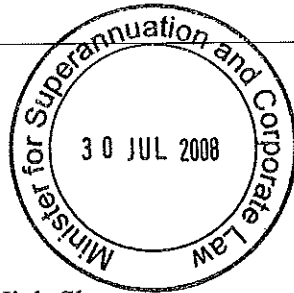


Your ref:

July 25, 2008

Senator the Hon. Nick Sherry
 Minister for Superannuation and Corporate Law
 Parliament House,
 CANBERRA 2600

Dear Sir,



Our ref: PQ NCW 316/2008

RECEIVED	
Office of The Minister for Superannuation and Corporate Law	
SIGNATORY	
<input type="checkbox"/> Minister	<input type="checkbox"/> Assistant Adviser
<input type="checkbox"/> Chief of Staff	<input type="checkbox"/> DLO
<input type="checkbox"/> Media Adviser	<input type="checkbox"/> Other
<input type="checkbox"/> Adviser	
30 JUL 2008	
ACTION	
<input type="checkbox"/> Acknowledge	<input type="checkbox"/> Briefing
<input type="checkbox"/> Substantive Response	<input type="checkbox"/> Speech
<input type="checkbox"/> Appropriate Action	<input type="checkbox"/> Refer to
<input type="checkbox"/> Information	<input type="checkbox"/> No further action
<input type="checkbox"/> Constituent	<input type="checkbox"/> URGENT

Financial Services and Credit Reform – Green Paper June 2008

We refer to the above-mentioned paper, and acknowledge that we are late in preparing a response.

We support the options for reform set out at 2 and 3 of the Green Paper (at page 12), for Commonwealth legislation to regulate all credit and mortgages (and hence mortgage lenders and brokers).

In relation to mortgage brokers, it is commonplace for brokers who have assisted our clients to be untraceable. This may occur for instance because they have allegedly left the brokerage at which they were employed, without leaving a forwarding address. Letters sent to their place of business come back to our office stamped “Not at this address”, or registered mail servers tell us that “the office was shut [at 3p.m. on a week day in the afternoon]”. In other cases, the business name is unregistered on ASIC databases. Consequently, our borrower clients are left without any redress. Although in theory a complaint could be made on their behalf, to ASIC, there is a limit to what ASIC can do if the creditors cannot be found. It is to be expected that the licensing of mortgage and finance brokers would partly assist in preventing shonky dealers from establishing themselves in the first place, and then later, from getting away.

It is our experience that updating of the Uniform Consumer Credit Code always takes too long under the current jurisdictional arrangements, and hence a change to enable uniform regulation of consumer credit would be welcome. By way of example, we refer to our attempts, together with other consumer advocates such as the Consumer Credit Legal Centre, to have the UCCC amended to bring so-called “pay-day lenders” within the auspices of the Code. This took a couple of years to achieve ⁽¹⁾.

73 Pitt St	Phone (02) 9698 7277	General enquiries	Interviews by
Redfern	Fax (02) 9310 3586	Monday to Thursday	appointment
NSW	TTY (02) 9699 8037	9 am-9 pm	Monday to Thursday
2016	http://www.rlc.org.au	Friday 9 am-5 pm	6:30pm-8:00pm

In addition, we note that it is commonplace for our clients to enter contracts in one State, but be sued by the Head Office of the creditor, in another State. Although legal arrangements can be made to transfer a matter to the State or Territory in which the client lives, this is difficult for disadvantaged clients. Where they are impecunious, have trouble obtaining pro bono legal advice, or cannot access a community legal centre, it is our experience (after the fact) that inter-territorial Courts have found such people liable for the alleged debts. Community legal centres are more readily able to achieve inter-jurisdictional transfers through their extensive contacts with one another nationally. (In this context, we note the Green Paper's mention of the importance of local networks).

However, we believe that State [and Territorial] Courts and Tribunals should retain some power to hear credit and mortgage matters in their own jurisdictions. Whichever jurisdictional purview is determined to be applicable, it should be appropriate to the complexity of the matter, the geographic accessibility and affordability for consumers, and the capacity of consumers to access the relevant venue in a timely way.

We do not comment specifically on Chapters 2, 3, 4 and 5 of the Green Paper (Trustee Corporations, Margin Lending, Debentures, and Property Spruikers).

It is our strong view that mortgage and finance brokers and lenders should be subject to stringent licensing requirements (as discussed in Chapters 1 and 6 of the Green Paper).

Yours faithfully

REDFERN LEGAL CENTRE



Penny Quarry
Senior Solicitor

Cc The Hon. Linda Burney, M.P.
Minister for Fair Trading,
NSW Parliament

Endnotes

(1) Whilst the Green Paper notes at page 13 that there may be "regional difficulties" in relation to payday loans, which require analysis "before concluding that a single national regime would best serve the needs of consumers", we do not believe that this is a problem.