Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.16 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Credit (Commonwealth Powers) Bill 2010, which transfers regulatory responsibility for credit and finance broking from this State to the Commonwealth.

The decision to transfer state powers in this regard has been made with the best interests of consumers in mind recognising that a single regulator can act quickly and decisively to protect consumers when the need occurs.

Underlying this decision is an acknowledgement of the anomaly of the Commonwealth regulating all financial services except for consumer credit and broking transactions.

The New South Wales Government has demonstrated a strong commitment to the protection of all consumers and played a prominent role in developing and implementing consumer credit laws that will shortly come to an end.

I have no doubt that the Commonwealth Government shares our commitment to the protection of credit consumers and will ensure that the level of services and support available to these consumers will be the equivalent to those currently provided.

The National Consumer Credit Protection Bill 2009, now enacted, which is the tabled text referred to in the Credit (Commonwealth Powers) Bill 2010, demonstrates that commitment.

The national legislation imposes a licensing system on credit providers and finance brokers alike and requires membership of an ASIC approved external dispute resolution scheme as a condition of licensing. This will ensure that disreputable traders are excluded from the industry and that consumers have affordable access to justice for the majority of consumer complaints.

The Consumer Credit Code, the state-based uniform legislation regulating all credit for personal domestic and household purposes, is to be transferred across in its entirety with amendments to close loopholes exploited by unscrupulous lenders to avoid regulation.

The Commonwealth has added to those amendments two important protections, the first is to raise the ceiling for hardship and stay of enforcement applications to $500,000.

The second is to extend the application of the Code to residential investment property.

I applaud these changes.

A most important addition to the regulatory scheme is a set of requirements for responsible lending conduct which will apply to both credit providers and brokers.

Members would be aware of the practices of fringe lenders, who approve loans that can't be repaid, and disreputable brokers who are only after their commission, so they exaggerate consumers' financial circumstances to get them a loan they can't repay.

We have seen the results of such practices worldwide on a grand scale and the results have been catastrophic.

These responsible lending conduct provisions are heartily welcomed.

I have already mentioned the requirement for membership of an ASIC approved dispute resolution scheme.

There are two such schemes in operation currently, the Financial Ombudsman Scheme and the Credit Ombudsman Scheme.

Both already deal with matters arising under the Code as well as finance broking issues and this will ensure a smooth transition for dispute resolution.

Matters which need to be heard in a court will be heard in the Federal Court and also the State courts.

Under the Constitution the Commonwealth is unable to confer jurisdiction for credit matters on tribunals.

This means the Consumer, Trader and Tenancy Tribunal will no longer hear credit matters, except for the maximum annual percentage rate and broking laws on a temporary basis, which I will explain shortly.

In order to promote access to justice the Commonwealth is to set up a small claims division of the Federal Court, which can waive fees and will not make costs orders except in the case of vexatious litigation.

As well, legal representation will be only by leave of the court.

This facility will also be available in State courts.

This welcome development recognises that consumers with small claims are not in a position to navigate standard court procedures involving formal evidentiary requirements and costly legal fees.

While the Commonwealth legislation could be discussed at length, it is the Credit (Commonwealth Powers) Bill 2010 that is at issue today.

I mention the Commonwealth legislation only to reassure Members that consumers will not be disadvantaged by this transfer, but will in fact gain from it.

I turn now to the referral Bill and this State's consequential and transitional provisions.

The States and Territories have chosen to make a text-based adoption, with a limited amendment power, in order to ensure that power is transferred to regulate and amend only the National Consumer Credit Protection legislation, as passed by the Commonwealth Parliament.

The referral Bill provides for the commencement of the legislation which will, as a result of changes announced by the Commonwealth last year, be 1 April 2010.

These changes were negotiated in order to allow industry sufficient time to change systems where necessary.

Registration of credit providers and brokers will commence on 1 April 2010, with licensing applications to commence from 1 July 2010.

The National Credit Code will also start on 1 July 2010 along with "high level" responsible lending requirements.

This will require financial providers to assess consumers' capacity to repay and to not provide unsuitable products.

States will retain responsibility for administering the Consumer Credit Code until the National Code commences.

Importantly, the New South Wales broking legislation as set out in Part 1 A of the Consumer Credit Administration Act 1995 will be retained until 1 January 2011 when the equivalent Commonwealth provisions commence.

This will ensure that consumers have appropriate protection from rogue brokers until the Commonwealth protections take effect.

I turn now to the Schedules to the referral Bill which set out the effects of the transfer of powers on New South Wales legislation and what regulatory responsibilities will remain with the New South Wales Government.

Let me preface the detail of the Bill with a general explanation.

All contracts regulated by the Consumer Credit Code prior to transfer will, in the future, be administered by the Australian Securities and Investments Commission (ASIC).

Of course all future consumer credit will also be regulated by the Commonwealth and administered by ASIC, in accordance with the new National Code and the overarching licensing and responsible lending regime.

There is one qualification to this, for a period of one year following the referral, New South Wales will continue to impose a maximum annual percentage rate on all Code contracts.

This is by agreement with the Commonwealth Minister, who has not included in the National legislation a maximum rate on consumer credit contracts.

I am very pleased that in the transition period, while the effect of the licensing and responsible lending provisions on fringe lending practices is being assessed, New South Wales consumers will continue to have this protection.

I will say a little more on this when I come to those provisions in the Schedule.

New South Wales will continue to administer pre-Code credit contracts that were regulated under the Credit Act 1984 and the Credit (Home Finance Contracts) Act 1984.

New South Wales will also continue to have responsibility for finance broking transactions undertaken prior to the repeal of the New South Wales laws and the commencement of the full responsible lending provisions in the national laws.

Brokers have been regulated under the Consumer Credit Administration Act 1995 since 2004, and while the nature of broking, which is a transaction rather than an ongoing contract, means that issues are likely to arise within a relatively short time of that transaction taking place, New South Wales will retain responsibility for a few years.

As previously stated, New South Wales will keep its legislation in place until all broking requirements under the Commonwealth law are in place on 1 January 2011.

The Bill also amends the Consumer, Trader and Tenancy Tribunal Act and Regulation to reflect the repeal of legislation.

However it allows certain matters to continue to be heard while New South Wales continues to have jurisdiction, either on a temporary and time limited basis such as maximum annual percentage rates or matters which are commenced but not concluded before referral takes place.

It also includes those matters for which we continue to have jurisdiction but which will in the relatively near future be irrelevant since contracts regulated by that Act will have run their course, such as the Credit Act 1984.

The legislation also provides for the continued operation of the financial counselling trust fund.

I am sure the Honourable Members of this House will agree that this fund is of considerable importance in promoting the financial health of the New South Wales community.

In 2008, this Program was instrumental in helping financial counselling organisations throughout the State to provide advice and assistance to nearly 40,000 people.

I am very pleased to say that the fund is actually self sustaining as the capital base of the fund, which came from civil penalty contributions, is able to generate sufficient interest to contribute to the Financial Counselling Services Program.

I turn now to Division 2 of Schedule 3 which relates to the maximum annual percentage rate of interest which can be charged in this State.

As I mentioned previously, the rate cap will sunset one year after the referral of the Consumer Credit Code.

However while in operation it will include an amendment to ensure that unscrupulous lenders cannot avoid the rate cap by artificially separating their business into a broker plus lender structure so that they can hide their exorbitant fees.

The Bill will require the inclusion of certain fees to third parties in the calculation of the maximum rate.

This will overcome the problem of fee splitting in New South Wales which is used as a loophole to avoid the interest rate cap legislation.

The legislation will continue to apply the enforcement provisions for the purposes of investigating and enforcing breaches of the maximum rate provisions.

The Bill will also authorise the Director General of the Department of Services, Technology and Administration to provide ASIC with documents, information and assistance that is reasonably required by ASIC in relation to its functions under the National credit legislation.

I conclude my remarks by noting that Australia has fared relatively well in this financial crisis, and venture to say that this is partly due to the quality of the laws that regulate the provision of consumer credit in this country.

I would also like to express my appreciation of the Fair Trading staff who have done so much to assist individual consumers with their credit problems, and also the important community organisations which support and assist consumers with their credit problems, including financial counsellors, legal centres and community organisations administering No Interest Loan Schemes.

The dedication and commitment of the workers in these organisations is inspiring, and I want to put on record my appreciation for the wonderful work that they do to assist vulnerable consumers and bring to justice those who operate outside the law.

I believe that state and territory Governments can be proud of the legislation which has struck a balance between protecting the rights and interests of consumers while not impeding the legitimate business goals of the industry.

I commend the Bill.