

CONSUMER CREDIT (QUEENSLAND) AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the legislation

The objectives of the Bill are to extend the operation of the Consumer Credit Code (“the Code”), an appendix to the Consumer Credit (Queensland) Act 1994 to:

- (1) require the publishing of mandatory comparison rates for fixed term consumer credit products; and
- (2) to provide a time limitation period for civil penalty applications under the Code.

The mandatory comparison rate is a method of reducing the total cost of a loan, including interest and all fees and charges, to a single percentage rate. This allows for much easier comparison of the overall cost of loan products by consumers.

The Bill requires credit providers to make available to consumers the comparison rates applicable to their products in advertising, and in brochures in a form suitable for viewing in electronic form, for example, on the Internet. This will provide consumers with an added tool in comparing the cost of different credit products offered by different credit providers.

The Bill will also effect a further amendment by providing a 6 year time limitation period for applications to the Court for the imposition of a civil penalty on credit providers who breach any key requirement imposed by the Code.

Reasons for the objectives and how they will be achieved

Mandatory Comparison Rates

The Code is an appendix to the *Consumer Credit (Queensland) Act 1994*, which provides protection to consumers borrowing money for personal, domestic or household purposes.

A central feature of the Code is that it requires lenders to fully disclose important features of the loan prior to the borrower entering into a loan contract. The types of features include such critical things as the interest rate and any fees and charges that are payable in connection with the loan.

Since the introduction of the Code in 1996, lenders have introduced a range of different fees and charges on consumer loan products. The combination of fees and charges and interest rates has made it increasingly difficult for consumers to compare the cost of credit between different lenders and different products.

The main objective of this Bill is to require credit providers to make available to consumers the comparison rates applicable to their products in advertising and in brochures or electronic form, such as the Internet. This will provide consumers with an added tool in comparing the cost of different credit products offered by different credit providers.

Time Limitation Period

A further objective of the Bill will be to provide a 6 year time limitation period for commencing civil penalty applications under the Code.

The Code provides that in the event of a credit provider breaching a key requirement of the Code, the Government Consumer Agency may make application to the Court seeking the imposition of a civil penalty against the credit provider in an amount of up to \$500,000.

Section 10(5) of the *Limitation of Actions Act 1974* (Qld) provides a 2 year time limitation period for the commencement of an action to recover a penalty or forfeiture or sum by way of a penalty or forfeiture. All States and Territories have an equivalent provision.

An action by the Government Consumer Agency seeking the imposition of a civil penalty against a credit provider who breaches the Code is an action to recover a penalty or forfeiture. Consequently, a 2 year time limitation period applies with time running from the date of the breach.

This is very limiting considering, for example, a home loan may be for 25 or 30 years. The 2 year time limitation is a major limiting factor on the ability of Government Consumer Agencies in policing the actions of credit providers and their compliance with the Code.

The amendment will increase the time limitation period to 6 years. This is the time limitation period applicable to most other civil actions, including tort and breach of contract based claims, and the civil penalty provisions of the *Corporations Law*.

Administrative Cost

The Bill will not result in additional costs to government.

Fundamental Legislative Principles

The Bill is consistent with Fundamental Legislative Principles.

Consultation

The Code is national uniform legislation and any amendments to the Queensland Code automatically amends the legislation in other States and Territories (except Western Australia, which has enacted alternative consistent legislation, and Tasmania which adopts the Queensland Amendment with approval of both Houses of the Tasmanian Parliament).

Two-thirds majority support from the State and Territory Ministers for Fair Trading and Consumer Affairs must be obtained prior to the introduction of any amendments to the Queensland Parliament.

Each of the State and Territory Fair Trading Agencies and Ministers for Fair Trading and Consumer Affairs have been consulted. The necessary two-thirds majority support of the States and Territories has approved the amendments.

Two Consultation Drafts of the Bill were circulated to key stakeholders, including consumer groups, mainstream financier industry bodies, the legal profession and other lending organisations. Organisations consulted included:

- Australian Competition and Consumer Commission
- Australian Bankers' Association
- Citibank Ltd
- Credit Union Services Corporation (Australia) Ltd
- Australian Association of Permanent Building Societies
- Mortgage Industry Association of Australia
- Australian Finance Conference
- Australian Consumers' Association
- Consumer Credit Legal Centre (NSW) Inc
- Legal Aid Commission (NSW)
- Financial Services Consumer Policy Centre (NSW)

NOTES ON PROVISIONS

Short title

Clause 1 sets out the short title of the Act.

Commencement

Clause 2 provides for the commencement of the Act.

Act and Code amended

Clause 3 provides that the Act amends the *Consumer Credit Code*, an appendix to the *Consumer Credit (Queensland) Act 1994*.

Insertion of new 113A Time Limitation

Clause 4 provides a time period of 6 years during which an application may be brought for a contravention of a key requirement under Division 1 of Part 6 of the Code.

The 6 year time limitation period runs from the date of the breach and will apply to applications for a declaration that there has been a contravention of the Code and the imposition of a civil penalty for a contravention.

This provision is intended to override the limitation periods provided in State and Territory limitation of actions legislation that provide that an action to recover a penalty or forfeiture or sum by way of a penalty or forfeiture must be commenced within 2 years¹.

Amendment of s140 Advertising

Clause 5 amends section 140 of the Code. It facilitates the incorporation of Division 2, Part 9A and renders inoperative section 140(4), which

¹ Specifically, see Limitation Act 1985 (ACT) s 15; Limitation Act 1969 (NSW) s 18; Limitation of Actions Act (QLD) s 10(5); Limitation Act 1981 (NT) s 16; Limitation of Actions Act 1936 (SA) s 37; Limitation Act 1974 (Tas) s 4(6); Limitation of Actions Act 1958 (Vic) s 5(5); Limitation Act 1935 (WA) s 37.

applied when the use of comparison rates was voluntary as was the case prior to the introduction of Part 9A.

Clause 6 inserts a new Part 9A to the Code that requires the inclusion of comparison rates in advertising and to make available comparison rate schedules for prospective customers.

PART 9A COMPARISON RATES

Division 1—Preliminary

Object of Part

Section 146A identifies the objects of Part 9A and how these objects are to be achieved.

The objects of Part 9A are to be achieved by assisting consumers to identify the true cost of credit through the mandatory inclusion of comparison rates in advertising conducted by credit providers if an interest rate is advertised and through publishing schedules of comparison rates for any such credit.

Part not to apply to continuing credit contracts

Section 146B provides that Part 9A does not apply to continuing credit contracts such as credit cards. Consequently, Part 9A only applies to fixed term credit contracts.

Definitions

Section 146C provides key definitions used in the Part 9A, including comparison rate schedule, consumer credit product, credit advertisement, finance broker and name.

Expiry of Part

Section 146D provides that Part 9A will sunset 3 years after it commences.

Division 2—Comparison rate in credit advertising**Comparison rate mandatory in advertisements containing annual percentage rate**

Section 146E provides that the relevant comparison rate must be included in advertising when the advertisement contains an annual percentage rate.

Sub-section (2) permits the inclusion of the relevant comparison rate even if no annual interest rate is included.

The relevant comparison rate

Section 146F defines what the relevant comparison rate is for the purposes of section 146E. It provides that the relevant comparison rate which must be included in advertising is the comparison rate calculated for whichever of the designated amounts and terms which most closely represents the typical amount of credit and term provided by the credit provider.

Sub-section (2) provides that the designated amounts and terms are to be prescribed by regulation.

Sub-section (3) provides that a particular advertisement may state more than one comparison rate.

Information about comparison rate

Section 146G provides that where a comparison rate must be included in advertising pursuant to section 146E, certain information needs to be included in the advertisement. This includes the name of the consumer credit product, the amount of credit and the term to which each comparison rate applies.

Sub-section (2) provides that if the comparison rate is calculated for an amount of credit prescribed by the regulations, the advertisement must clearly say that the comparison rate is calculated on the basis that security (by mortgage or guarantee) is taken or state that the calculation is based on the situation where no security is being taken. Inclusion of the word “secured” or “unsecured” is sufficient for this purpose.

Sub-section (3) provides that the advertisement must also say that a comparison rate schedule is available at the premises of the credit provider, finance broker or supplier to which the advertisement relates.

Warning about comparison rate

Section 146H requires the inclusion of a warning statement as to the accuracy of comparison rates in circumstances where a comparison rate appears in credit advertisement. The warning statement is to be prescribed by regulation.

Sub-section (2) provides that if a comparison rate schedule consists of more than 1 document, then a separate warning must be given on all documents.

Sub-section (3) provides that the warning may state that a given comparison rate is only accurate for the specified amount of credit and the specified term.

Other requirements for comparison rate

Section 146I details other requirements that must be complied with when a comparison rate is used in advertising on television, radio and in electronic form such as the Internet.

Sub-section (1) requires a comparison rate to be identified as such when it is used in credit advertising.

Sub-section (2) provides that the comparison rate must not be less prominent than the annual percentage rate and the amount of any repayment stated in the advertisement.

Sub-section (3) relates to advertising on television, the Internet and on any other electronic display medium. If the annual percentage rate is spoken and does not appear in text on the screen, the comparison rate must be spoken also. If the annual percentage rate is displayed on the screen in text, the comparison rate must also be displayed on the screen in text and may be spoken. If the comparison rate is in spoken form, the warning and other information may either be in spoken form or displayed on screen in text. If the comparison rate is displayed on the screen in text, the warning and other information must also be displayed on the screen in text.

Division 3—Comparison rate schedules

The comparison rate schedule

Section 146J provides that a comparison rate schedule is a list of comparison rates for consumer credit products of a credit provider.

When comparison rate schedule to be provided to consumers

Section 146K provides when comparison rate schedules are to be provided to consumers.

Sub-sections (1) to (3) require a credit provider, finance broker and linked supplier to display, and have available for collection by members of the public, copies of the relevant comparison rate schedule. The credit provider, finance broker or supplier must make available the schedule at any of their premises where they display, or make available for collection by members of the public, documents advertising consumer credit products or at which members of the public may lodge applications for credit in person.

Sub-section (4) provides that where a credit provider, finance broker or supplier makes available material advertising consumer credit products on the Internet or other electronic access system, then the credit provider, finance broker or supplier must ensure access is available to the relevant comparison rate by members of the public.

Sub-section (5) provides that a credit provider, finance broker or supplier must ensure that the relevant comparison rate schedule accompanies any application for credit that is given to consumers by the credit provider, finance broker or supplier.

Relevant comparison rate schedule

Section 146L defines what the relevant comparison rate schedule for the purposes of section 146K are.

In the case of the premises of a credit provider, the relevant schedule is a schedule of all consumer credit products of the credit provider.

In the case of a finance broker, the schedule is of the consumer credit products of each credit provider that the finance broker deals with, subject to sub-section (2), which limits the number to the 6 main credit providers with whose products the finance broker mainly deals.

In the case of a supplier, the schedule is of the consumer credit products of each linked credit provider.

In the case of the Internet or other public electronic system, the relevant schedule is of the consumer credit product or products offered by each credit provider concerned.

In the case of an application for credit, the relevant schedule is the schedule for the consumer credit product or products to which the application relates.

Comparison rates to be listed in schedule

Section 146M provides which comparison rates are to be listed in the relevant comparison rate schedule. These rates are those comparison rates calculated for each of the designated amounts of credit and terms for the credit product concerned.

Sub-section (2) provides that designated amounts of credit and the terms are those prescribed by regulation.

Sub-section (3) provides that the comparison rate schedule for any credit product need not list any amounts that are not generally available in connection with the product. The schedule must list any amounts that are generally available in connection with that credit product whether or not it is generally available on the terms specified or in the amount specified.

Sub-section (4) provides that where a comparison rate is calculated for an amount of credit prescribed by the regulations, the comparison rate schedule must state that the comparison rate has been calculated on the basis of whether security in the form of a mortgage or guarantee will or will not be taken by the credit provider. The use of the word “secured” or “unsecured” is sufficient for this purpose.

Sub-section (5) provides that the comparison rate schedule must clearly state the name of the product, the amount of credit and the term applicable for each comparison rate and the annual percentage rate for each amount of credit and term.

Form of comparison rate schedule

Section 146N details the form of the comparison rate schedule. The schedule is to be in the form of either a printed document or text displayed on a screen where access is via the Internet or public electronic system. Comparison rates for different credit products may be shown on a single schedule.

Warning about comparison rate schedules

Section 146O requires that whenever a comparison rate schedule is published it must include a warning as to its accuracy. The warning statement is to be prescribed by regulation.

Sub-section (2) provides that where a comparison rate schedule comprises of 2 or more documents, the warning must appear on each of the documents.

Sub-section (3) provides that if the schedule is displayed in text on a screen, the regulations may require more than 1 warning to be given.

Other requirements for comparison rate schedules

Section 146P provides a list of other requirements that a comparison rate schedule must contain. These include a title “comparison rate schedule”, the name of the credit provider providing the credit product and the date of issue of the schedule.

Sub-section (2) provides that a comparison rate schedule may contain the name of the finance broker or supplier who displays the schedule and contact information for the credit provider, finance broker or supplier.

Sub-section (3) provides that a comparison rate schedule is not to contain any information other than that required or permitted by or under the Code.

Offences for non-compliance with this Division

Section 146Q provides that where a credit provider, finance broker or supplier contravenes a requirement of Division 3 in relation to comparison rate schedules, they are guilty of an offence which attracts a penalty not in excess of 100 penalty units.

Division 4—Miscellaneous**Calculation of comparison rate**

Section 146R provides that the method of calculating comparison rates may be prescribed in the regulations.

Sub-section (2) provides that in calculating the relevant comparison rates, credit fees and charges that are not ascertainable need not be included

in the calculation if their imposition or amount is dependent on events that may or may not happen. This may be clarified by a regulation.

Compliance grace period following changes in credit, interest or fees

Section 146S provides a 7 day grace period for credit providers to alter their advertising and comparison rate schedules where there is a change in the annual percentage rate or any credit fees or charges.

Regulations – exemptions and other matters

Section 146T provides that the regulations may make provision for exempting any class of person or matter from the operation of Part 9A. In addition, the regulations may make provision for requirements for credit advertisements containing a comparison rate.

Amendment of Part 12 (Transitional provisions for Consumer Credit (Queensland) Amendment Act) 2002

Clause 7 inserts a new Division 2, Part 12 to provide for transitional provisions for the new section 113A. It provides that section 113A does not apply to contraventions of key requirements that occurred more than 2 years prior to the commencement of section 113A. This is to prevent any retrospective operation of section 113A. However, section 113A will apply to contraventions that occurred within the 2 year period prior to the commencement of section 113A.