

**CREDIT (COMMONWEALTH POWERS)  
(TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2010**

*Introduction and First Reading*

Bill introduced, on motion by **Mr T.R. Buswell (Minister for Commerce)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR T.R. BUSWELL (Vasse — Minister for Commerce)** [12.39 pm]: I move —

That the bill be now read a second time.

The bill that the government is introducing today is the Credit (Commonwealth Powers)(Transitional and Consequential Provisions) Bill 2010, which I will refer to as the credit transitional and consequential provisions bill. As I referred to in my second reading speech for the Credit (Commonwealth Powers) Bill 2010, these two bills are being introduced to establish the new national regulation of credit in Western Australia. The importance of this bill is that it provides for the local industry to transfer from the current state licensing and compliance regime to the new national consumer credit protection legislation, which commences on 1 July 2010. It also ensures that the state can conclude any outstanding matters that may affect Western Australian borrowers.

Part 2 of the bill repeals the Consumer Credit (Western Australia) Act 1996. This act is the enabling legislation of the Consumer Credit (Western Australia) Code, which is being replaced by the National Credit Code in schedule 1 of the National Consumer Credit Protection Act 2009. Transitional provisions are included to deal with proceedings that are not captured by the new national credit code, together with arrangements to be made with the Australian Securities and Investment Commission for these proceedings, and for the sharing of information held by the state in respect of the administration of the Consumer Credit (Western Australia) Act 1996 with ASIC. Provisions are also made for arrangements consequential to the repeal of the Consumer Credit (Western Australia) Act 1996 in other state legislation.

The bill amends the Credit (Administration) Act 1984. This act is the Western Australian legislation that enables a licensing regime for credit providers, other than banks and exempted bodies, and sets out administrative, investigative and disciplinary provisions. This act is not being repealed at this time to allow for the seeing out of proceedings underway with respect to alleged offences under the act or the Consumer Credit (Western Australia) Code prior to the referral day, and for the ongoing administration of the Credit Act 1984, which relates to pre-Consumer Credit Code contracts. The number of contracts to which the Credit Act 1984 applies that are still in force in the marketplace is not ascertainable. Until a satisfactory assessment of the effect of repealing the Credit Act 1984 can be undertaken, it and an amended Credit (Administration) Act 1984 will remain in force. The amendments essentially remove the obligation for credit providers to be, or remain, licensed under the Credit (Administration) Act on and after the referral day, while retaining provisions in the act to allow for the conclusion of any proceedings underway in respect of alleged breaches of that act prior to the commencement of the Credit (Commonwealth Powers) Bill 2010—the “adoption and referral” bill. It also makes provisions for arrangements to be made with the Australian Securities and Investments Commission in relation to these proceedings.

Transitional arrangements are included in the bill to allow for moneys held in the Consumer Credit Fund under part VA of the Credit (Administration) Act 1984 to be used for the provision of information, advice or research relevant to the protection of the interests of consumers broadly, and for the fund to be renamed the Consumer Credit Account. In part 4, provisions are made for the amendment of the Finance Brokers Control Act 1975, similar to the amendments to the Credit (Administration) Act 1984 in part 3. The Finance Brokers Control Act 1975 is the Western Australian legislation which establishes a licensing regime and code of conduct for finance brokers, and sets out administrative, investigative and disciplinary provisions for the industry. Transitional provisions are made to deal with proceedings which are not captured by the new national credit legislation, together with arrangements to be made with the Australian Securities and Investments Commission for those proceedings and for the sharing of information held by the state in respect of the administration of the Finance Brokers Control Act 1975 with ASIC.

Provisions to remove the obligations in the Finance Brokers Control Act 1975 regarding trust accounts on and after the referral date are contained in this part, as those licensees who are not exempt from the requirement to maintain and audit a trust account will be subject to similar provisions under the National Consumer Credit Protection Act 2009. This will mean that part IV, division 2 of the Finance Brokers Control Act 1975 will have historic relevance only. Obligations and provisions regarding trust accounts and statutory audits remain, and can be enforced, where they are relevant to pre-referral day matters. Amendments to references to the Finance

Brokers Control Act 1975 and the Credit (Administration) Act 1984 in other state legislation are also provided for in this bill.

This bill also provides for the making of regulations enabling the Commissioner for Consumer Protection to repay a credit provider or finance broker licensee all or part of a fee paid in respect of their licence. This is because a majority of licensees who have obtained, renewed or paid an annual fee in respect of their licence will not have received the full benefit of that fee at the date they will come under the commonwealth licensing requirements. It is believed that this is unfair to local businesses, and arrangements have been put in place for reimbursing fees on a pro rata basis. Further, fees charged for occupational licences are used to recover the government's costs in administering the relevant legislation over the licence period. After the transition date and completion of any runout actions, this revenue will not be required by the state government.

Part 5 of the bill provides for the repeal of the Finance Brokers Control Act 1975. It is intended that this part be proclaimed at a later date, subject to the Minister for Commerce being satisfied that all proceedings in any relevant matters have been satisfactorily concluded. As it is not possible to determine in advance the date and exact circumstances under which this may occur, a repealed provision was drafted instead of a sunset clause.

The credit transitional and consequential provisions bill commences on a day to be fixed by proclamation, and different days may be fixed for different provisions. Sections 1 and 2 come into operation on the day on which the act receives royal assent. Section 3 and parts 1 to 4 are intended to commence from the referral day. Part 5, the repeal of the Finance Brokers Control Act 1975, will be proclaimed when the Minister for Commerce is satisfied there is no further business left to be regulated under the amended Finance Brokers Control Act 1975. I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.