments enable the "cash price" of the land to be readily determined? If not, why not? How can the proposals be improved?*

A: The section 32 statement disclosure already provides the amount of the "cash price". The proposal is thus unnecessary.

REIV recommendation on Consultation Package -

The REIV is of the view the Consultation Package – in so far as it attempts to justify applying the consumer credit code to all terms contracts of sale - is flawed and should be withdrawn for the reasons set out below.

The Package attempts no analysis of existing protection provided to purchasers under terms contracts of sale by the Sale of Land Act 1962. It makes no meaningful analysis of the impact, both legal and economic, on vendors of extending consumer credit law requirements to all terms contracts of sale.

The Package provides a highly unusual, emotive example of the perceived evils of terms contracts as justification for extending the requirements of the consumer credit code to all terms contracts. The example provides no such justification.

The Package has been drafted with a predetermined end in mind viz to require all vendors – no matter what their background or the circumstances giving rise to their terms contracts - to comply with the consumer credit code. This "one size fits all" approach is not justified when existing protections provided to purchasers under the Sale of Land Act 1962 are taken into account.

The Package fails to provide a fair and balanced assessment of terms contracts as they are controlled and operate in Victoria.

Use of Corporations Law/Trade Practices Act -

If it is the intention of the Ministerial Council on Consumer Affairs to strengthen the law in relation to financial schemes promoting terms contracts of sale, the proper approach, in the opinion of the REIV, is to deal with such schemes in the Corporations Law or the Trade Practices Act not by applying the consumer credit code to every vendor who enters into a terms contract of sale.

REIV point of contact –

All future correspondence regarding this submission should initially be directed to the REIV's Chief Executive Officer at the above address.

Yours sincerely,



ENZO RAIMONDO
Chief Executive Officer