

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to refer to the Commonwealth Parliament certain matters relating to credit and certain other financial transactions,
- (b) to repeal the existing consumer credit legislation operating in New South Wales and to make consequential and related amendments to other legislation,
- (c) to continue, on a transitional basis, provisions relating to the maximum annual percentage rate for credit contracts and the regulation of finance broking activities.

The proposed Act will form part of the new national credit protection regime being established under Commonwealth law. It is to be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution which enables State Parliaments to refer matters to the Commonwealth Parliament or to adopt Commonwealth laws that have been enacted pursuant to such referrals.

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.

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In view of the enactment of the Commonwealth laws, the remaining States will adopt the Commonwealth laws under section 51 (xxxvii) of the Commonwealth Constitution. The adopted laws are the National Consumer Credit Protection Act 2009 of the Commonwealth (as amended at the time of the adoption by the National Consumer Credit Protection Amendment Act 2010 of the Commonwealth) and the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 of the Commonwealth.

The proposed Act also provides for the referral of certain matters relating to credit to the Commonwealth Parliament in order to support future 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 (the 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 the proposed Act. 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

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. The definitions reflect the fact that there is to be an adoption of the relevant existing Commonwealth laws mentioned above, together with the conferral of an amendment reference. Those existing laws, as amended from time to time, comprise the National Credit legislation.

Clause 4 provides for the adoption, under section 51 (xxxvii) of the Commonwealth Constitution, of the relevant existing Commonwealth laws.

Clause 5 enables the Governor, by proclamation, to fix a day on which the adoption of the relevant existing Commonwealth laws is to terminate.

Clause 6 refers to the Commonwealth Parliament the matters of amending the

National Credit legislation as in force from time to time (the amendment reference). The amendment reference will enable the Commonwealth to make express amendments to its National Credit legislation about the provision of credit to which the National Credit Code applies and about consumer leases to which Part 11 of that Code applies. The National Credit Code is set out in Schedule 1 to the National Consumer Credit Protection Act 2009 of the Commonwealth.

Clause 7 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 land and State statutory rights.

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Clause 8 enables the Governor, by proclamation, to fix a day on which the amendment reference is to terminate.

Clause 9 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.

Clause 10 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 period of the adoption is also terminated.

Schedule 1 Repeals

Schedule 1 repeals the existing New South Wales consumer credit legislation.

Schedule 2 Consequential amendment of other legislation

Schedule 2 amends various Acts and regulations as a consequence of the repeal of existing consumer credit legislation and its replacement by the new national credit protection regime.

Schedule 3 Savings, transitional and other provisions

Schedule 3 includes savings and transitional provisions consequent on the enactment of the proposed Act (including a power to make regulations of a savings and transitional nature). Provision is made for the continuation of the financial counselling trust fund under the Credit Act 1984. The maximum annual percentage rate that currently applies to credit contracts will continue to apply for a period of 12 months (including in relation to new credit contracts under the National Credit Code). Provision is also made to continue the regulation of finance broking activities under the former credit legislation until such time as the Commonwealth commences relevant provisions of the National Credit legislation that regulate the provision of credit assistance.