

## Credit (Commonwealth Powers) Bill 2010

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### **Defined Terms**



Western Australia

LEGISLATIVE ASSEMBLY

## **Credit (Commonwealth Powers) Bill 2010**

**A Bill for**

**An Act to adopt the *National Consumer Credit Protection Act 2009* (Commonwealth) as amended and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Commonwealth), and to refer certain matters relating to the provision of credit and certain other financial transactions to the Parliament of the Commonwealth, for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth.**

The Parliament of Western Australia enacts as follows:

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1   **1.    Short title**

2           This is the *Credit (Commonwealth Powers) Act 2010*.

3   **2.    Commencement**

4           This Act comes into operation as follows —

- 5           (a) sections 1 and 2 — on the day on which this Act  
6                receives the Royal Assent;  
7           (b) the rest of the Act — on a day fixed by proclamation.

8   **3.    Terms used**

9           In this Act, unless the contrary intention appears —

10          ***adoption*** means the adoption under section 4(1);

11          ***amendment reference*** means the reference under section 6(1);

12          ***Commonwealth Credit instrument*** means any instrument  
13          (whether or not of a legislative character) that is made or issued  
14          under the National Credit legislation;

15          ***express amendment*** of the National Credit legislation means the  
16          direct amendment of the text of the National Credit legislation  
17          (whether by the insertion, omission, repeal, substitution or  
18          relocation of words or matter) by another Commonwealth Act  
19          or by an instrument under a Commonwealth Act, but does not  
20          include the enactment by a Commonwealth Act of a provision  
21          that has or will have substantive effect otherwise than as part of  
22          the text of the National Credit legislation;

23          ***National Credit legislation*** means —

24           (a) the *National Consumer Credit Protection Act 2009*  
25                (Commonwealth); and

26           (b) the *National Consumer Credit Protection (Transitional*  
27                *and Consequential Provisions) Act 2009*  
28                (Commonwealth),

29           as in force from time to time;

1        ***referred credit matter*** means a matter relating to either of the  
2 following —

- 3        (a) credit, being credit the provision of which would be  
4 covered by the expression “provision of credit to which  
5 this Code applies” in the relevant version of the National  
6 Credit Code;
- 7        (b) consumer leases, being consumer leases each of which  
8 would be covered by the expression “consumer lease to  
9 which Part 11 applies” in the relevant version of the  
10 National Credit Code;

11        ***relevant version of the National Credit Code*** means the text of  
12 Schedule 1 to the *National Consumer Credit Protection*  
13 *Act 2009* (Commonwealth) as originally enacted, and as later  
14 amended by the *National Consumer Credit Protection*  
15 *Amendment Act 2010* (Commonwealth);

16        ***relevant version of the National Credit legislation*** means —

- 17        (a) the *National Consumer Credit Protection Act 2009*  
18 (Commonwealth) as originally enacted, and as later  
19 amended by the *National Consumer Credit Protection*  
20 *Amendment Act 2010* (Commonwealth); and
- 21        (b) the *National Consumer Credit Protection (Transitional*  
22 *and Consequential Provisions) Act 2009*  
23 (Commonwealth).

24        **4. Adoption of National Credit legislation**

- 25        (1) The relevant version of the National Credit legislation is  
26 adopted within the meaning of section 51(xxxvii) of the  
27 Constitution of the Commonwealth.
- 28        (2) The adoption has effect for a period —
- 29            (a) beginning when this section commences; and
- 30            (b) ending at the end of the day fixed under section 5 as the  
31 day on which the adoption is to terminate,
- 32 but no longer.

- 1   **5.       Termination of the adoption**
- 2       (1)   The Governor may, at any time, by proclamation published in  
3       the *Gazette*, fix a day as the day on which the adoption is to  
4       terminate.
- 5       (2)   The Governor may, by proclamation published in the *Gazette*,  
6       revoke a proclamation published under subsection (1), in which  
7       case the revoked proclamation is taken (for the purposes of  
8       section 4) never to have been published.
- 9       (3)   A revoking proclamation has effect only if published before the  
10      day fixed under subsection (1).
- 11      (4)   The revocation of a proclamation published under  
12      subsection (1) does not prevent publication of a further  
13      proclamation under that subsection.
- 14   **6.       Reference of matters**
- 15      (1)   Subject to section 7, any referred credit matter is referred to the  
16      Parliament of the Commonwealth, but only to the extent of the  
17      making of laws with respect to such a matter by making express  
18      amendments of the National Credit legislation.
- 19      (2)   The reference of a matter under subsection (1) has effect  
20      only —
- 21          (a)   if and to the extent that the matter is not included in the  
22          legislative powers of the Parliament of the  
23          Commonwealth (otherwise than by a reference for the  
24          purposes of section 51(xxxvii) of the Constitution of the  
25          Commonwealth); and
- 26          (b)   if and to the extent that the matter is included in the  
27          legislative powers of the Parliament of the State.
- 28      (3)   Despite any other provision, the reference has effect for a  
29      period —
- 30          (a)   beginning when this section commences; and

- 1 (b) ending at the end of the day fixed under section 8 as the  
2 day on which the reference is to terminate,  
3 but no longer.

4 **7. Matters excluded from reference**

- 5 (1) A matter referred by section 6(1) does not include —  
6 (a) the matter of making provision with respect to the  
7 imposition or payment of State taxes, duties, charges or  
8 other imposts, however described; or  
9 (b) the matter of making provision with respect to the  
10 general system for the recording of estates or interests in  
11 land and related information; or  
12 (c) the matter of providing for the priority of interests in  
13 real property; or  
14 (d) the matter of making a law that excludes or limits the  
15 operation of a State law, to the extent that the State law  
16 makes provision with respect to the creation, holding,  
17 transfer, assignment, disposal or forfeiture of a State  
18 statutory right.

- 19 (2) In this section —  
20 *forfeiture* means confiscation, seizure, extinguishment,  
21 cancellation, suspension or any other forfeiture;

22 *State law* means —

- 23 (a) any Act of the State or any instrument made under such  
24 an Act, whenever enacted or made and as in force from  
25 time to time;  
26 (b) the general law, being the principles and rules of  
27 common law and equity to the extent that they have  
28 effect in the State from time to time;

29 *State statutory right* means a right, entitlement or authority that  
30 is granted by or under any Act of the State or any instrument  
31 made under such an Act, whenever enacted or made and as in

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- 1 force from time to time, other than a right, entitlement or  
2 authority that relates to —
- 3 (a) credit covered by paragraph (a) of the definition of  
4 *referred credit matter* in section 3; or
- 5 (b) a consumer lease covered by paragraph (b) of that  
6 definition.

7 **8. Termination of references**

- 8 (1) The Governor may, at any time, by proclamation published in  
9 the *Gazette*, fix a day as the day on which the amendment  
10 reference terminates.
- 11 (2) The Governor may, by proclamation published in the *Gazette*,  
12 revoke a proclamation published under subsection (1), in which  
13 case the revoked proclamation is taken (for the purposes of  
14 section 6) never to have been published.
- 15 (3) A revoking proclamation has effect only if published before the  
16 day fixed under subsection (1).
- 17 (4) The revocation of a proclamation published under  
18 subsection (1) does not prevent publication of a further  
19 proclamation under that subsection.

20 **9. Amendment of Commonwealth law**

- 21 For the avoidance of doubt, it is the intention of the Parliament  
22 of the State that —
- 23 (a) the National Credit legislation may be expressly  
24 amended, or have its operation otherwise affected, at  
25 any time after the commencement of this Act by  
26 provisions of Commonwealth Acts the operation of  
27 which is based on legislative powers that the Parliament  
28 of the Commonwealth has on account of a reference of  
29 any matters, or the adoption of the relevant version of  
30 the National Credit legislation, under section 51(xxxvii)  
31 of the Constitution of the Commonwealth; and



- 1 (b) the National Credit legislation may be expressly  
2 amended, or have its operation otherwise affected, at  
3 any time after the commencement of this Act by  
4 provisions of Commonwealth Acts the operation of  
5 which is based on legislative powers that the Parliament  
6 of the Commonwealth has apart from a reference of any  
7 matters, or the adoption of the relevant version of the  
8 National Credit legislation, under section 51(xxxvii) of  
9 the Constitution of the Commonwealth; and  
10 (c) the National Credit legislation may have its operation  
11 affected, otherwise than by express amendment, at any  
12 time by provisions of Commonwealth Credit  
13 instruments.

14 **10. Effect of termination of amendment reference before**  
15 **termination of adoption of Commonwealth Acts**

- 16 (1) If the amendment reference is terminated but the adoption of the  
17 relevant version of the National Credit legislation is not  
18 terminated, the termination of the amendment reference does  
19 not affect —  
20 (a) laws that were made under the amendment reference  
21 (but not repealed) before that termination (whether or  
22 not they have come into operation before that  
23 termination); or  
24 (b) the continued operation in the State of the National  
25 Credit legislation as in operation immediately before  
26 that termination or as subsequently amended or affected  
27 by —  
28 (i) laws referred to in paragraph (a) that come into  
29 operation after that termination; or  
30 (ii) provisions referred to in section 9(b) or (c).  
31 (2) Accordingly, the amendment reference continues to have effect  
32 for the purposes of subsection (1) unless the adoption is  
33 terminated.



## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
adoption .....	3
amendment reference .....	3
Commonwealth Credit instrument .....	3
express amendment .....	3
forfeiture .....	7(2)
National Credit legislation .....	3
referred credit matter .....	3
relevant version of the National Credit Code .....	3
relevant version of the National Credit legislation .....	3
State law .....	7(2)
State statutory right .....	7(2)