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MEDIA RELEASE

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Hon Sir Grant Hammond KNZM
President
Law Commission

**RELEASE OF LAW COMMISSION FINAL REPORT ON
CREDIT (REPOSSESSION) ACT**

The Law Commission is recommending wide-ranging changes to New Zealand's consumer credit repossession laws, with a view to establishing a fairer, more transparent and efficient regime for all parties.

Under the proposed changes, consumers entering credit contracts would have to be told explicitly when repossession could occur, and which goods could be repossessed.

The Commission is also recommending that some goods, such as bedding, washing machines, portable heaters, passports and identity documents, should not be subject to repossession at all.

If the Commission's recommendations are accepted by the Government, in the future repossession agents will need to be licensed and could lose their licence for breaching the new laws.

The recommendations arise from the Commission's review of the *Credit (Repossession) Act 1997*. This forms part of the Government's wider review of consumer credit law, led by the Ministry of Consumer Affairs.

The Commission is recommending that the 1997 Act be repealed and that provisions covering the repossession and sale of consumer goods be incorporated into the Government's proposed amendments to the Credit Contracts and Consumer Finance Act¹.

Commissioner Professor Geoff McLay said the Commission's recommendations drew on the views and experiences of a wide range of stakeholders, including banks, finance companies, debt collection specialists and repossession agents, and consumer advice and advocacy groups.

¹ Credit Contracts and Consumer Finance Amendment Bill, <http://www.consumeraffairs.govt.nz/legislation-policy/policy-development/credit-review>

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He said the Commission's view was that while repossession ought to be possible, the law should make clear the circumstances under which repossession could occur, and the repossession process itself ought to be as efficient and fair as possible.

"The challenge is to strike the appropriate balance between the rights of consumers and the rights of those extending credit."

Professor McLay said the Commission had tried to develop pragmatic and principled solutions to the issues and had taken on board the views of submitters.

He said it had discarded its original proposal that would have required creditors or their agents to obtain approval from a court or a regulator before repossessing goods, after the majority of submitters voiced their opposition to the proposal, due to the costs and delays that would be involved.

Professor McLay said it made sense to fold the reform of repossession laws into the Government's broader consumer credit reforms because the underlying principles and objectives were the same.

"Just as the law requires creditors to act responsibly when entering into and administering credit contracts, so too must they exercise their rights of repossession in a manner that is responsible and fair to consumers."

The core recommendations that the Commission makes in the report are:

- The Credit Contracts and Consumer Finance Act should be extended to include what is now covered by the Credit (Repossession) Act and that repossession should be included in the Code of Responsible Lending;
- The consumer credit repossession legislation should include a checklist setting out when repossessions can occur so that disputes at the time of repossession can be avoided, and breaches of the pre-possession and repossession requirements should be an offence;
- Only goods that are individually identified as being subject to repossession in the original credit contract can be repossessed;
- Some goods should not be subject to repossession at all, such as bedding, washing machines, portable heaters, passports and identity documents, and keys (except when giving access to a secured good), and the Code of Responsible Lending should deal with the taking of security and repossession of goods of emotional sensitivity, but of low or no economic value;
- There should be better disclosure of rights and remedies at the original time of contracting, and at pre-possession (when the consumer is warned that repossession is possible), repossession and post-possession;
- Compensatory remedies, including for non-financial loss, should be available from the Disputes Tribunal and the courts, and in the case of registered financial service providers, the relevant dispute resolution schemes should be required to have rules to that effect;
- Where the debtor has made a complaint or brought a dispute, the consumer credit repossession legislation should be amended so as to prevent repossession under a pre-possession notice or the sale of repossessed goods before the complaint has been dealt with by the creditor or the dispute resolution scheme;
- Repossession agents should be licensed by an appropriate body. Licensing and the loss of licence for breaching the consumer credit repossession legislation are important parts of the

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proposed regime. Licences must be carried during the repossession process as part of an assurance that the agent is not otherwise prohibited; and

- Repossession agents should be able to be excluded from the industry under s 108 of the Credit Contracts and Consumer Finance Act or the repossession chapter of the Code of Responsible Lending.

-ENDS-

For further information and comment, contact: Professor Geoff McLay, Law Commission, tel (04) 914 4814 or 021 029 57155, gmclay@lawcom.govt.nz

This media release and a copy of the publication is available from our website at <http://www.lawcom.govt.nz/project/review-credit-repossession-act-1997>