

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

CONSUMER CREDIT BILL 1995

EXPLANATORY MEMORANDUM

Circulated by authority of
Gary Humphries MLA
Minister for Consumer Affairs

GENERAL OUTLINE

Objectives of the Bill

The *Consumer Credit Bill 1995* (the Bill) forms part of a legislative scheme that involves the enactment of legislation by the States and Territories. The scheme is based on the Uniform Credit Laws Agreement 1993 of the States and Territories. The scheme aims to provide laws which apply equally to all forms of consumer lending and to all credit providers, and which are uniform in all jurisdictions in Australia.

The uniform scheme relied on the enactment by Queensland of a Consumer Credit Code (the Code). The Code is to be applied as the law of the Australian Capital Territory by the Bill. Under the Agreement, States and Territories had the choice of either applying the Code (as in force from time to time) as the law of the State or Territory or enacting a law that was not inconsistent with the Code. Under the Agreement, the approval of the Ministerial Council on Consumer Affairs will be required before any changes are made to the Code by the Queensland Parliament.

The Code applies rules which regulate the credit provider's conduct throughout the life of a loan but without restricting product 'flexibility' and consumer choice. The policy of the legislation is to rely generally on competitive forces to provide price restraint but to provide significant redress mechanisms for borrowers in the event that credit providers fail to comply with the legislation.

The Code is designed to apply to a deregulated credit market and provide standards for the provision of credit which will not be overtaken by changes in the financial marketplace.

Reasons for the Bill

Current consumer credit legislation is outdated and overly prescriptive. It applies only to a small percentage of the consumer credit market. It regulates the form of credit contracts and has a monetary ceiling of \$30,000. The laws were made for a regulated credit market where a limited number of products were available.

They are no longer appropriate for a deregulated finance industry and a regulatory environment which favours minimum intervention in the market.

DETAILS OF PROVISIONS

CONSUMER CREDIT BILL 1995

PART I—PRELIMINARY

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement and definitions. As it is anticipated that the Bill will commence on 1 March 1996, subsection 2 (3) which automatically commences the provisions of the Bill which have not already commenced after a specified period of time, refers to a period of 12 months rather than the usual 6 months.

PART II-CONSUMER CREDIT (AUSTRALIAN CAPITAL TERRITORY) CODE AND CONSUMER CREDIT (AUSTRALIAN CAPITAL TERRITORY) REGULATIONS

Clause 4 provides that the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act* applies as the law of the Territory and may, as the law of Territory, be referred to as the Consumer Credit (Australian Capital Territory) Code

Clause 5 provides that the regulations made by the Queensland Governor-in-Council under Part 4 of the Queensland Act apply as regulations for the purposes of the Code and may be referred to as the Consumer Credit (Australian Capital Territory) regulations (those regulations will be the uniform regulations for the purposes of the Code).

Clause 6 defines some general expressions used in the Code for the purposes of its application as a law of the Territory. The clause also stipulates that the *Acts Interpretation Act 1954* and other Queensland Acts do not apply to the *Consumer Credit Bill 1995* or the Consumer Credit Code once they are applied in the Territory.

PART III—CONFERMENT OF JUDICIAL AND ADMINISTRATIVE FUNCTIONS

Clause 7 specifies jurisdiction on either the Australian Capital Territory Credit Tribunal alone or on either the Tribunal or a court of competent jurisdiction.

Clause 8 specifies that the Director of Consumer Affairs for the Australian Capital Territory is the officer having the functions of the Government Consumer Agency under the Consumer Credit (Australian Capital Territory) Code and the Consumer Credit (Australian Capital Territory) Regulations.

PART IV-GENERAL

Clause 9 specifies that the Act binds the Crown to the extent of the Territory's power to do so.

Clause 10 allows the Executive to prescribe by regulation a maximum annual percentage rate for consumer credit contracts made in Territory.

Clause 11 allows an offence to be dealt with summarily by a Magistrate sitting alone according to the provisions of the *Magistrates Court Act 1930*.

Clause 12 allows for transitional and savings provisions to be made by regulation.

Clause 13 allows the Executive to prescribe regulations for the purposes of the Act