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Competition and Consumer Policy Division  
Treasury  
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PARKES ACT 2600

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Dear Sirs

## **REVIEW OF AUSTRALIA'S CONSUMER POLICY FRAMEWORK**

This submission is made on behalf of the Mortgage & Finance Association of Australia (MFAA). The MFAA is the peak industry body for the mortgage and finance industry in Australia.

### **Uniform national laws**

The MFAA strongly supports uniform national laws for Australia. Particularly in the financial services industry the boundaries between states and territories are quite artificial. Many of our members conduct business across state and territory borders.

There are significant and well recorded inefficiencies associated with differences between state and territory laws. Accordingly, we welcome the proposal to create a new Australian Consumer Law.

### **Application law model or referral method?**

The experience of the UCCC using the application law model has not been happy, with significant differences applying amongst states and territories and in some cases delays in states and territories passing their corresponding legislation. There are also differences in the way the jurisdictions enforce the law causing industry and consumers frustration and expense.

It would seem better if the ACL can proceed by the referral method where the states delegate their legislative power to the Commonwealth (as proposed for the Commonwealth regulation of credit).

We also submit that it is preferable for there to be a single regulator so that the enforcement of the law is uniform.

### **Unfair contract terms**

The proposal to regulate unfair contract terms is the key proposal of interest to our members.

The Victorian government passed the *Consumer Credit (Victoria) and other Acts Amendment Bill 2008* but a date of commencement for the unfair contract provisions for

credit contracts has not been set. We hope that Victoria will withhold commencing those provisions to allow the uniform ACL to be enacted.

There will be significant cost and inefficiency if lenders have to deal first with new Victorian law and then subsequently with new Commonwealth law. The introduction of unfair contract terms regulation for credit contracts is a significant change and our members will need time to come to terms with it. Obviously, many of our members are experiencing stress because of the global financial crisis and so a single implementation date is important to avoid further disruption.

### **National guidance – unfair contract terms**

The discussion paper proposes that there will be single national guidance on the regulation.

Our initial discussions with Victoria have been most fruitful to find mutually acceptable solutions to controversial terms, and so this experience causes us to value highly the ability to consult and obtain guidance.

It will be imperative for the stability of the industry and the smooth operation of the law for industry to have significant guidance prior to commencement of the law.

Loan contracts and in particular mortgage loan contracts run for very long terms (often 30 years) and so special considerations apply to them. By this we mean a term which might be unreasonable in a short term contract is not unreasonable when a contract is being written which may have a life of many decades. This factor needs to be taken into account when assessing whether a contract term is fair.

### **Is regulation of unfair contract terms in financial contracts required?**

We have no evidence that the existing law is in any way insufficient. We have no experience of widespread use of unfair contract terms in loan contracts.

In the rare cases where there are unfair contract terms, consumers seem to be adequately protected by existing common law, the UCCC, and the Corporations Act. Further protection will presumably be provided by the new Commonwealth laws arising from the takeover of credit on 1 July 2009.

We therefore submit that another level of regulation is not required. There will be a significant risk of inconsistency and duplication in relation to credit contracts between the ACL and the new Commonwealth Credit Law. In this context, it is important to remember that the UCCC has specific and extensive provisions relating to unconscionable contract terms.

Besides the risk of inconsistency and duplication, if the ACL proceeds by the application law model, unfair contract terms in credit contracts will be regulated solely by ASIC in relation to the UCCC provisions, but by both Commonwealth and state regulators in relation to ACL. This appears to be unworkable.

### **Questions raised in the consultation paper**

We note the 29 questions raised in the consultation paper. Many of them have no direct impact on our members and so we make no response to them except as follows:

11. *Do businesses operating in multiple jurisdictions incur additional compliance costs as a result of different door-to-door sales regulation? If so, please provide evidence of this.'*

Section 146 of the UCCC prohibits a credit provider visiting a place of residence for the purpose of inducing a person who resides there to apply for credit except by prior arrangement.

That provision does not prevent a mortgage broker who is not acting as agent for the credit provider making unsolicited home visits. Some of our broker members do conduct home visits and encounter additional compliance costs as a result of differences between the different door-to-door sales regulation. This is particularly so to the extent that the regulation extends to telemarketing.

### **Conclusion**

Thanks for the opportunity to make submissions on these proposals.

Yours faithfully



**PHIL NAYLOR**  
CHIEF EXECUTIVE OFFICER