

CONSUMER CREDIT (WESTERN AUSTRALIA) AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

The principle purpose of this Bill is to apply the Consumer Credit Code as set out, from time to time, in the Appendix to the *Consumer Credit (Queensland) Act 1994* to Western Australia as a law of Western Australia.

A copy of the Code and Regulations is attached as part of this memorandum.

The Consumer Credit Code is a national scheme of uniform credit laws introduced in 1996 to advance consumer protection, while at the same time, ensuring that product diversity and competition is optimised. The Code provides protection for all users of consumer credit. Financial institutions and credit providers who provide credit for personal, domestic or household purposes are required to comply with the Code.

The Code is the result of all States and Territories formally entering into the Australian Uniform Credit Laws Agreement in 1993. The agreement commits all jurisdictions to ensuring that the same consumer credit laws apply across the country and binds the respective Ministers to the process of maintaining uniformity between the jurisdictions. In addition, all parties are bound not to submit legislation to their respective Parliaments that conflicts with or negates the Code.

In 1996, Western Australia chose to enact consistent legislation rather than adopting the template model. As a result, Western Australia has had to pass separate, but consistent amendments, each time the Code has been amended in Queensland. This has resulted in a lack of certainty in the marketplace, unnecessary duplication of effort and significant delays in implementing changes. Other States and Territories have, in the past, delayed the commencement of amendments to the Code until the amendments have been passed here.

Understandably, delays of up to two years in some instances, have been viewed as untenable and attracted criticism from consumer groups, industry stakeholders and other jurisdictions.

The States and Territories, however, have agreed to some areas of non-uniformity. These essentially relate to administrative matters and should not impose additional regulatory burdens on credit providers. There are some differences between the current Western Australian Code and the Queensland template Code which have been retained by this Bill and are explained in this memorandum.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

- Clause 1: Sets out the name (short title) of the proposed Act – “this Act may be cited as the *Consumer Credit (Western Australia) Amendment Act 2002*.”
- Clause 2: Provides for the commencement of the proposed Act by a day fixed by proclamation.
- Clause 3: Identifies that amendments in the proposed Act, except for section 15, are to the *Consumer Credit (Western Australia) Act 1996* as amended.
- Clause 4: Amends the long title of the *Consumer Credit (Western Australia) Act 1996*.
- Clause 5: Amends the definitions of the Act to reflect that references to the “*Consumer Credit (Queensland) Act 1994*” means that Act, and that references to the “*Consumer Credit (Western Australia) Code*” and “*Consumer Credit (Western Australia) Code Regulations*” means the provisions applying as a result of the template legislation, unless a contrary intention appears.
- Clause 6: Provides that the Consumer Credit Code, as set out in the Appendix to the *Consumer Credit (Queensland) Act 1994*, as in force for the time being, applies as a law of Western Australia and may be referred to as the *Consumer Credit (Western Australia) Code*. The differences as set out in Part 5 (see Clause 12) of the proposed Act are retained for the purposes of the Code as it applies in WA.

The regulations in force under Part 4 of the of the *Consumer Credit (Queensland) Act 1994* apply as regulations in force for the purposes of the *Consumer Credit (Western Australia) Code* and may be referred to as the *Consumer Credit (Western Australia) Code Regulations*.

Schedule 2 of the regulations in force under the *Consumer Credit (Queensland) Act 1994* applies for the purposes of the *Consumer Credit (Western Australia) Code* and *Consumer Credit (Western Australia) Code Regulations*.

If a provision of the *Consumer Credit (Western Australia) Code Regulations* is taken to have effect before the day on which it first applies in WA, the provision does not operate so as to disadvantage a person by decreasing the person’s rights or by imposing liabilities on the person. This covers the possibility of the retrospective commencement of regulations.

Defines various terms used in the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations* and provides that the *Acts Interpretation Act 1954*, and other Acts of Queensland, do not apply to the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations*.

- Clause 7: Amends sections 7(1) and 8(1) to refer to *Consumer Credit (Western Australia) Code Regulations* as a result of the change in Clause 6.
- Clause 8: Deletes existing heading to Part 4 and inserts a new heading, “Part 4 – Miscellaneous.”
- Clause 9: Repeals section 9 which was the definition of “the Code” for the purposes of Part 4 in the current WA Code.
- Clause 10: Repeals and replaces section 10 with a re-worded provision that provides the general regulation making power under the Act for the Governor.

The *Consumer Credit (Western Australia) Regulations 1996* in force before commencement of the template legislation will be repealed.

- Clause 11: Inserts a new section 11(1) to enable special savings and transitional regulations to be made specifically for Western Australia subsequent to the commencement of the template legislation.

Identifies that the Code under section 11(2) is the *Consumer Credit (Western Australia) Code*.

Provides that savings and transitional regulations may apply from the day of commencement of the Act concerned or from a later day that is specified.

- Clause 12: Amends section 12 to delete “Code” and replace it with “*Consumer Credit (Western Australia) Code*.”
- Clause 13: Inserts a new heading – “Part 5 – Amendment of the Consumer Credit Code” and retains the differences in the existing WA Code for the purposes of the template Code as it will apply in WA. These being:

section 53(1) – protects debtors as it ensures that guarantors can not withdraw from the guarantee if the debtor has obtained credit or the debtor has entered into a contract with another person in reliance on the availability of credit under the credit contract;

section 66(1a) – enables consumers to apply to a Government Consumer Agency for assistance in negotiating a change in the

terms of a credit contract with a credit provider where the consumer is experiencing genuine short-term hardship (ie. illness or unemployment);

section 101(2) – enables debtors and guarantors to make individual applications against a credit provider for a civil penalty if the credit provider has failed to also make an application in WA; and

section 108(2) – modifies the effect of the registration of an order made by a Court or Tribunal outside WA to preserve the rights of WA debtors and guarantors to apply to the Commercial Tribunal where orders have not been registered in WA.

Clause 14: Repeals the current WA Consumer Credit Code.

Clause 15: Clarifies that section 36 of the *WA Interpretations Act 1984* applies in relation to the repeal and re-enactment of the Code and Regulations under the *Consumer Credit (Queensland) Act 1994*. This ensures that any matters or proceedings in place or in existence before the repealing law shall continue to exist as is consistent with the repealing law;

Clarifies that the enactment of section 6A of the Bill does not have any effect on the interpretation of the former *Consumer Credit (Western Australia) Code* or the *Consumer Credit (Western Australia) regulations*; and

Defines certain terms used for the purposes of this clause.

Clause 16: Makes a consequential amendment to the *Credit (Administration) Act 1984*.