

AUSTRALIAN CAPITAL TERRITORY

CREDIT REGULATIONS (AMENDMENT) 1986

EXPLANATORY STATEMENT

No. 17 of 1986

The Credit Ordinance 1985 regulates the provision of credit in the Australian Capital Territory. In particular the Ordinance regulates contracts under which credit is provided and requires persons connected with the provision of credit to be licensed or registered. The Credit Regulations (Amendment) make provision for a number of matters that may be prescribed under the Ordinance.

The effect of each of the provisions in the proposed regulations is outlined in the attachment.

CREDIT REGULATIONS (AMENDMENT) 1986

Regulation 1 amends regulation 3 of the Credit Regulations (the Principal Regulations) by omitting the definition of ‘the Ordinance’ in sub-regulation 3(1) and by inserting the following definitions into the Principal Regulations: ‘certificate of registration’ means a certificate issued pursuant to paragraph 26 (3) (b) of the proposed regulations ‘Ordinance’ means the Credit Ordinance 1985; and ‘registered credit provider’ means a person registered as a credit provider under paragraph 26(3) (a) of the proposed regulations.

Regulation 2 inserts regulations 26, 27, 28, 29 and 30 into the Principal Regulations.

Regulation 26 (1) provides that an application for registration as a credit provider by a person who is required by sub-section 156 (4) of the Ordinance to be registered may be made to the Director of Consumer Affairs.

Sub-regulation 26 (2) provides that an application under sub-regulation 26 (1) is to be in writing in a form approved by the Director of Consumer Affairs and is to be signed by a director or authorised officer of the applicant and is to be accompanied by the fees that the applicant is liable to pay under paragraph 156 (4) (b) of the Ordinance.

Sub-regulation 26 (3) provides that where the Director of Consumer Affairs is satisfied that an application under sub-regulation 26 (1) complies with sub-regulation 26 (2) the Director is to register the applicant as a credit provider and issue a certificate of registration to the applicant.

Sub-regulation 26 (4) provides for variations and modifications to the provisions of the Ordinance which are to apply to persons registered or required to be registered as a credit provider under the Ordinance.

Regulation 27 (1) provides that a person who is required by sub-section 156 (4) of the Ordinance to be registered as a credit provider and who was carrying on business as a credit provider (a “prescribed person”) during the period beginning on the date of commencement of regulation 27 and ending at the expiration of 30 June 1986 (the “prescribed period”) is, subject to the Ordinance and the Regulations, deemed to be a registered credit provider.

Sub-regulation 27 (2) provides that a prescribed person may, within the prescribed period, apply for registration as a credit provider.

Sub-regulation 27 (3) provides that an application made under sub-regulation 27 (2) is to be in a form approved by the Director of Consumer Affairs and is to be accompanied by fees of the same amount as the fees determined under section 263 of the Ordinance for the purposes of paragraph 156 (4) (b) of the Ordinance.

Sub-regulation 27 (4) provides that a prescribed person who fails to apply within the prescribed period for registration as a credit provider is not to be deemed to be a registered credit provider after the end of the prescribed period.

Sub-regulation 27 (5) provides that a prescribed person who applies in accordance with regulation 27 and within the prescribed period, for

registration as a credit provider will: (a) continue to be deemed to be a registered credit provider until the application is determined; (b) cease to be deemed to be registered as a credit provider if the Director of Consumer Affairs refuses to register the prescribed person; and (c) will be deemed to have been registered on 30 June 1986 if the prescribed person is registered pursuant to the application after the end of the prescribed period.

Regulation 28 provides that for the purposes of paragraph 179 (2) (a) of the Ordinance, a finance broker is authorised to demand, receive or accept commission in respect of negotiating, or acting as intermediary for the obtaining of, credit on behalf of another person of an amount not exceeding 2 percent of so much of the amount negotiated or obtained as does not exceed \$5,000 and, where the amount negotiated or obtained exceeds \$5,000, an additional amount not exceeding 1.5 per cent of so much of that amount as exceeds \$5,000 or \$6.50 whichever is the greater.

Regulation 29 in conjunction with sub-section 179 (4) of the Ordinance provides that where a finance broker is found by the Court to be guilty of an offence against the Ordinance the Court may order the finance broker to refund any commission received by him together with interest at such rate as is fixed by the Court not exceeding 8 per cent per annum from the time of the receipt or acceptance of the commission until the time it is refunded.

Regulation 30 will prescribe a form for the purposes of section 153 of the Ordinance. Section 153 provides that a credit provider under a home finance contract is not entitled to institute proceedings or exercise a right under the contract or a mortgage or guarantee that relates to the contract (being proceedings that may be instituted, or a right that may be exercised, as a consequence of a default under the contract) until after the expiration of one month after service in accordance with sub-section 153 (2) of the Ordinance of a notice in the prescribed form that specifies the proceedings or right.

Regulation 3 adds form 12 to Schedule 1 of the Principal Regulations.