



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Credit (Commonwealth Powers) Bill 2010

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REPORT

Overview of Bill

The object of this Bill is to adopt the *National Consumer Credit Protection Act 2009* of the Commonwealth, as amended at the time of adoption by the *National Consumer Credit Protection Amendment Act 2010* of the Commonwealth, to adopt the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth, and to refer certain matters relating to credit and consumer leases to the Parliament of the Commonwealth.

The proposed Act is to be enacted for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, which enables State Parliaments to refer matters to the Commonwealth Parliament, or to adopt Commonwealth laws that have been enacted pursuant to such referrals.

This Bill will form part of the new national credit protection regime which is being established under Commonwealth law.

The reference to support the enactment of the initial Commonwealth legislation was provided by Tasmania by the enactment of the *Credit (Commonwealth Powers) Act 2009* of that State, which commenced on 17 November 2009.

In view of the enactment of the Commonwealth laws, the remaining States have decided to adopt the Commonwealth laws under section 51(xxxvii) of the Constitution.

The Bill also provides for the referral of certain matters to the Commonwealth Parliament in order to support certain amendments to the *National Consumer Credit Protection Act 2009* of the Commonwealth and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth (an *amendment reference*).

Since the enactment of the initial Tasmanian legislation, the Commonwealth and the States have also agreed on certain exclusions (or "carve outs") to the amendment reference. These carve outs are reflected in this measure. They will also be recognised under the *National Consumer Credit Protection Act 2009* of the Commonwealth by amendments made to that Act by the *National Consumer Credit Protection Amendment Act 2010* of the Commonwealth.

Outline of provisions

1—Short title

This clause sets out the short title of the proposed Act.

2—Commencement

This clause provides that the Bill will come into operation on a date to be fixed by proclamation. The Commonwealth and States have agreed that this should be 1 July 2010.

3—Definitions

This clause defines certain words and expressions used in the proposed Act. The definitions reflect the fact that there is to be an *adoption* of the Commonwealth laws together with the conferral of an *amendment reference*.

It is also necessary to distinguish for the purposes of the Bill between:

- the ***National Credit legislation***, which means—
 - (a) the *National Consumer Credit Protection Act 2009* of the Commonwealth; and
 - (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth,as in force from time to time; and
- the ***relevant version of the National Credit legislation***, which means—
 - (a) the *National Consumer Credit Protection Act 2009* of the Commonwealth as originally enacted, and as later amended by the *National Consumer Credit Protection Amendment Act 2010* of the Commonwealth; and
 - (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth.

4—Adoption of National Credit legislation

This clause deals with the adoption of the relevant version of the National Credit legislation. The clause provides that the adoption is under section 51(xxxvii) of the Commonwealth Constitution.

5—Termination of adoption

This clause allows the Governor to fix a day as the day on which the adoption is to terminate. This gives the State the capacity to withdraw the adoption at a future date if that is desirable.

6—Reference of matters

This clause refers to the Commonwealth Parliament the matters of amending the National Credit legislation (the *amendment reference*).

The amendment reference will enable the Commonwealth to make express amendments to its National Credit legislation about the provisions of credit to which the National Credit Code applies and about consumer leases to which Part 11 of that Code applies.

7—Matters excluded from reference

This clause provides for the exclusion from the amendment reference of certain matters relating to the imposition of State taxes, the system for recording of estates or interests in land, the priority of estates or interests in real property and State statutory rights.

8—Termination of reference

This clause allows the Governor to fix a day as the day on which the amendment reference is to terminate. This gives the State the capacity to terminate the reference of power at a future date if that is desirable.

9—Amendment of Commonwealth law

This clause makes it clear that the National Credit legislation may be amended on account of any reference or adoption, or by Commonwealth laws or instruments enacted or made on the basis of powers vested in the Commonwealth apart from any reference or adoption.

10—Effect of termination of amendment reference before termination of adoption of Commonwealth Acts

This clause makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the adoption is also terminated.