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Dr Nicholas Horne
Inquiry Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs
PO Box 6021
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INQUIRY INTO OLDER PEOPLE AND THE LAW – QUESTIONS ON NOTICE

Dear Dr Horne

As I trust you will recall, on 4 June 2007, Mr Nigel Ridgway and I represented the Australian Competition and Consumer Commission (ACCC) at the Public Hearing for the House of Representatives *Inquiry into Older People and the Law* in Melbourne. In relation to several matters raised by members of the Committee during this hearing, the ACCC undertook to return to the Committee with additional information at a later time. The purpose of this letter is to address those matters.

On several occasions during the Hearing, it appeared that there was some uncertainty among members of the Committee regarding the ACCC's legal jurisdiction in respect of financial services. Reinforcing the comments I offered during the Hearing, I would like to confirm that the fair trading and consumer protection provisions of the *Trade Practices Act 1974 (TPA)* do not apply to the supply, or possible supply, of services that are financial services¹. Provisions addressing consumer protection in financial services are found in the *Australian Securities and Investments Commission Act 2001 (Cth)*, an Act which is administered by the Australian Securities and Investment Commission (ASIC).

By way of background the ASIC has regulated financial markets, securities, futures and corporations since 1991. In response to the findings of the *Financial System Inquiry* (the Wallis report), in 1998, the ASIC assumed responsibility for consumer protection in superannuation, insurance, and deposit taking activities. In 2002, the *Financial Services Reform Act 2001* extended the ASIC's consumer protection powers to include credit. To enable it to fulfil its consumer protection functions, the *Australian Securities and Investments Commission Act* was amended to provide consumer protection provisions which mirrored those of the *Trade Practices Act*. This includes prohibitions on misleading and deceptive conduct and unconscionable conduct.

¹ Refer Section 51 AF of the *Trade Practices Act 1974*.



I can assure the Committee that the ACCC maintains close links with the ASIC (and other key national agencies) relevant to its administration of the *Trade Practices Act*, and I acknowledge that, at times, there may appear to be a degree of overlap between the respective jurisdictions. However, there are a range of measures in place to manage the efficient identification and management of such issues that may arise. For example, in 2004, the ACCC and the ASIC signed a new memorandum of understanding (MOU) covering liaison, cooperation, assistance, joint enquiries and exchange of confidential information arrangements. The MOU reinforced the cooperative approach the agencies had taken to address wealth creation seminars and get rich quick schemes, as well as misconduct in debt collection. The agencies have also entered into cross delegation arrangements to enable one agency to take action where it is possible that a case falls within both jurisdictions.

Against this background, I trust that the Committee will appreciate my hesitation to address its concerns about consumer protection matters which are clearly of a financial nature and are therefore not within the ACCC's jurisdiction. I would prefer to defer the Committee's inquiries on mandatory reporting of financial abuse, reverse mortgages and Ponzi scams to the ASIC.

The Committee also queried why the ACCC's submission to the Inquiry had not placed a greater emphasis on the issue of retirement villages. While the ACCC acknowledges that retirement village concerns are quite pertinent for older Australians, as explained during the Hearing, each of the states and territories have their own regulatory frameworks which deal with issues such as pricing and fees.

Of course, coverage under state specific legislation does not preclude the more general application of the TPA - in particular, provisions relating to unconscionability and misleading and deceptive conduct. The ACCC will review complaints received to date to determine whether there are any issues of relevance to the TPA. We will also raise the issues identified by the Committee with our colleagues in the Offices of Fair Trading (OFT) and the Fair Trading Operations Advisory Committee.

I trust that I have been able to assist the Committee understand the ACCC's consumer protection roles and responsibilities. Please don't hesitate to contact me again should the Committee require further clarification or seek my assistance to resolve specific concerns. The ACCC looks forward to reading the findings of the Inquiry.

Yours sincerely



Mark Pearson
Executive General Manager
Enforcement and Compliance