

# Credit (Commonwealth Powers) Bill 2009

## Explanatory Notes for amendments to be moved during consideration in detail by The Honourable Peter Lawlor, MP

### Title of the Bill:

Credit (Commonwealth Powers) Bill 2009

Amendments during consideration in detail to be moved by The Honourable the Minister for Tourism and Fair Trading.

### Objectives of the Amendments:

One of the objectives of the *Credit (Commonwealth Powers) Bill 2009* introduced into the Legislative Assembly on 9 November 2009 was to refer constitutional power for credit (including finance broking) to the Commonwealth and repeal the *Credit Act 1987*, the *Consumer Credit (Queensland) Act 1994*, the appended template Consumer Credit Code, *Consumer Credit (Queensland) Special Provisions Regulation 2008* and the *Consumer Credit Regulation 1995*.

Following introduction of the *Credit (Commonwealth Powers) Bill 2009*, the Commonwealth and the State Governments agreed to modify the terms of the amendment power and agreed to allow the States to adopt the Commonwealth legislation and refer an amendment power. The objectives of the amendments are to clarify the scope of the amendment power and to adopt the Commonwealth legislation and refer an amendment power to ensure the Constitutional soundness of the referral of consumer credit powers.

The reference to support the enactment of the initial Commonwealth legislation was provided by Tasmania by the enactment of the *Credit (Commonwealth Powers) Act 2009* of that State, which commenced on 17 November 2009.

In view of the enactment of the Commonwealth laws, the remaining States have decided to adopt the Commonwealth laws under section 51(xxxvii) of the Constitution.

The Bill also provides for the referral of certain matters to the Commonwealth Parliament in order to support certain amendments to the *National Consumer Credit Protection Act 2009* (Cwlth) and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth) (an amendment reference).

Since the enactment of the initial Tasmanian legislation, the Commonwealth and the States have also agreed on certain exclusions (or "carve outs") to the amendment reference. These carve outs are reflected in this measure. They will also be recognised under the *National Consumer Credit Protection Act 2009* (Cwlth) by amendments made to that Act by the *National Consumer Credit Protection Amendment Act 2010* (Cwlth).

The ultimate objective of the *Credit (Commonwealth Powers) Bill 2009* containing the amendments will be to adopt the *National Consumer Credit Protection Act 2009* (Cwlth), as amended at the time of adoption by the *National Consumer Credit Protection Amendment Act 2010* (Cwlth), to adopt the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cwlth), and to refer certain matters relating to credit and consumer leases to the Parliament of the Commonwealth.

### **Achievement of the Objectives:**

The proposed Act is to be enacted for the purposes of section 51(xxxvii) of the *Commonwealth Constitution*, which enables State Parliaments to refer matters to the Commonwealth Parliament, or to adopt Commonwealth laws that have been enacted pursuant to such referrals.

This Bill will form part of the new national credit protection regime which is being established under Commonwealth law.

### **Alternative Ways of Achieving Policy Objectives:**

The policy objective can only be achieved by way of amendments during Consideration in Detail.

### **Estimated Cost for Government Implementation:**

There should not be any cost to Government associated with the amendments.

## **Consistency with Fundamental Legislative Principles:**

The proposed amendments do not infringe fundamental legislative principles.

## **Consultation:**

Department of the Premier and Cabinet, including the Parliamentary Liaison Officer and the Law and Justice Policy Unit

Office of the Queensland Parliamentary Counsel

Queensland Treasury

## **Notes on Provisions**

### **1 After clause 2**

*Clause 1* amends the title of Part 2 of the Bill from ‘Reference of matters’ to ‘Adoption and reference of matters’.

### **2 Clause 3 (Definitions for part)**

*Clause 2* defines ‘adoption’ in Part 2 of the Bill as having the same meaning as that under the new clause 3A(1) of the Bill. The new definition reflects the fact that there is to be an adoption of the Commonwealth laws together with a conferral of an amendment reference.

### **3 Clause 3 (Definitions for part)**

*Clause 3* amends the reference from ‘section 4(1)(b)’ of the Bill to ‘section 4(1)’.

### **4 Clause 3 (Definitions for part)**

*Clause 4* amends the definitions contained in Part 2, clause 3, of the Bill to define ‘National Credit legislation’ as the *National Consumer Credit Protection Act 2009* (Cwlth) and the *National Consumer Credit Protection*

*(Transitional and Consequential Provisions) Act 2009* (Cwlth), as in force from time to time.

### **5 Clause 3 (Definitions for part)**

*Clause 5* amends the definition of ‘referred credit matter’ for Part 2 of the Bill from ‘initial National Credit Code’ to the new definition of ‘relevant version of the National Credit Code’.

### **6 Clause 3 (Definitions for part)**

*Clause 6* also amends the definition of ‘referred credit matter’ for Part 2 of the Bill from ‘initial National Credit Code’ to the new definition of ‘relevant version of the National Credit Code’.

### **7 Clause 3 (Definitions for part)**

*Clause 7* defines ‘relevant version of the National Credit Code’ and the ‘relevant version of the National Credit legislation’ for Part 2 of the Bill.

### **8 Clause 3 (Definitions for part)**

*Clause 8* omits the definition of ‘tabled text’ for Part 2 of the Bill.

### **9 After clause 3**

*Clause 9* incorporates new clauses 3A and 3B, which circumscribe the commencement and termination of the to-be-adopted national credit legislation. New clause 3A provides that the adoption is under section 51(xxxvii) of the Commonwealth Constitution. New clause 3B allows the Governor to fix a day as the day on which the adoption is to terminate.

### **10 Clause 4 (Reference of matters)**

*Clause 10* amends clause 4(1) of the Bill to state that any referred credit matter is referred to the Parliament of the Commonwealth only to the extent of the making of laws with respect to such a matter by making express amendments of the National Credit legislation.

This clause refers to the Commonwealth Parliament the matters of amending the National Credit legislation as in force from time to time (the **amendment reference**).

The amendment reference will enable the Commonwealth to make express amendments to its National Credit legislation about the provision of credit to which the National Credit Code applies and about consumer leases to which Part 11 of that Code applies. The National Credit Code is set out in Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cwlth).

### **11 Clause 4 (Reference of matters)**

*Clause 11* omits sub-clauses 4(3),(4) and (5) and inserts a revised sub-clause 4(3) of the Bill to set out the commencement and conclusion of the referral.

### **12 After clause 4**

*Clause 12* inserts a new clause 4A into the Bill. This clause provides for the exclusion from the amendment reference of certain matters namely: (a) the matter of making provision with respect to the imposition or payment of State taxes, duties, charges or other imposts, however described; or (b) the matter of making provision with respect to the general system for the recording of estates or interests in land and related information; or (c) the matter of providing for the priority of interests in real property; or (d) the matter of making a law that excludes or limits the operation of a State law, to the extent that the State law makes provision with respect to the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right.

*Clause 12* also defines ‘forfeiture’, ‘State law’ and ‘State statutory right’.

### **13 Clause 5 (Termination of references)**

*Clause 13* amends the heading of clause 5 of the Bill from ‘references’ to ‘reference’.

### **14 Clause 5 (Termination of references)**

*Clause 14* amends clause 5(1)(a) and (b) of the Bill to read: ‘which the amendment reference terminates’.

### **15 Clause 5 (Termination of references)**

*Clause 15* removes clause 5(5) of the Bill.

## **16 After clause 5**

*Clause 16* incorporates clause ‘5A Amendment of Commonwealth law’ into Part 2 of the Bill. This clause makes it clear that the National Credit legislation may be amended on account of any reference or adoption, or by Commonwealth laws or instruments enacted or made on the basis of powers vested in the Commonwealth apart from any reference or adoption.

## **17 Clause 6 (Effect of termination of amendment reference before initial reference)**

*Clause 17* amends the heading of clause 6 of the Bill from ‘Effect of termination of amendment reference before initial reference’ to ‘Effect of the termination of amendment reference before termination of adoption of Commonwealth Acts’.

## **18 Clause 6 (Effect of termination of amendment reference before initial reference)**

*Clause 18* amends clause 6(1) of the Bill from ‘terminates before the initial reference terminates’ to ‘is terminated but the adoption of the relevant version of the National Credit legislation is not terminated’.

The clause as a whole makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the adoption is also terminated.

## **19 Clause 6 (Effect of termination of amendment reference before initial reference)**

*Clause 19* amends clause 6(1)(b) of the Bill to read ‘this State’, rather than ‘the State’.

## **20 Clause 6 (Effect of termination of amendment reference before initial reference)**

*Clause 20* amends the reference made in clause 6(1)(b)(ii) of the Bill from ‘section 4(4)(a) or (b)’ to ‘section 5A(b) or (c)’.

**21 Clause 6 (Effect of termination of amendment reference before initial reference)**

*Clause 21* amends clause 6(2) of the Bill to read: ‘the adoption’, rather than, ‘the initial reference’.

**22 Clause 7 (Evidence)**

*Clause 22* excises clause 7 from the Bill.

**23 Clause 23 (References to superseded legislation and subordinate legislation)**

*Clause 23* amends clause 23(1)(b) of the Bill to read: ‘to take account of the adoption of matters under section 3A and the referral of matters under section 4’.

**24 Long title**

*Clause 24* refines the long title of the Bill to describe the adoption of the National Credit legislation.