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28 April 2017

Consumer Property Law Review
Policy and Legislation Branch
Consumer Affairs Victoria By email to: consumerpropertylawreview@justice.vic.gov.au

Dear Sir/Madam

Sale of Land and Business: Options for Reform

Thank you for the opportunity to comment on the Options Paper 2, *Sale of land and business: options for reform*.

Background

This submission is made on behalf of the Australian Finance Conference (AFC), Australia's national finance industry association. We represent more than 60 of Australia's leading financial service providers, including finance companies, specialist equipment financiers and general financiers providing consumer (including home loans), commercial and wholesale credit facilities, as well as listed and customer-owned banks, and credit reporting bureaux. A current list of our members is attached.

As providers of secured and unsecured consumer credit, many of our members are required to hold an Australian Credit License (ACL) under the *National Consumer Credit Protection Act 2009* (NCCP Act), and comply with its extensive responsible lending obligations as a prerequisite to conducting that part of their business. In addition, some members manufacture and/or distribute financial products, requiring them to also hold an Australian Financial Service License (AFSL) under the *Corporations Act 2001*, or be an authorised representative of an AFSL holder.

Both regimes impose general and specific license conditions, enforced by the Australian Securities and Investments Commission (ASIC), on how our members conduct their lending and distribution businesses. This includes the requirement for them to be members of an approved external dispute resolution scheme which provides accessible, fair and independent dispute resolution for consumers.

AFC Position

The AFC supports the Victorian Government's Consumer Property Law Review and consideration of options to improve the operation of the *Sale of Lands Act 1962*. On the whole, we consider the Act is functioning as intended. We support however targeted and measured reforms to modernise the Act, ensure it remains fit for purpose, and protects the rights of sellers and buyers without imposing unnecessary red tape and cost burdens on market participants.

We offer the following views to improve the operation of possible legislative amendments to the *Sale of Land Act*, and avoid unintended consequences that may unnecessarily impact how our members undertake future home lending in Victoria.

Statement Concerning Finance

The AFC supports the introduction of *Option 11 – Generalise requirements to provide financial statements so they apply to any person selling land who makes a promise about finance, and relocate these provisions to the Sale of Land Act.*

The purchase of a property is the most significant financial decision most families will ever make. This is why we believe it is reasonable to maintain the current obligation on estate agents and auctioneers, to set out the details of a promise made to prospective buyers regarding a loan, and extend it to other parties, including builders and developers.

The AFC contends that reforms to representations about loans made by these parties should be guided by the existing national consumer credit laws obligations. The NCCP Act provides for a single national consumer credit regime to protect consumers who take out loans (including home loans) or seek advice by imposing a range of obligations on credit providers, credit assistance providers and others involved in credit activities.

Particularly relevant to discussions concerning Option 11, the NCCP Act also sets out responsible lending disclosure obligations for credit providers, and others, to give certain documents to consumers to give them the information they need to make informed decisions when considering taking out a home loan.

To avoid any unintended consequences for our members, the AFC submits that any legislative amendment to implement Option 11 must clearly exempt those entities subject to the NCCP Act from any future financial statement obligations under the Sale of Land Act. We believe this will bring an improved level of competitive neutrality to loan representations by estate agents, auctioneers, builders and developers (amongst others), by aligning their activities closer to comparable activities regulated under the NCCP Act.

We submit that any proposed legislative amendment to implement such an approach must make it clear that a financial statement is required with respect to any promise made about accessing finance, regardless of the amount in question, and should not be limited to representations only related to the purchase price.

This is a measured approach that better aligns Victoria's consumer protection laws (related to the representation of home loans by vested parties) with the existing and well established national consumer credit regime. It also recognises that those making such a promise may receive a commission for loans less than the purchase price (that is yet to be defined). Further, loans for less than the purchase price still represent significant sums of money in the current property market, therefore it is appropriate to continue consumer protections in this area.

If you would like to discuss any aspect of this submission, please contact me helen@afc.asn.au or James Aliferis, Associate Director – Policy james@afc.asn.au or either on 02 9231 5877.

Kind regards



Helen Gordon
Executive Director

Attachment:

List of AFC Members



AFC MEMBER COMPANIES

Allied Credit	Mercedes-Benz Financial Services
American Express	MetroFinance
ANZ	Nissan Financial Services
Automotive Financial Services	nlc Pty Ltd
Bank of China	Once Australia t/as My Buy
Bank of Melbourne	On Deck Capital
Bank of Queensland	PACCAR Financial
BMW Australia Finance	Pepper Australia Pty Ltd
Branded Financial Services	Qudos Bank
Capital Finance Australia	RABO Equipment Finance
Caterpillar Financial Australia	RAC Finance
Classic Funding Group	RACV Finance
CNH Industrial	Ricoh Finance
Commonwealth Bank of Australia	Selfco Leasing
Credit Corp Group	Service Finance Corporation
Custom Fleet	Sharp Finance
De Lage Landen	St. George Bank
Dun & Bradstreet	Suttons Motors
Eclixp Group	Thorn Group/Radio Rentals
Experian Asia Pacific	TL Rentals
Finance One	Toyota Financial Services
FlexFleet	Veda
FlexiGroup	Volkswagen Financial Services
Genworth	Volvo Finance
Group and General Finance	Walker Stores
HP Financial Services	Wells Fargo International
Indigenous Business Australia	Westlawn Finance
John Deere Financial	Westpac
Komatsu Corporate Finance	WEX Australia
Kubota Australia Finance	Wingate Consumer Finance
Latitude Financial Services	Yamaha Finance
Leasewise Australia	<u>Professional Associate Members:</u>
Liberty Financial	CHP Consulting
Lombard Finance	Clayton Utz
Macquarie Equipment Rentals	Credit Sense Australia
Macquarie Leasing	Dibbs Barker
Max Recovery Australia	Henry Davis York
McMillian Shakespeare Group	Sofico Services
ME Bank	White Clarke

April 2017