

CONSUMER CREDIT LEGISLATION AMENDMENT BILL 1996

EXPLANATORY NOTES

Objectives of the Legislation

The main objectives of the Bill are:

- (1) to repeal those sections of the *Credit Act 1987* which set up a negative licensing regime for credit providers and, by way of an amendment to the *Consumer Credit (Queensland) Act 1994*, establish a negative licensing system for credit providers who provide credit under that Act or the *Credit Act 1987*;
- (2) to grant the chief executive and departmental officers a number of investigative and enforcement powers for both the *Credit Act 1987* and the *Consumer Credit (Queensland) Act 1994*, including powers of entry, search, inspection and seizure;
- (3) to continue the Consumer Credit Fund established under the *Credit Act 1987* under the *Consumer Credit (Queensland) Act 1994*;
- (4) to amend the *Credit Act 1987* to clarify the application of the Act after the commencement of the *Consumer Credit (Queensland) Act 1994* and to make necessary amendments to the *Bills of Sale and Other Instruments Act 1955* and the *Hire-Purchase Act 1959*; and
- (5) to provide for a number of other administrative matters, including, for example, the prosecution of offences under the *Credit Act 1987* and the *Consumer Credit (Queensland) Act 1994* (other than the *Consumer Credit (Queensland) Code*).

Reasons for the Bill

In September, 1994, the Queensland Parliament passed the *Consumer Credit (Queensland) Act 1994*. The *Consumer Credit (Queensland) Code* is an Appendix to that Act. By proclamation dated 27 June 1997, the Deputy Governor fixed 1 November 1996 as the commencement date for the Act.

The Code forms the basis of a national scheme of new consumer credit laws and will replace the existing Queensland credit legislation, the *Credit Act 1987*. The *Credit Act 1987* will not be repealed so that it can provide for matters arising under contracts to which it still applies. However, the importance of the *Credit Act 1987* will wane over time and eventually it will have no further application.

Prior to the commencement of the *Consumer Credit (Queensland) Code*, it is necessary to amend the *Consumer Credit (Queensland) Act 1994* to provide for a number of matters peculiar to Queensland, mainly of an administrative nature. This is the main purpose of the *Consumer Credit Legislation Amendment Bill 1996*.

Without this administrative framework, Queensland will not be ready for the *Consumer Credit (Queensland) Code* to commence.

Ways in which the Objectives will be Achieved in the Bill

The objectives will be achieved by repealing the sections of the *Credit Act 1987* that deal with the Consumer Credit Fund, the negative licensing of credit providers, the administrative powers given to departmental officers and certain other general administrative provisions and inserting the equivalent of those provisions, with some changes, additions and modernisation where considered necessary, in the *Consumer Credit (Queensland) Act 1994*. Those parts of the *Consumer Credit (Queensland) Act 1994* inserted by way of this Bill then establish the administrative framework for both the *Credit Act 1987* and the *Consumer Credit (Queensland) Act 1994*.

The objectives are also achieved by including necessary amendments to the *Credit Act 1987*, the *Hire Purchase Act 1959* and the *Bills of Sale and Other Instruments Act 1955* in the Bill.

Estimated Administrative Cost of Government Implementation

As the Bill largely continues the status quo under the *Credit Act 1987* as regards the negative licensing of credit providers in the State and the investigative and enforcement powers given to departmental officers, the Bill will not result in any significant additional costs to government. The continuation of the Consumer Credit Fund, together with the ability for monies in the Fund to be used to provide for services for consumers, including financial counselling services to consumers and legal advice to consumers about consumer credit, should reduce the demands on government for these services. Further, the provision in the Bill widening the purposes for which monies in the Consumer Credit Fund may be applied so that those monies can be used to pay expenses incurred in the administration of the consumer credit laws, should be beneficial to government.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation

During the development of the Bill, consultation occurred with the Queensland Law Society and the Australian Finance Conference (which represents a number of key credit providers).

Most of the matters dealt with in the Bill, however, have been well-known to industry and consumer groups for a considerable period of time, for example, the proposal that Queensland would continue with the negative licensing of credit providers after the commencement of the *Consumer Credit (Queensland) Act 1994* was foreshadowed in 1993 and was confirmed when the *Credit Amendment Bill 1994*, which amended the *Credit Act 1987* to establish the Consumer Credit Fund, was introduced into Parliament. The continuation of the Consumer Credit Fund was also confirmed at that time.

The investigative and enforcement powers granted to officers of the Department to enforce compliance with the *Credit Act 1987* and the *Consumer Credit (Queensland) Act 1994* are also anticipated by industry and consumer groups, as they largely mirror the current powers under the *Credit Act 1987*.

The amendments to the *Credit Act 1987* to clarify the matters to which the *Credit Act* will continue to apply after the commencement of the *Consumer Credit (Queensland) Act 1994* are in line with those passed in other *Credit Act* jurisdictions.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision and provides that section 3, part 2 and the schedule will commence when section 4 of the *Consumer Credit (Queensland) Act 1994* commences. By Proclamation dated 27 June 1996, the Deputy Governor fixed 1 November 1996 as the commencement date for the *Consumer Credit (Queensland) Act 1994*.

Clause 3 states that the schedule amends the Acts mentioned in it.

PART 2—AMENDMENT OF CREDIT ACT 1987

Clause 4 provides that the purpose of the part is to amend the *Credit Act 1987*.

Clause 5 amends the definition of “Fund” in section 7(1) of the *Credit Act 1987* so that any references in that Act to the Fund will be references to the Consumer Credit Fund established under the *Consumer Credit (Queensland) Act 1994*.

Clause 6 substitutes references in section 19 of the *Credit Act 1987* to an order in council with references to a regulation.

Clause 7 replaces references to an order in council in section 21 of the *Credit Act 1987* with references to a regulation.

Clause 8 inserts new sections 21A and 21B into the *Credit Act 1987*. These new sections declare the extent to which the *Credit Act 1987* will apply to credit contracts after the commencement of the *Consumer Credit (Queensland) Act 1994*.

Clause 9 repeals divisions 1 and 2 of Part 9 of the *Credit Act 1987*. These divisions establish Queensland's negative licensing system for credit providers. New provisions for the negative licensing of credit providers who provide credit under either the *Credit Act 1987* or the *Consumer Credit (Queensland) Act 1994* are by the Bill inserted into the lastmentioned Act.

Clause 10 repeals Part 9A of the *Credit Act 1987*. The Bill then establishes the Consumer Credit Fund under the *Consumer Credit (Queensland) Act 1994*, and makes it clear that the Fund so established is a continuation of the Fund originally established under the *Credit Act 1987* and that references to the Fund in the *Credit Act 1987* are references to the Fund under the *Consumer Credit (Queensland) Act 1994*.

Clause 11 amends section 155 of the *Credit Act 1987* by substituting references in that section to an order in council with references to a regulation. The clause also repeals an obsolete provision in section 155(4) of the *Credit Act*.

Clause 12 repeals sections 164 to 166 of the *Credit Act 1987*. Where necessary, the Bill inserts equivalent sections in the *Consumer Credit (Queensland) Act 1994*.

Clause 13 repeals Part 11 of the *Credit Act 1987* which deals with the administration of that Act. This Bill then inserts new provisions covering matters relevant to the administration of the *Credit Act 1987* and the *Consumer Credit (Queensland) Act 1994* in the *Consumer Credit (Queensland) Act*.

PART 3—AMENDMENT OF CONSUMER CREDIT (QUEENSLAND) ACT 1994

Clause 14 states that Part 3 of the Bill amends the *Consumer Credit (Queensland) Act 1994*.

Clause 15 replaces the definitions found in existing section 3 of the *Consumer Credit (Queensland) Act 1994* with new definitions. These definitions apply to all of the Act other than the *Consumer Credit (Queensland) Code*. The clause states that words and expressions used in the Act, other than the *Consumer Credit (Queensland) Code*, have the meanings given by the Code if the words are used in relation to credit to which the Code applies, but have the meanings given by the *Credit Act 1987* if they are used in relation to credit to which the *Credit Act* applies.

Clause 16 inserts a regulation making power for the *Consumer Credit (Queensland) Act 1994*, other than the *Consumer Credit (Queensland) Code*.

Clause 17 inserts a proposed section in the *Consumer Credit (Queensland) Act* which allows the chief executive to approve forms for use under the Act, other than the *Consumer Credit (Queensland) Code*.

Clause 18 inserts new parts 6-10 into the *Consumer Credit (Queensland) Act 1994*.

The various proposed sections in each of those parts may be explained as follows:-

PART 6—CONTROL OF CREDIT PROVIDERS’ PRACTICES

Division 1—Preliminary

Proposed section 15 makes it clear that Part 6 of the *Consumer Credit (Queensland) Act 1994* will provide for controls over credit providers’ practices over and above those already provided for in the *Consumer Credit (Queensland) Code* and the *Credit Act 1987*.

Proposed section 16 gives the District Court jurisdiction as regards the negative licensing of credit providers.

Division 2—Unjust conduct by credit providers

Proposed section 17 defines the term “unjust conduct” by a credit provider as dishonest or unfair conduct, or anything done, or omitted to be done, in breach of a contract as well as the contravention of a consumer credit law or the *Credit (Rural Finance) Act 1996*.

Proposed section 18 allows the chief executive, where it appears that a credit provider has repeatedly engaged in unjust conduct in the course of a credit business, to request a credit provider to execute a conduct deed or alternatively to apply to a court for an order under section 21.

Proposed section 19 deals with the terms to be contained in a conduct deed and certain consequences for the chief executive once the credit provider executes, and complies, with a conduct deed. A credit provider who enters into a conduct deed is obliged to comply with it, and a maximum penalty of 500 penalty units is provided for breach of a conduct deed.

Proposed section 20 requires the chief executive to keep a register of conduct deeds. The chief executive must record in the register the prescribed particulars. The register may be inspected free of charge during office hours.

Proposed section 21 empowers the court, on the application of the chief executive, to make an order which will restrain a credit provider from engaging in unjust conduct or force the credit provider to comply with a conduct deed it has executed. The court may also order a credit provider to rectify the consequences of past unjust conduct. If the credit provider is a corporation and the court is satisfied an executive officer of the corporation was involved in the unjust conduct or the contravention of the conduct deed by the credit provider, then the court may also make an order about the future involvement of such executive officer of the corporation in the credit provider’s conduct.

Proposed section 22 empowers the court to vary or discharge an order made under section 21.

Division 3—Prohibition from acting as credit provider

Proposed section 23 gives the court power to make a prohibition order whereby a person is prohibited from providing consumer credit or is restricted in the way in which the person may provide consumer credit. The order may be made on terms the court considers appropriate and may be made without any time limit or for a stated time. The clause sets out the matters which the court must consider before making a prohibition order. If a person fails to comply with a prohibition order a maximum penalty of 200 penalty units or 6 months imprisonment may be imposed on the credit provider.

Proposed section 24 gives a court power to vary or discharge a prohibition order.

Proposed section 25 clarifies the effect of a prohibition order in relation to a credit contract entered into before the order is made.

Proposed section 26 states that a person who provides consumer credit under a credit contract in contravention of a prohibition order is not entitled to payment of any amount under the credit contract and anyone who makes a payment under the credit contract to the prohibited person may recover the amount as a debt payable by the prohibited person.

PART 7—INVESTIGATION AND ENFORCEMENT***Division 1—Inspectors***

Proposed section 27 allows the chief executive to appoint an officer or employee of the Department as an inspector under the Act, provided the conditions outlined in the section are fulfilled.

Proposed section 28 clarifies the powers given to inspectors and allows for the limitation of an inspector's powers.

Proposed section 29 requires the chief executive to give each inspector an identity card. It sets out the necessary contents of each identity card and compels a person who stops being an inspector to return his or her identity

card to the chief executive. The proposed section also permits an inspector to be issued with a single identity card for a number of purposes.

Proposed section 30 sets out the requirements for an inspector in relation to the production or display of the inspector's identity card.

Division 2—Inspectors' general powers

Proposed section 31 sets out the terms on which an inspector may enter a place.

Proposed section 32 sets out the procedure which an inspector must follow if the inspector intends to request an occupier of a place for permission to enter the place.

Proposed section 33 allows an inspector to apply to a magistrate for a warrant to enter a place. It provides for the application to be sworn and that it must state the grounds on which the warrant is sought. It also provides that the magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires. The proposed section also sets out what the warrant must state, and what matters the magistrate must be satisfied about before the warrant is issued.

Proposed section 34 sets out when, and how, an inspector may apply for a warrant other than in person. It also sets out the obligations of the inspector, and the magistrate, in this situation, and the matters which are authorised by the facsimile warrant, or the warrant form properly completed by the inspector.

Proposed section 35 gives the powers stated therein to an inspector after entering a place under section 31(1).

Proposed section 36 sets out the conditions under which an inspector who enters a place under proposed section 31(1), other than under a warrant, may seize evidence.

Proposed section 37 grants powers to an inspector who has seized evidence to move the evidence from the place where it was seized or leave the evidence at the place of seizure. If the inspector leaves the evidence where seized, the inspector may take reasonable action to restrict access to it. It also makes it an offence for a person to tamper (or attempt to tamper)

with the evidence, or something restricting access to the evidence, without an inspector's approval.

Proposed section 38 requires an inspector to give a receipt for a seized thing unless it is impractical or would be unreasonable to give such a document.

Proposed section 39 requires an inspector to return a seized thing to its owner when the matters set out therein are satisfied.

Proposed section 40 sets out when an inspector is obliged to allow access to, or copying of, evidence which has been seized.

Proposed section 41 requires an inspector to exercise a power under the division, in relation to a credit provider, in a way which causes as little inconvenience as practicable to the credit provider's business.

Division 3—Other investigative powers

Proposed section 42 gives authority to an inspector, in the circumstances set out in the proposed section, to require a person to state the person's name and residential address.

Proposed section 43 grants an inspector power, by written notice given to a person, to require the person to give information about an offence against a consumer credit law. However, the section only applies if the inspector reasonably believes an offence against a consumer credit law has just been committed and a person may be able to give information about the offence. The proposed section also sets out what must be stated in the notice and that a person must give the information, unless the person has a reasonable excuse. The proposed section further provides that it is a reasonable excuse if giving the information would tend to incriminate the person.

Proposed section 44 allows an inspector or the chief executive, by written notice, to require a person to produce a document relating to a credit business. The notice must state the matters set out in the proposed section and the person must comply with the notice unless the person has a reasonable excuse. However, it is a reasonable excuse if complying with the notice might tend to incriminate the person. The proposed section permits the document to be copied and for the copy to be certified as a true copy.

Proposed section 45 states that the power under proposed section 44 to require production of a document includes the power to require, for an unreadable document, production of a printed document in the English language containing the information in the unreadable document. The term “unreadable document” is defined.

Division 4—Other enforcement matters

Proposed section 46 makes it an offence for a person to make a false or misleading statement to an inspector.

Proposed section 47 makes it an offence for a person, without reasonable excuse, to obstruct an inspector in the exercise of a power.

Proposed section 48 makes it an offence for a person to impersonate an inspector.

Proposed section 49 sets out the obligations on an inspector if an inspector damages something in the exercise of a power or a person acting under the direction of an inspector damages something.

Proposed section 50 allows a person to claim compensation from the State, and for a court to order compensation, provided the requirements set out in the proposed section are met. The proposed section also provides that a regulation may prescribe matters that may, or must, be taken into account by the court when considering whether to make a compensation order.

PART 8—CONSUMER CREDIT FUND

Proposed section 51 continues the Consumer Credit Fund which was established under the *Credit Act 1987*, section 153A.

Proposed section 52 states that the Consumer Credit Fund is the fund established and operated for the purposes of section 106 of the *Consumer Credit (Queensland) Code*. The proposed section also states what amounts may be paid into the fund.

Proposed section 53 sets out what payments may be approved by the Minister and the chief executive from the fund.

Proposed section 54 requires a report on the operations of the fund to be included in the department's annual report.

PART 9—ADMINISTRATION

Division 1—Offences

Proposed section 55 states that the division does not apply to an offence against the *Consumer Credit (Queensland) Code*.

Proposed section 56 makes an offence against a consumer credit law a summary offence.

Proposed section 57 sets out the time limits for a proceeding for an offence against a consumer credit law.

Proposed section 58 requires the executive officers of a corporation to ensure the corporation complies with the consumer credit laws. If a corporation commits an offence against a provision of a consumer credit law, each of the corporation's executive officers is deemed to have also committed the offence of failing to ensure the corporation complies with the provision and evidence that a corporation has been convicted of an offence against a provision of a consumer credit law is evidence that each of the executive officers committed the offence of failing to ensure compliance by the corporation. However, the proposed section also sets out in proposed subsection (4) the defences available to an executive officer in such circumstances.

Division 2—Miscellaneous

Proposed section 59 gives the chief executive the standing to intervene in a proceeding before a court under a consumer credit law.

Proposed section 60 allows the chief executive to delegate the chief

executive's powers under a consumer credit law.

Proposed section 61 imposes secrecy requirements on a person who is, or has been, an officer of the department, subject to certain exceptions. The proposed section also allows the chief executive to disclose protected information in certain circumstances.

Proposed section 62 is an evidentiary provision.

Proposed section 63 states an official (defined in the proposed section) does not incur civil liability for an act done, or omission made, honestly and without negligence under a consumer credit law and that liability that would, apart from the section, attach to an official, attaches to the State.

Proposed section 64 requires a report to be made about the administration of the consumer credit laws and the report must be included in the department's annual report.

PART 10—TRANSITIONAL

Proposed section 65 makes certain necessary transitional provisions for court orders under the *Credit Act 1987* as well as for the register of undertakings under that Act and for deeds entered into by credit providers under that Act.

The *schedule* contains necessary amendments to the *Bills of Sale and Other Instruments Act 1955* and the *Hire-Purchase Act 1959* consequential on the anticipated commencement of the *Consumer Credit (Queensland) Act 1994*.