

# Consumer Credit (Queensland) and Other Acts Amendment Bill 2008

## Explanatory Notes

### Short Title

The short title of the Bill is the Consumer Credit (Queensland) and Other Acts Amendment Bill 2008.

### Objective of the Bill

#### Consumer Credit (Queensland) Act 1994

Under the Australian Uniform Credit Laws Agreement 1993, the Governments of each State and Territory agreed to establish a uniform scheme to regulate consumer credit. Clause 13 of the Agreement allows a State to individually introduce legislation that fixes the maximum interest rates payable under consumer credit contracts entered under the national Consumer Credit Code (the Code).

The *Consumer Credit (Queensland) Act 1994* currently allows a regulation to prescribe a maximum annual percentage rate and permits utilising provisions of the Code for offences and remedies. The objective of the Bill is to amend the *Consumer Credit (Queensland) Act 1994* to facilitate the implementation of a maximum annual percentage rate for a consumer credit contract in Queensland. The amendments will allow for the capping of interest, fees and charges and will ensure all consumers are protected, particularly vulnerable and marginalised consumers without the capacity or financial means to legally challenge a loan. The level of the cap and how it is calculated will be placed in a regulation.

#### Legal Profession Act 2007

The *Legal Profession Act 2007* is being amended as a consequence of the expiry of the *Legal Profession (Transitional) Regulation 2007* and to facilitate terms of office on the Queensland Law Society council being for calendar years.

### Security Providers Act 1993

The *Security Providers Act 1993* is being amended in relation to security equipment installers, security office licence categories and the licence conditions regarding on-going training.

## **Reasons for the Bill**

### Consumer Credit (Queensland) Act 1994

Australian households are holding historically high levels of debt. At the same time, the costs of many basic living expenses such as rent and petrol are also increasing. Against this background, many Queensland households are at risk of financial stress. Many of those most at risk resort to high cost loans because they are unable to obtain credit from mainstream lenders such as banks and credit unions.

Borrowers who use high cost lenders are predominantly low-income, disadvantaged or vulnerable consumers. Many have poor credit histories, are already in financial difficulty and have been excluded from the mainstream market. Such consumers often seek credit in urgent or desperate circumstances when they are most vulnerable to exploitation.

The consumer detriment flowing from high cost loans can be serious. Problems include serious financial hardship including inability to meet other bills and household expenses; forced sale of assets; a depleted capacity to save; debt spirals or debt traps; an increased likelihood of default on loan repayments; bankruptcy; stress and other health and social costs including family breakdown caused by financial stress. High cost loans also have broader social impacts including an increased strain on community and welfare services, and reduced consumer confidence. Legal Aid Queensland's advice services to consumers aggrieved by high-cost loans has increased by 20% in the year 2006-2007, compared to the year 2005-2006.

Victoria, New South Wales and the Australian Capital Territory have interest rate caps to control the cost of consumer credit.

In late 2006, community consultation was conducted on options for better protecting vulnerable Queensland consumers from exploitation by short-term credit providers. Apart from responses received from payday lenders and other small amount credit providers, respondents supported the introduction of a legislative cap on interest, fees and charges.

Submissions received from key stakeholders including welfare and consumer advocacy groups showed significant community concern about increasing social problems arising from debt incurred under high interest loans. Submissions also indicate borrowers of high cost credit are likely to 'roll over' their loan rather than pay it back in accordance with the original loan period, or form a dependency on repeatedly obtaining credit to live from month to month. Many lenders offer loan extensions or further capital over the phone. The risk of vulnerable consumers falling into a debt trap is significant.

While the fringe lending industry in Queensland has grown dramatically in recent years, competition has failed to lower the price of credit to acceptable levels. The Queensland Government has approved a course of action that includes capping interest rates, fees and charges to ensure all consumers are protected. An interest rate cap provides relief to consumers and is easily enforced. It also sends a clear message to lenders about what is legitimate lending practice, and provides consistency and certainty for both consumers and industry.

#### Legal Profession Act 2007

Section 751 of the *Legal Profession Act 2007* provides for regulations of a savings or transitional nature to be made for matters for which the Act has not made sufficient provision. Regulations made under the section expire one year after the commencement of the section. The *Legal Profession (Transitional) Regulation 2007* (the transitional regulation) made under the section provides for:

- an exemption from the reservation of legal work to legal practitioners for certain activities of licensees under the *Property Agents and Motor Dealers Act 2000* (PAMDA); and
- the liability for the costs of a costs assessment.

Provision for these matters needs to be incorporated into the *Legal Profession Act 2007* because the transitional regulation expires on 1 July 2008.

The Bill also includes an amendment to facilitate terms of office on the Queensland Law Society council being according to calendar years from 1 January 2009. The Council will be able to make rules of a transitional nature extending to 31 December 2008 the terms of the current president and deputy president whose terms would otherwise expire on 27 July 2008

and to 31 December 2009 the terms of other council members whose terms would otherwise expire on 27 July 2009.

### Security Providers Act 1993

The *Security Providers Amendment Act 2007* introduced licensing requirements for security equipment installers. Under these requirements, new sectors of the security industry will be licensed, including businesses which work within electrical contracting and locksmithing. In keeping with the overall framework of this Act, an age requirement of 18 years and over applies to applicants for licences in these new sectors of the industry.

However, subsequent to the passing of these amendments it became clear that the security equipment installation sector engages apprentices and trainees – many of whom may not yet be 18 years of age, and are therefore unable to be licensed under the *Security Providers Act 1993*. As security equipment installation is not associated with physically maintaining order and control in liquor licensed premises, the age limit is not directly relevant.

An amendment will provide certainty that trainees and apprentices under the age of 18 may obtain a security equipment installers licence.

Modifications to the definition of security officer activities introduced by the *Security Providers Amendment Act 2007* were made to define specific security officer activities in place of the previously broad definition. For example, the specific activity of guarding through the use of electronic monitoring devices such as closed circuit television systems.

The amendments in relation to security officer licensing will implement the new categories of security officer licences envisaged by the *Security Providers Amendment Act 2007*.

The *Security Providers Amendment Act 2007* also introduced an on-going training regime for security providers as part of the Queensland Government's commitment to ensuring a skilled and knowledgeable security industry. The amendments clarify the 'show cause' provisions of the *Security Providers Act 1993* do not apply to a determination by the Chief Executive to update new or modified training requirements for security providers. This will enable more efficient State wide commencement of new training requirements and will contribute to personal safety and the protection of property.

## **Achievement of the Objective**

### Consumer Credit (Queensland) Act 1994

The *Consumer Credit (Queensland) Act 1994* will be amended to establish the legislative framework for the implementation of an annual percentage rate cap on consumer credit contracts.

The Government has decided that the cap will be set at 48% and that all fees and charges, as well as interest charges for a credit contract, are to be included in the calculation of the annual percentage rate. A regulation will be made after the Bill is passed to specify the cap amount and the formula for calculating an annual percentage rate to determine whether the total amount of interest, fees and charges under a credit contract exceeds the cap limit. This policy is consistent with the approach taken in New South Wales and the Australian Capital Territory. Furthermore, any amount above the 48% interest rate cap that has been paid under a credit contract is void and recoverable by the borrower. The credit provider will also have committed an offence. The current provisions in the Code for offences and remedies will be utilised.

The regulation will also provide that credit fees and charges are not to be calculated where a temporary credit facility is established, such as an overdraft or a bridging loan, if it is provided by an authorised deposit-taking institution. Authorised deposit-taking institutions include the major banks and credit unions. Consultation did not reveal community concern that these institutions were charging low income and vulnerable consumers excessive amounts for credit. This is also consistent with the approach taken in New South Wales and the Australian Capital Territory.

### Legal Profession Act 2007

The *Legal Profession Act* will be amended to make provision for the matters currently dealt with in the *Legal Profession (Transitional) Regulation 2007* relating to a current exemption from the reservation of legal work for certain activities of licensees under the *Property Agents and Motor Dealers Act 2000* and liability for the costs of costs assessments. The Act will also be amended to allow for a transitional society rule to be made to facilitate the terms of office for members of the Queensland Law Society Council being according to calendar years.

### Security Providers Act 1993

The *Security Providers Act 1993* will be amended to allow security equipment installer apprentices and trainees under the age of 18 years to

apply for a licence. The Chief Executive must be satisfied that the applicant is an apprentice or trainee within the meaning of the *Vocational Education, Training and Employment Act 2000*, meaning that the person must be a party to a signed apprenticeship or traineeship under that Act.

The *Security Providers Act 1993* will also be amended to provide licences for specific security officer activities and to facilitate a State wide commencement of the on-going training regime.

## **Estimated Cost for Government Implementation**

### Consumer Credit (Queensland) Act 1994

The Government will resource a comprehensive package of supporting measures to assist low income credit consumers. Funding will be provided to:

- conduct a communications campaign to inform lenders and borrowers about the cap and its effect;
- boost compliance resources to ensure lenders comply with the cap, to prosecute lenders who flaunt the cap or attempt to avoid the cap by operating outside the Code and where appropriate, conciliate disputes between borrowers and lenders;
- boost Legal Aid Queensland's capacity to provide legal information, advice and representation for consumers of high cost consumer loans. This is critical because without representation, such loans are rarely challenged as vulnerable, low income borrowers do not have the means, the capacity or the confidence to take such action;
- explore and facilitate other community-based assistance such as no-interest and low-interest loans schemes, which offer a partial supply-side answer to high cost credit. Traditionally operated by community organisations, welfare organisations and charities either alone or in partnership with mainstream lenders, such schemes provide vulnerable consumers with a safe and non-exploitative alternative for small loans. Such schemes also have the capacity to promote competition in the marketplace, which in turn places downward pressure on prices; and
- develop greater community awareness of alternatives to high cost loans, such as Centrelink special payments and hardship payment arrangements offered by utility providers.

### Legal Profession Act 2007

Implementation of these amendments will be met with existing budget allocations.

### Security Providers Act 1993

Implementation of these amendments will be met with existing budget allocations.

## **Consistency with Fundamental Legislative Principles**

The amendments to the *Security Providers Act 1993* in relation to the power enabling the Chief Executive to require further training involves an inconsistency with fundamental legislative principles. This is because the amendments do not allow for the exercise of power by the Chief Executive in requiring new training to be subject to review.

This inconsistency is justified on the basis that the Queensland Government has decided to introduce an on-going training regime for security providers to lift their competencies because the conduct of security providers has a direct impact on personal safety and the protection of property. Security providers must already be trained with a minimum set of skills and knowledge before applying for a licence and the amendments will ensure new and advanced training techniques can be implemented without challenge which would cause unwarranted delay, administrative expense and uncertainty.

The amendment to the *Legal Profession Act 2007* to facilitate the terms of office of members of the Queensland Law Society council being for calendar years from 1 January 2009 may involve an inconsistency with the fundamental legislative principles. This is because it allows the making of rules by the QLS council to extend the terms of the president, deputy president and other council members beyond the terms of one and two years stated in section 685 and 686 of the Act. The justification is that the rules are for the purpose of allowing a short term extension only for the purpose of allowing the terms to move to calendar years. The rules will apply for a short period and the limits for the making of the rules are clearly stated in the transitional amendment for this purpose.

All other proposed amendments are consistent with Fundamental Legislative Principles.

## **Consultation**

### Consumer Credit (Queensland) Act 1994

#### ***Community***

Widespread consultation has taken place. From 4 November 2006 to 15 December 2006, stakeholder submissions were received in response to a Discussion Paper entitled 'Managing the Cost of Consumer Credit in Queensland'. On 26 November 2007, the draft Consumer Credit (Queensland) Amendment Bill 2008 and *Consumer Credit (Queensland) Special Provisions Regulation 2008* which contained a 48% interest rate cap inclusive of interest, fees and charges, were released for public consultation until 15 February 2008. The Attorney-General and staff of the Department of Justice and Attorney-General have also met with industry and consumer stakeholders.

#### ***Government***

All Queensland Government Departments have been consulted on the proposed amendments including the Department of the Premier and Cabinet, Queensland Treasury, and the Office of Regulatory Efficiency in the Department of Tourism, Regional Development and Industry.

### Legal Profession Act 2007

The Queensland Law Society and the Real Estate Institute of Queensland have been consulted on the proposed amendments to section 24 of the *Legal Profession Act 2007*. The Queensland Law Society has been consulted on proposed new section 770.

## **Notes on Provisions**

### **Part 1                      Preliminary**

Clause 1 provides that the short title is the *Consumer Credit (Queensland) and Other Acts Amendment Act 2008*.



Clause 2 provides that Part 2 amending the *Consumer Credit (Queensland) Act 1994* and Part 3 amending the *Legal Profession Act 2007* commence on a date to be fixed by proclamation and Part 4 amending the *Security Providers Act 1993* commences immediately after all the provisions of the *Security Providers Amendment Act 2007* have commenced.

## **Part 2                      Amendment of Consumer Credit (Queensland) Act 1994.**

Clause 3 provides that this Part amends the *Consumer Credit (Queensland) Act 1994*.

Clause 4 amends section 14 of the *Consumer Credit (Queensland) Act 1994* which provides for a maximum annual percentage rate.

Section 14(2) currently provides Part 2, Division 2 of the Consumer Credit Code which limits a debtor's monetary obligations applies to a maximum annual percentage rate prescribed by a regulation. A note is inserted for subsection (2) clarifying the effect of the application of these provisions of the Code should a provision of a credit contract impose a monetary liability in excess of a prescribed rate.

New subsection (3) enables a regulation to require that for calculating the annual percentage rate of a credit contract for section 14(1), not only interest charges but all credit fees and charges payable by the debtor under the credit contract are to be included. The term 'credit fees and charges' is defined in schedule 1 of the Code.

New subsection (4) makes clear that other remedies over and above the protection provided by the cap may be available to the borrower under the Code, including those contained in provisions relating to hardship and the reopening of unjust transactions.

Clause 5 replaces the Part 10 heading of the *Consumer Credit (Queensland) Act 1994* consequential to the insertion of a new Division 2 and new section 66 (clause 6).

Clause 6 inserts new Division 2 and new section 66 into the transitional provisions of the *Consumer Credit (Queensland) Act 1994*. The new section will apply if a maximum annual percentage rate is prescribed for a credit contract under section 14(1) of the Act. Section 66(2) facilitates a

regulation providing the circumstances for the prescribed maximum annual percentage rate to apply to a credit contract entered into before the day the rate is prescribed.

## **Part 3                      Amendment of Legal Profession Act 2007**

Clause 7 states that this Part amends the *Legal Profession Act 2007*.

Clause 8 amends section 24 of the *Legal Profession Act 2007* by:

- omitting the current subsection (2)(e) which provides for section 24(1) not to apply to certain activities of PAMDA licensees;
- inserting additional subsections which describe the activities of *Property Agents and Motor Dealers Act 2000* licensees and employees that are not engaging in legal practice; and
- clarifying that, for the purpose of determining whether the activities of a *Property Agents and Motor Dealers Act 2000* licensee amount to engaging in legal practice:
  - it is immaterial that a fee is charged by the *Property Agents and Motor Dealers Act 2000* licensee for the transaction for which the licensee or employee provides, prepares or completes the property contract or other document; and
  - it is material if charging the fee is an offence under section 578 of the *Property Agents and Motor Dealers Act 2000*.

Clause 9 replaces section 342 of the *Legal Profession Act 2007* to be consistent with the equivalent provision under the national model laws for the regulation of the legal profession developed through the Standing Committee of Attorneys-General.

Clause 10 provides for society rules of a transitional nature to be made for extending to 31 December 2008 the terms of the current president and deputy president whose terms would otherwise expire on 27 July 2008 and to 31 December 2009 the terms of other council members whose terms would otherwise expire on 27 July 2009. This is intended to facilitate terms of office on the Queensland Law Society council being according to calendar years from 1 January 2009.

## **Part 4                      Amendment of Security Providers Act 1993**

Clause 11 states that this Part amends the *Security Providers Act 1993*.

Clause 12 removes the words ‘with or without a guard dog’ from the definition of a security officer in the Act.

Clause 13 clarifies an applicant must state in the application:

- (a) if it is for carrying out the functions of a security officer—the category of functions intended to be carried out under the licence; or
- (b) if it is for carrying out the functions of a security firm—the security firm services intended to be supplied under the licence

Clause 14 amends section 11 in relation to entitlement to licences.

Security equipment installer apprentices and trainees under the age of 18 years will be able to apply for a licence. The Chief Executive must be satisfied that the applicant is an apprentice or trainee within the meaning of the *Vocational Education, Training and Employment Act 2000*, meaning that the person must be a party to a signed apprenticeship or traineeship contract under that Act.

Clause 15 removes a drafting error.

Clause 16 clarifies that Chief Executive decisions apply to all forms of licences.

Clause 17 modifies the statutory conditions under the Act to include a condition on the completion of on-going training requirements by the licensee. If required in writing by the Chief Executive, these training requirements must be completed:

- (a) on renewal of the licence; or
- (b) at 1 or more stated intervals during the term of the licence; or
- (c) both on renewal of the licence and at 1 or more stated intervals during the term of the licence.

The Chief Executive may make a requirement under Clause 17 only if satisfied the relevant approved training is required:

- (a) because of an increased risk to public safety or protection of property since the licensee’s latest successful completion of an approved training course or relevant approved training; or

- (b) to update the licensee's competency for carrying out the functions, or the category of functions, of a security provider authorised under the licence.

No appeal lies against a decision of the Chief Executive made under Clause 17. A court or tribunal must dismiss a proceeding started in of Clause 17.

Clause 18 provides that without limiting the conditions the Chief Executive may impose on a licence, imposed conditions may include a condition that the licensee must monitor, at stated intervals, whether or not its employees who are employed as security providers are complying with this Act

Clause 19 provides for modified definitions in the Act.

***appropriate licence*** means—

- (a) for a security provider other than a security officer—a class 1 or class 2 unrestricted licence authorising the licensee to carry out the functions of the types of security provider stated in the licence; or
- (b) for a security provider who is a security officer—
- (i) a class 1 unrestricted licence authorising the licensee to carry out the category of functions of a security officer stated in the licence; or
- (ii) a class 1 restricted licence authorising the licensee to carry out the category of functions of a security officer stated in the licence, under appropriate direct supervision; or
- (c) for a security provider other than a security firm or security officer—a class 1 or class 2 restricted licence authorising the licensee to carry out the functions of the types of security provider stated in the licence, under appropriate direct supervision.

Under the *Security Providers Act 1993*, a person must not carry on the functions of a security provider unless they hold an appropriate licence.

***approved training course***, for carrying out the functions or a category of functions of a particular type of security provider, means a training course approved by the Chief Executive for the carrying out of the functions or the category of functions.

***cash in transit category***, of functions of a security officer, means the carrying out of the activities of personally guarding, patrolling or watching another person's cash or other valuables while they are in transit or being stored in connection with their transit.

This is a specific definition of the type of activities which may be carried out under a security officer (cash in transit) licence.

**category**, of functions of a security officer, means—

- (a) cash in transit category; or
- (b) dog patrol category; or
- (c) monitoring category; or
- (d) unarmed category.

**dog patrol category**, of functions of a security officer, means the carrying out of the activities of personally guarding, patrolling or watching another person's property with a dog.

This is a specific definition of the type of activities which may be carried out under a security officer (dog patrol) licence.

**functions**, of a security provider—

- (a) means the carrying out of the activities mentioned in a following provision—
  - (i) for a bodyguard—section 4A;
  - (ii) for a crowd controller—section 5;
  - (iii) for a private investigator—section 6;
  - (iv) for a security adviser—section 6A;
  - (v) for a security equipment installer—section 6B;
  - (vi) for a security firm—section 8; or
- (b) for a security officer, means 1 or more categories of functions of a security officer.

These definitions refer to the activities which are mentioned in the relevant section of the *Security Providers Act 1993*.

**monitoring category**, of functions of a security officer, means the carrying out of the activities mentioned in section 7(1)(b).

This is a specific definition of the type of activities which may be carried out under a security officer (monitoring) licence. Specifically, the personal monitoring of property by operating an audiovisual or visual recording system, a radio or other electronic monitoring device.

**statutory condition**, of a licence, means a condition to which the licence is subject under section 14B(1) or (2).

**unarmed category**, of functions of a security officer, means the carrying out of the activities of personally guarding, patrolling or watching another person's property—

- (a) other than as mentioned in section 7(1)(b); and
- (b) without a weapon within the meaning of the *Weapons Act 1990*.

This is a specific definition of the type of activities which may be carried out under a security officer (unarmed) licence. These activities include personally guarding, patrolling or watching another person's property other than by personal monitoring of property by operating an audiovisual or visual recording system, a radio or other electronic monitoring device and without a weapon within the meaning of the *Weapons Act 1990*.

**unrestricted licence** means a licence for carrying out, other than under appropriate direct supervision—

- (a) for a security provider other than a security officer—the functions of each type of security provider stated in the licence; or
- (b) for a security officer—the category of functions of a security officer stated in the licence.