

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**CONSUMER CREDIT (ADMINISTRATION) (CONSEQUENTIAL
PROVISIONS) BILL 1996**

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Consumer Credit (Administration) (Consequential Provisions) Bill 1996

Background

The Uniform Credit Laws Agreement (the Agreement) which was signed by all Australian jurisdictions in July 1993, will see the implementation and commencement of national uniform credit legislation, in the form of the Consumer Credit Code ("the Code") on 1 November 1996. As part of its obligations under the Agreement, the ACT has already passed the *Consumer Credit Act 1995*, which applies the Code in this jurisdiction. To facilitate the Code's operation in the ACT an administrative structure is to be created.

The Consumer Credit (Administration) Bill 1996 establishes an administrative framework for the *Consumer Credit Act 1995* and the Code by carrying forward the following key administrative functions established by the *Credit Act 1985* ("the Credit Act") into the new scheme.

This Bill, the Consumer Credit (Administration) (Consequential Provisions) Bill 1996 ("the Bill") provides for transitional and savings provisions. The effect of the transitional and savings provisions is to ensure that certain specified proceedings commenced under the Credit Act may continue under the new administrative arrangements. For example, ongoing matters such as orders made by the Credit Tribunal, appointments and remuneration of Tribunal members, applications for the grant of a credit provider's licence, are able to be continued under Consumer Credit (Administration) Bill 1996. Further, the Bill deems certain events which occurred under the *Credit Act* to have occurred under the relevant provisions of the Consumer Credit (Administration) Bill 1996. The effect of this is to ensure that, for example, licence holders under the *Credit Act* are able to continue to operate as licence holders under the Consumer Credit (Administration) Bill 1996 without having to re-apply for that same licence.

DETAIL OF PROVISIONS

PART I - PRELIMINARY

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and to the commencement of the Bill. Clauses 1 and 2 and Division 1 of Part II commence on the day on which the Bill is notified in the Gazette, while the remaining provisions of the Bill commence on the same day that the substantive provisions of the Consumer Credit (Administration) Bill 1996 commences. The ACT consumer credit legislation package will start at the same time as the Consumer Credit Code, on 1 November 1996.

PART II - AMENDMENTS OF LAWS

Division 1 - Consumer Credit Act 1995

Clauses 3 - 5 are tidying-up provisions amending the *Consumer Credit Act 1995* which applies the Consumer Credit Code in the ACT. The *Consumer Credit Act 1995* contains an automatic commencement provision which will commence the Act and apply the Consumer Credit Code in the ACT on 5 September 1996, two months ahead of its scheduled commencement on 1 November 1996.

Accordingly, clauses 3 - 5 of this Bill amend the *Consumer Credit Act 1995* to remove the automatic commencement provision and allow the Act and the Consumer Credit Code to properly commence in the ACT on 1 November 1996.

Division 2 - Credit Act 1985

Clause 6 - Principal Act

Under this clause, the words "Principal Act" when used in this Division, mean the *Credit Act 1985*.

Clause 7 - Interpretation

This clause amends the definitions section in the *Credit Act* so that there is internal consistency between this Act and the new Consumer Credit (Administration) Bill 1996 ("the Administration Bill"). This ensures that the current credit scheme, to the extent that it will still be operating, can work smoothly with the new scheme when it comes into force. To achieve this, the clause amends definitions in the *Credit Act* by reference to definitions in the new Administration Bill.

Clause 8 - Assignment of rights by credit provider

This clause amends the *Credit Act* to reflect the change in terminology from 'licensed' credit providers to 'registered' credit providers and to reflect the policy changes in the new administrative scheme. Under the new scheme, a 'negative' licensing regime will operate with a system of registration for credit providers and finance brokers.

In keeping with the terminology of this new scheme, the clause amends subsection 81 (3) (a) of the *Credit Act* so that it applies to persons who would be 'disqualified from registration' instead of applying to persons who would 'not receive a grant of a licence'.

Clause 9 - Tribunal may reduce credit provider's loss

This is a tidying-up provision that amends section 85 of the *Credit Act* to provide for the application of the new Administration Bill. In short, the clause amends section 85 to remove words relating to 'failure'. Under subsection 14(1) of the *Interpretation Act 1967* 'contravene' is defined to include 'fail to comply' and therefore additional references to failure to comply are not necessary.

Clause 10 - Repeal

The effect of this clause is to repeal Parts XI, XII, XIII, XIV, XV, XVAA, and Sections 251, 252 and 253 of the *Credit Act*. After the new scheme commences, these provisions of the *Credit Act* will cease to apply being replaced by the Administration Bill.

Clause 11 - Contracting out of Act prohibited

This clause amends Section 254 of the *Credit Act* so that instead of a monetary penalty being imposed, the penalty is expressed in units. Using units rather than dollar figures to express penalties helps in keeping penalties set at a level consistent with community attitudes.

Clause 12 - Repeal

The effect of this clause is to repeal Sections 255 to 262 (inclusive) and Section 265 of the *Credit Act*.

Clause 13 - Regulations

This clause amends Section 266 of the *Credit Act* so that instead of a monetary penalty being imposed, the penalty is expressed in units. The clause repeals subsection (2) which provides for the commencement date for regulations made under the *Credit Act*.

Division 3 - Credit Regulations

Clauses 14, 15 and 16

The effect of these clauses is to remove the definitions of 'certificate of registration' and 'registered credit provider' from the Regulations and repeal Regulations 26, 27, 28 and 29 of the Credit Regulations. Regulations 26, 27, 28 and 29 were made in relation to the licensing scheme under the *Credit Act* and thus, as a new negative licensing scheme is being introduced under the Administration Bill, they will be repealed.

PART III - TRANSITIONAL PROVISIONS

Clause 17 - Interpretation

This section defines certain terms used in the Bill. A key definition is 'commencement day' which refers to the date on which this Part of the Bill will come into effect. This day is to be the same day as the day when the substantive provisions of the Consumer Credit (Administration) Bill 1996 commences.

Clause 18 - Repealed Part XI - licensing and registration

This clause provides for transitional provisions in relation to the licensing and registration of credit providers and finance brokers. The provisions may be summarised as follows:

- where a person holds a licence as a credit-provider or finance broker under the *Credit Act*, or is registered as such under the Credit Regulations, then that person will be taken to be registered as a credit provider or finance broker (as the case may be) under the Administration Bill, see **sub-clause (1)**;
- a reference to a registration certificate under the Administration Bill includes a reference to a licence issued to a credit provider under the *Credit Act*, or a certificate of registration issued to a credit provider under the Credit Regulations, see **sub-clause (2)**;
- a reference to a registration certificate under the Administration Bill includes a reference to a licence issued to a finance broker under the *Credit Act*, or a certificate of registration issued to a finance broker under the Credit Regulations, see **sub-clause (3)**;
- if, immediately prior to commencement day, there are any conditions attached to a licence which was issued under the *Credit Act*, these conditions will not apply once the Administration Bill comes into effect. That is, a licence issued under the *Credit Act* that is subject to a condition or restriction will, upon deemed registration under the Administration Bill, be taken to be free from that condition or restriction, see **sub-clause (4)**;
- where a person holds a deceased person's licence as a credit provider or finance broker under the provisions of the *Credit Act* immediately before the commencement date, then that person will be taken to be registered under the Administration Bill as a credit provider or finance broker (as the case may be) for a period up to six months following the death of the deceased licensee, see **sub-clause (5)**;
- any suspensions made under the *Credit Act* will continue in force under the new regime, see **sub-clause (6)**;
- the Tribunal is still able to exercise the powers it had under subsection 163(2) of the *Credit Act* which means it may remove the suspension of a licence at any time, see **sub-clause (7)**; and
- Where a person has been disqualified as a credit provider or finance broker under the *Credit Act* and this disqualification is in effect on the day immediately before the commencement day, then that person will continue to be disqualified under the Administration Bill and the disqualification will continue to run until the end of the disqualification

period as set down under the *Credit Act*. That is, disqualification periods set down under the *Credit Act* still remain in effect under the Administration Bill and are not void, see sub-clause (8).

Clause 19 - Repealed Part XI - transitional processes

The effect of these clauses is to allow matters that were commenced and not finished under the *Credit Act* to be finished. For example, sub-section (3) provides that where an Inquiry was started under subsection 173 (4) of the *Credit Act* and not concluded, the Inquiry may be concluded and in doing so, the Tribunal may exercise any power under that section in relation to the Inquiry as if that section still applied.

This clause allows the carry over of matters on foot immediately before the substantive provisions of the Administration Bill commence, including:

- applications for the grant of a credit provider or finance broker's licence;
- applications for registration as a credit provider;
- objections lodged under subsection 173(1) *Credit Act* to particular persons holding licences as credit providers or finance brokers;
- inquiries in relation to licensed credit providers or finance brokers;
- applications under the *Credit Act* for authority to carry on the business of a deceased licensee.

Objections lodged by the Director under section 160 or 173 of the *Credit Act* and decisions made under Part XI of the *Credit Act* immediately before the date of operation of the substantive provisions of the Administration Bill will continue in force.

Clause 20 - Repealed Part XII - Credit Tribunal

Sub-clauses (1), (2) and (3) of this clause provide that any appointments as members or acting members of the Credit Tribunal continue as though they were made under the Administration Bill, and any remuneration to which a member was entitled to be paid continues until a new determination is made.

Sub-clauses (4), (5) and (6) provide that steps taken by the Tribunal under the *Credit Act* that are not completed before the commencement date, shall be taken to continue under the *Administration Bill*. For example, even though proceedings may have commenced under the *Credit Act*, the issuing of search warrants will be made under the Administration Bill after the new scheme commences. These subclauses also provide that Part IV of the Administration Bill will apply to decisions in force under the *Credit Act*.

Clause 21 - Repealed Part XIII - Inquiries

Sub-clause (1) provides that appointments made under subsection 213 (1) of the *Credit Act* shall be deemed to be appointments made under the Administration Bill.

The effect of **sub-clauses (2) and (3)** is that where inquiries were being conducted by the Tribunal or a person under Part XIII of the *Credit Act* then these inquiries will be taken to be inquiries conducted under Part V of the Administration Bill.

Clause 22 - Repealed Part XIV - Unjust conduct by credit providers

This clause has two purposes. First, the clause provides that the provisions of the Administration Bill will apply to any undertakings made or in force under the *Credit Act* immediately before the commencement date. Second, the clause provides any orders of the Tribunal in force under Part XIV of the *Credit Act* will continue to have effect as though they were made under the Administration Bill. Similarly, any proceedings before the Tribunal that have started but have not finished before the commencement date will carry over and be completed under the Administration Bill.

Clause 23 - Repealed Part XV - Powers and functions of Director

This clause aims to carry over the powers and functions that were being exercised by the Director under the *Credit Act* immediately before the commencement date of the Administration Bill. These include:

- investigations being conducted by the Director for the purposes of section 225(a) or (b) of the *Credit Act*, see **sub-clause (1)**;
- proceedings taken or defended by the Director under section 227 of the *Credit Act*, see **sub-clause (2)**;
- proceedings to which the Director or the Minister were a party under section 229 of the *Credit Act*, see **sub-clause (3)**;
- investigations being conducted by the Director under section 230 of the *Credit Act*, see **sub-clause (4)**;
- authorisations in force that were given by the Director under subsection 232 (1) (b) of the *Credit Act*, see **sub-clause (5)**;
- certificates in force that were issued by the Director under subsection 232 (2) of the *Credit Act*, see **sub-clause (6)**;
- search warrants in force under subsection 235(1) of the *Credit Act*, see **sub-clause (7)**;
- notices given under section 237 of the *Credit Act*, see **sub-clause (8)**, documents in the possession of the Director or an investigating officer under section 238 of the *Credit Act*, see **sub-clause (9)**.