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E-commerce and consumer credit

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Introduction

The Uniform Consumer Credit Code Management Committee (UCCCMC) recognises the increased interest from credit providers in the use of electronic communications in connection with consumer credit. UCCCMC is currently working towards a set of modest amendments to the Uniform Consumer Credit Code (the Code) aimed at implementing the e-commerce recommendations in the Post Implementation Review (PIR) of the Code.

Since the recommendations were made, there have been significant developments in the area of e-commerce. The Victorian Government has established a dedicated e-commerce unit within the Department of Consumer Affairs and Fair Trading. This unit is currently working on a range of initiatives to support businesses and consumers in the e-commerce space. The Victorian Government has also established a dedicated e-commerce unit within the Department of Consumer Affairs and Fair Trading. This unit is currently working on a range of initiatives to support businesses and consumers in the e-commerce space.

Part one

Recommendation 2.20

Amend the Code's definition of writing and sign to make it clear that the Code recognises both electronic records and the electronic authentication of

Recommendation 2.21

Give further consideration to those types of contracts, such as real property mortgages, which need to be exempted from being able to be entered into electronically.

The UCCCMC considers that in principle, all forms of credit contract should be able to be made electronically.

Reservations about the use of electronic communications in connection with real property mo

Section 172 goes some way towards establishing electronic equivalence, but it does so in the non-standard, ambiguous terminology and the limitation of *similar electronic facility* to use with corporate bodies is anomalous.

Section 8(3) of the ETV Act suggests that the equivalence ordinarily achieved via section 8 (1) and (2) ETV Act will not apply because s.172 makes provision for a particular kind of electronic communication.⁶ The UCCCMC does not want the Code to employ a variety of different terms that all imply some form of electronic communication.

Recommendation 2.23

Prohibit documentation under the Code that triggers an enforcement process being able to be provided electronically

The PIR expresses concern about permitting documents that signal the commencement of a statutory process of enforcement to be served electronically, at least until electronically conducted credit and commencing court process by electronic communication is more commonplace.

Initially the UCCCMC eitia

guarantees and notices in electronic format, though the size of font is ultimately controlled by the end user rather than the sender of the communication.

The Code's regulation making power needs to be wide enough to permit prohibition of the use of gimmicks such as flashing text. It should also enable regulations to prescribe documents or electronic communications that cannot contain anything other than text and tables. It might be helpful to confirm that *easily legible* includes ensuring sufficient contrast between lettering and background. Where a hyperlink is used to propel the consumer from one document to another - eg. from the information statement to the credit contract, credit providers should take reasonable steps to signal this to the consumer.

- (6) Require that credit providers take reasonable steps to ensure that the pre-contractual information and the contract are complete and unaltered at the point at which a consumer receives them.**

The UCCCMC considers that credit providers already operate under this obligation.

- (7) Give further consideration to the kinds of documentation or other information that would not be considered to be appropriate to post on a website for the purposes of pr3 of**

If the contract is accessed and entered into on the credit provider's website, it is probably feasible to require that credit providers arrange the presentation of the precontractual statement, the information statement and the credit contract so that the credit contract cannot be entered into unless these documents have already been opened, though this falls short of requiring the consumer to scroll through the entirety of the document. However, if a credit contract and associated documentation is attached to an email sent to 42.9607 Tm(ai)TTj0 0 1 326.1

Recommendation 2.29

Ensure that consumers are given the opportunity to challenge unfair contractual terms concerning the attribution of a message to them.

It is not proposed to intro

Part Two

Consumer Credit (Queensland) Amendment Bill 2003

Introduction

The Bill does not introduce new concepts: it is facilitative and therefore concise.

Application of electronic transactions statutes

The most important provision is one that confirms the application to the Code of the electronic transactions legislation in each jurisdiction. In some jurisdictions the Code is currently excluded from the operation of that legislation. This will cease to be the case once the amendments introduced by the Bill are in force.

Generic notice

Section 172 has been overhauled to rationalise the current disparate references to electronic mediums of notice and to confirm the option of incorporating the Internet into the giving of notice.

When is notice given?

Notice is taken to be given when the consumer receives the communication, as determined by the electronic transactions legislation, which is different from the provisions of section 173(1)(c).

Retention

The draft Bill expresses the importance attached to the consumer having the opportunity to save and download contracts and statutorily required information.

Hard copy references

Provisions that by their terms do not accommodate electronic communications equivalence are to be amended. For example, the section 17 reference to annotating a credit contract in the *margin* will be removed and a reference in section 162 to *printed or typed* will be restricted to paper documents.

Regulations

Aside from ensuring that the Code has the necessary regulation making power in respect of electronic communications, there will also be a set of regulations to complement the e-commerce amendments. These will comprise consequential adjustments to achieve equivalence (such as in reg. 20(2) where there is currently a need to have a warning *immediately above* the signature) and some consumer protection measures arising from the special nature of electronic communications. An example of such a measure was given above in connection with distracting features.