Queensland

Consumer Credit and Trade Measurement Amendment Bill 2006

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Contents

2006

A Bill

for

An Act to amend the *Consumer Credit (Queensland) Act 1994* to make changes to the Consumer Credit Code, and to amend the *Trade Measurement Act 1990* and the *Trade Measurement Administration Act 1990*

The Parliament of Queensland enacts—

Part 1 Preliminary

Clause 1 Short title

This Act may be cited as the *Consumer Credit and Trade Measurement Amendment Act 2006*.

Clause 2 Commencement

This Act, other than section 5, commences on a day to be fixed by proclamation.

Part 2 Amendment of Consumer Credit Code

Clause 3 Code amended in pt 2

This Act amends the Consumer Credit Code set out in the appendix to the *Consumer Credit (Queensland) Act 1994*.

Clause 4 Amendment of s 17 (Alteration of contract document)

Section17(1)—

omit, insert—

‘(1) An alteration of (including an addition to) a contract document by the credit provider after it is signed by the debtor is ineffective unless the debtor has agreed in writing to the alteration.’.

Clause 5 Amendment of s 146D (Expiry of part)

Section 146D, 'third anniversary of its commencement'—

omit, insert—

'fourth anniversary of its commencement, or on an earlier day fixed by a regulation'.

Clause 6 Amendment of s 162 (Legibility and language)

(1) Section 162(1), after 'contract,'—

insert—

'mortgage or'.

(2) Section 162(1), after 'Code'—

insert—

', other than a document transmitted by electronic communication'.

(3) Section 162—

insert—

'(1A) A credit contract, mortgage or guarantee or a notice given by a credit provider under this Code, if transmitted by electronic communication—

(a) must be easily legible; and

(b) must conform with the provisions of the regulations, if any, as to content, legibility and accompanying information; and

(c) must be clearly expressed.'.

(4) Section 162(2), 'a guarantee'—

omit, insert—

'mortgage or guarantee'.

(5) Section 162(2), after 'credit contracts,'—

insert—

'mortgages or'.

Clause 7 Amendment of s 163 (Copies of contracts and other documents)

Section 163(3)—

omit.

Clause 8 Insertion of new s 164A

Part 11, division 2—

insert—

'164A Electronic transactions and documents

'(1) Without limiting the provisions of this Code, it is declared that any contract, mortgage or guarantee referred to in this Code may be made in accordance with the laws of this jurisdiction in relation to electronic transactions.

'(2) Without limiting the provisions of this Code, it is declared that any requirement or permission by or under this Code, however expressed—

(a) to give information in writing; or

(b) to provide a signature; or

(c) to produce a document; or

(d) to record information in writing; or

(e) to retain a document;

may be met in accordance with the laws of this jurisdiction in relation to electronic transactions.

Example—

Giving information would include the requirement under section 34(1) to provide a statement of amount owing.

Note—

The laws of this jurisdiction relating to electronic transactions include a definition relating to the giving of information. That definition provides, generally, that giving information includes, but is not limited to—

(a) making an application;

(b) making or lodging a claim;

(c) giving, sending or serving a notification;

(d) lodging a return;

(e) making a request;

(f) making a declaration;

(g) lodging or issuing a certificate;

(h) making, varying or cancelling an election;

(i) lodging an objection;

(j) giving a statement of reasons.

‘(3) The regulations may provide that—

(a) a specified transaction, or a specified class of transactions; or

(b) a specified document, or a specified class of documents; or

(c) specified information, or a specified class of information;

referred to by or under this Code must not be made, given or provided by electronic communication.’.

Clause 9 Amendment of s 171 (Giving notice or other document)

Section 171(2)(a), ‘similar facility’—

omit, insert—

‘electronic communication’.

Clause 10 Amendment of s 172 (Manner of giving notice or other document)

(1) Section 172(1)(a)(ii), ‘post, telex, facsimile or similar facility’—

omit, insert—

‘post, telex or facsimile or, with the written consent of the person in accordance with subsection (1A), by electronic communication’.

(2) Section 172(1)(b)(ii), ‘post, telex, facsimile or similar electronic facility’—

omit, insert—

'post, telex or facsimile or, with the written consent of the body corporate in accordance with subsection (1A), by electronic communication'.

(3) Section 172—

insert—

'(1A) A debtor, mortgagor or guarantor may consent to the giving of documents by electronic communication by, and only by, a specific positive election in writing, after being informed that if consent is given—

(a) paper documents may no longer be given; and

(b) electronic communications should be regularly checked for notices; and

(c) consent to the giving of documents by electronic communication may be withdrawn at any time.'.

(4) Section 172(2), 'mortgagor, guarantor or consumer lessee'—

omit, insert—

'mortgagor or guarantor'.

(5) Section 172(2)—

insert—

'Note—

A nominated address may be an electronic address.'.

(6) Section 172(3)—

insert—

'Note—

A nominated address may be an electronic address.'.

(7) Section 172—

insert—

'(3A) If a person nominates an address under subsection (2)(a) or (3)(a), the person may, by notice in writing to the person giving the notice or other document referred to in subsection (1), change the nominated address or cancel the nomination.

‘(3B) If this Code requires or permits a notice or other document to be given to a debtor, mortgagor or guarantor by a credit provider (whether the expression “deliver”, “serve”, “notify”, “send” or “give” or another expression is used), the notice or other document may, with the written consent in accordance with subsection (3C) of the debtor, mortgagor or guarantor, as the case may be, to service of documents by this process, be given by—

(a) making it available for a reasonable period of time on the credit provider’s information system for retrieval by electronic communication by the debtor, mortgagor or guarantor; and

(b) promptly notifying the debtor, mortgagor or guarantor by electronic communication that the information is available for retrieval on that information system and the nature of the information; and

(c) providing the debtor, mortgagor or guarantor with the ability to readily retrieve the information by electronic communication.

‘(3C) A person may consent to the giving of documents by the process in subsection (3B) by, and only by, a specific positive election in writing, after being informed that if consent is given—

(a) there is no longer a requirement that paper documents be given; and

(b) electronic communications should be regularly checked for notices; and

(c) consent to the giving of documents by that process may be withdrawn at any time.

‘(3D) In addition to the requirements of the laws of this jurisdiction in relation to electronic transactions, if a notice or other document is given by sending it to a nominated electronic address or by the process in subsection (3B)—

(a) the notice or other document must be in a format that enables the notice or other document to be printed and saved to an electronic file; and

(b) at the time the notice or other document was sent or was made available on the credit provider's information system, it was reasonable to expect that the intended recipient would be readily able to print the notice or other document and to save it to an electronic file.

'(3E) A nomination or consent under this section ceases to have effect if it is cancelled or withdrawn by the person who made or gave it.

'(3F) The regulations may provide for or with respect to—

(a) the electronic retention of documents under this Code that have been given by electronic communication or by the process in subsection (3B); and

(b) electronic access to those documents by the relevant debtor, mortgagor or guarantor.'.

Clause 11 Amendment of s 173 (Date of notice or other document)

(1) Section 173(1)(c)—

omit, insert—

'(c) in the case of a notice or other document sent by facsimile transmission—on the date it bears or the date on which the machine from which the transmission was sent produces a report indicating that the notice or other document was sent to the facsimile or other number of the addressee, whichever is the later; or

(d) in the case of a notice or other document given in accordance with section 172(3B)—at the time when the electronic communication referred to in section 172(3B)(b) enters the information system of the addressee; or

(e) in the case of a notice or other document given by electronic communication—at the time when the electronic communication enters the information system of the addressee.'.

(2) Section 173—

insert—

'(3) This section has effect despite anything to the contrary in the laws of this jurisdiction in relation to electronic transactions.'.

Clause 12 Insertion of new s 173A

After section 173—

insert—

'173A Attribution of electronic communications

'(1) For the purposes of this Code, the purported originator of an electronic communication is bound by that communication only if—

(a) the purported originator and the addressee of an electronic communication have agreed that the Electronic Funds Transfer Code of Conduct as published from time to time on the Internet site of the Australian Securities and Investments Commission applies to the electronic communication and under that Code of Conduct the purported originator is bound by the communication; or

(b) in any other case, the communication was sent by the purported originator or with the authority of the purported originator.

'(2) Subsection (1) does not affect the operation of section 176.

'(3) This section has effect despite anything to the contrary in the laws of this jurisdiction in relation to electronic transactions.'.

Clause 13 Amendment of sch 2 (Miscellaneous provisions relating to interpretation)

(1) Schedule 2, clause 12(1)—

insert—

'***electronic communication*** means—

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.'.

(2) Schedule 2, clause 12(1), definitions *document*, *sign* and *writing*—

insert—

'Note—

See section 164A.'.

Part 3 Amendment of Trade Measurement Act 1990

Clause 14 Act amended in pt 3

This part amends the *Trade Measurement Act 1990*.

Clause 15 Amendment of s 3 (Definitions)

(1) Section 3—

insert—

'***firewood*** means any wood, including dockings, edgings, mill ends, offcuts and timber products, that—

(a) is intended for use as firewood; and

(b) is in billets or lengths of not more than 2.4m.

pack, for the purpose of deciding who packs or has packed an article as a prepacked article, includes authorise, direct, cause or permit a person to pack an article as a prepacked article.

use, in relation to the use of a measuring instrument for trade, includes—

(a) have the measuring instrument in possession for use; and

(b) make the measuring instrument available for use; and

(c) authorise, direct, cause or permit a person to do an act mentioned in paragraph (a) or (b) or anything else that is the use of a measuring instrument for trade.

weighbridge suitability statement, for a public weighbridge licence, means a statement, signed by the administering authority, that the weighbridge mentioned in the licence is suitable for use as a public weighbridge.'.

(2) Section 3, definition *class 4 measuring instrument*, 'pattern that'—

omit, insert—

'pattern that, in accordance with the approved pattern'.

(3) Section 3, definition *class 4 measuring instrument*, paragraph (b), 'is marked with a symbol'—

omit, insert—

'has a symbol on it'.

(4) Section 3, definition *sell*, paragraph (e), 'paragraph (a), (b), (c) or (d)'—

omit, insert—

'paragraphs (a) to (d) or anything else that is a sale'.

Clause 16 Amendment of s 7 (Measuring instruments used for trade must be marked)

Section 7(4), 'is taken not to have committed'—

omit, insert—

'may not be prosecuted for'.

Clause 17 Amendment of s 7A (Use of class 4 measuring instruments)

Section 7A(b)—

omit, insert—

‘(b) for weighing a thing to decide freight or haulage charges for the thing; or’.

Clause 18 Amendment of s 7B (Use of measuring instruments for pre-packed articles)

Section 7B, ‘is approved for trade use under the National Measurement Act’—

omit, insert—

‘is of an approved pattern’.

Clause 19 Amendment of s 8 (Unjust measurement)

Section 8(5), ‘is taken not to have committed’—

omit, insert—

‘may not be prosecuted for’.

Clause 20 Amendment of s 9 (Supplying incorrect etc. measuring instrument)

(1) Section 9(2), ‘for trade’, third mention—

omit.

(2) Section 9—

insert—

‘(2A) Subject to subsection (3)(b), it does not matter whether the person who used the measuring instrument purchased it or took it on lease, hire or loan for trade.’.

Clause 21 Replacement of s 23 (Incorrect measurement or price calculation)

Section 23—

omit, insert—

‘23 Incorrect measurement or price calculation

‘(1) This section applies to a person who, for the purpose of the sale of an article at a price determined by reference to the measurement of the article, operates a measuring instrument to measure the article or decides the measurement of the article.

‘(2) For this section—

(a) a reference to the person’s measurement of the article is a reference to the person’s operation of the measuring instrument or measurement of the article as mentioned in subsection (1); and

(b) it does not matter whether the person’s measurement of the article is for the article’s sale by the person or by anyone else at any time.

‘(3) For any sale of the article at any time, the person commits an offence if, because of the person’s measurement of the article—

(a) the person directly or indirectly misleads any party to the sale as to the measurement of the article or the calculation of the price, to the party’s detriment; or

(b) the price paid or required to be paid is not the price correctly determined by reference to the correct measurement of the article and as a result any party to the sale suffers or would suffer detriment.

Maximum penalty—$20000.’.

Clause 22 Insertion of new s 25A

After section 25—

insert—

‘25A Special provision for sale of firewood by volume

‘To apply section 23 to a sale of firewood by volume, the volume stated for the sale of the firewood (the ***stated volume***) is taken to comply with that section if, when the firewood is stacked with as few gaps as practicable, the volume worked out using the stack’s dimensions is at least the stated volume.’.

Clause 23 Amendment of s 44 (Application for licence)

(1) Section 44(1)(b), after 'licence'—

insert—

'for a single weighbridge'.

(2) Section 44—

insert—

'(2A) If the licensing authority grants a licence to a partnership, the licence must state—

(a) the names of all the partners; and

(b) if the partnership has a registered business name, the registered business name.

'(2B) Each partner stated in the licence, including the licence as amended under section 54B, is taken to be a holder of the licence.'.

(3) Section 44(3), 'The application'—

omit, insert—

'An application under this section'.

Clause 24 Amendment of s 45 (Grounds for refusal)

Section 45—

insert—

'(1A) If the applicant is a partnership, subsection (1) applies to each member of the partnership.

'(1B) Also, for a public weighbridge licence application for a weighbridge, the licensing authority must refuse the application if the administering authority considers the weighbridge is not suitable for use as a public weighbridge.'.

Clause 25 Amendment of s 50 (Conditions on all public weighbridge licences)

(1) Section 50(1)(a)—

omit, insert—

‘(a) a condition that the licensee must not operate the weighbridge mentioned in the licence unless the licence or a copy of the licence has a weighbridge suitability statement written on it that is in force;

(aa) a condition that the weighbridge suitability statement is in force only until the end of—

(i) the period for which the fee payable in relation to the statement has been paid; or

(ii) the period as extended under section 52A;

(ab) a condition that the weighbridge mentioned in the licence is to be located at the place stated in the licence;’.

(2) Section 50(1)(b), ‘a weighbridge operated pursuant to the licence’–

omit, insert—

‘the weighbridge mentioned in the licence’.

Clause 26 Insertion of new ss 52A and 52B

After section 52—

insert—

‘52A Continuation of weighbridge suitability statement in particular circumstances

‘(1) This section applies if—

(a) before the end of the period for which a weighbridge suitability statement is in force for a particular weighbridge, a licensee pays the fee for a new weighbridge suitability statement; and

(b) the administering authority has not caused the weighbridge to be examined for the purpose of providing a new weighbridge suitability statement.

‘(2) The licensee may continue to operate the weighbridge under the licence until the administering authority—

(a) issues to the licensee a copy of the public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid; or

(b) decides the weighbridge is no longer suitable for use as a public weighbridge and gives written notice of the decision to the licensee under section 52B(2).

'52B If weighbridge no longer suitable for use as public weighbridge

'(1) This section applies if the administering authority decides a public weighbridge is no longer suitable for use as a public weighbridge.

'(2) The administering authority may give the licensee a notice stating—

(a) why the administering authority considers the public weighbridge is no longer suitable for use as a public weighbridge; and

(b) that the licensee may make written representations to the administering authority within 28 days stating why the licensee considers the public weighbridge licence for the public weighbridge should not be cancelled.

'(3) After considering any representations made to the administering authority, the administering authority may—

(a) decide to take no further action against the licensee; or

(b) recommend to the licensing authority that the public weighbridge licence for the public weighbridge be cancelled.

'(4) The licensing authority may cancel the licence on the recommendation of the administering authority under subsection (3)(b).

'(5) The administering authority must give the licensee a written notice stating—

(a) the decision and the reason for the decision; and

(b) that if the licensing authority cancels the licensee's licence, the licensee may appeal against the decision to the appeals tribunal under the Administration Act.

'(6) This section does not limit section 7.'.

Clause 27 Amendment of s 54 (Surrender etc. of licence)

Section 54(2), 'A licence'—

omit, insert—

'Subject to section 54B, a licence'.

Clause 28 Insertion of new ss 54A–54D

After section 54—

insert—

'54A Effect of relocation of licensed weighbridge

'(1) This section applies if a licensee moves a weighbridge from the location at which it was inspected before the issue of the weighbridge suitability statement for the weighbridge to another location at the place stated in the licence.

'(2) The public weighbridge licence for the weighbridge is taken to have been surrendered under section 54.

'54B Application to change licence holders due to change of partnership

'(1) This section applies if—

(a) a partnership is the holder of a licence; and

(b) there is or is proposed to be a change to the membership of the partnership (the ***change***) with at least 1 partner before the change continuing as a partner after the change.

'(2) The partnership may apply to the licensing authority to amend the licence to state the partners who are or will be the partners after the change.

‘(3) To the extent the change consists of a person ceasing to be a partner, the licensing authority must grant the application and amend the licence to remove the name of the partner from the licence.

‘(4) To the extent the change involves a new partner being admitted to the partnership—

(a) the application must include the information about the new partner that the new partner would have to give to the licensing authority when applying for a licence of that kind; and

(b) after considering the application, the licensing authority must—

(i) grant the application and amend the licence to include the name of the new partner; or

(ii) refuse the application under subsection (5).

‘(5) The licensing authority must refuse an application to which subsection (4) applies if it would be refused under section 45 were it an application by the new partner for the licence.

‘(6) If the licensing authority refuses the application, the licensing authority must notify the partnership of the grounds for the refusal and the right of appeal against the refusal under section 59.[1]

‘(7) If an application is granted relating to a change that is to happen at a later time, the licensing authority must amend the licence in accordance with the application from the later time.

‘(8) To amend a licence under this section, the licensing authority may endorse the amendment on the licence held by the partnership, or replace the licence with a licence stating the membership of the partnership after the change.

‘(9) An application must be accompanied by the application fee prescribed under the Administration Act.

1 Section 59 (Rights of appeal)

‘54C Effect on licence of application under s 54B

‘(1) This section applies if a change within the meaning of section 54B happens—

(a) not more than 28 days before an application under the section is made; or

(b) after the application is made but before it is decided.

‘(2) From the day of the change, the relevant licence is taken to be held by the partnership as it exists after the change, and each partner is taken to be a holder of the licence, until—

(a) the application is granted; or

(b) if the application is refused—the end of the period allowed under section 59(2) for appeal against the refusal, and, if the partnership appeals, the end of the appeal.

‘54D Application to amend condition of licence

‘(1) A licensee under a servicing licence may apply to the licensing authority for an amendment to a condition of the licence of a kind mentioned in section 48(2).

‘(2) The licensing authority may amend or refuse to amend the licence.

‘(3) An application must be accompanied by the application fee prescribed under the Administration Act.’.

Clause 29 Amendment of s 56 (Grounds for disciplinary action)

Section 56—

insert—

‘(2) A ground for disciplinary action under subsection (1) exists in relation to a licensee who is a partnership if the ground exists in relation to any 1 or more of the members of the partnership.’.

Clause 30 Amendment of s 59 (Rights of appeal)

(1) Section 59(1)(a), after 'licence'—

insert—

'or an amendment of a licence'.

(2) Section 59(1)—

insert—

'(ea) to cancel a public weighbridge licence because the public weighbridge mentioned in the licence is no longer suitable for use as a public weighbridge; or'.

Clause 31 Amendment of s 80 (Regulation-making power)

(1) Section 80(2)(n)—

omit, insert—

'(n) weighbridge suitability statements;'.

(2) Section 80(2)—

insert—

'(v) the approval of forms for use under this Act.'.

Clause 32 Insertion of new pt 9

After section 81—

insert—

‘Part 9 Transitional provisions for Consumer Credit and Trade Measurement Amendment Act 2006

‘82 Certificates of suitability

‘A certificate of suitability for a public weighbridge that is in force immediately before the commencement of the *Consumer Credit and Trade Measurement Amendment Act 2006*, section 25[2] is taken to be a weighbridge suitability statement for the weighbridge’s public weighbridge licence expiring when the certificate of suitability would otherwise have expired.

‘83 Existing licensed public weighbridges

‘(1) This section applies if, immediately before the commencement of the *Consumer Credit and Trade Measurement Amendment Act 2006*, section 25, a licensee operates more than 1 public weighbridge under a public weighbridge licence.

‘(2) On the commencement—

(a) each public weighbridge is taken to be licensed under a separate public weighbridge licence; and

(b) a separate periodic licence fee is not payable because of paragraph (a) until the day the periodic licence fee is payable under section 52 after the commencement.

‘(3) Also, if, after the commencement—

(a) a licensee for a public weighbridge that is taken under subsection (2)(a) to be licensed under a separate public weighbridge licence pays a separate periodic licence fee for the public weighbridge; and

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2 *Consumer Credit and Trade Measurement Amendment Act 2006*, section 25 (Amendment of s 50 (Conditions on all public weighbridge licences))

(b) the administering authority decides the weighbridge is still suitable for use as a public weighbridge;

the licensing authority must issue to the licensee a separate public weighbridge licence for the weighbridge with a weighbridge suitability statement on it in force for the period for which the fee payable in relation to the statement has been paid.’.

Part 4 Amendment of Trade Measurement Administration Act 1990

Clause 33 Act amended in pt 4

This part amends the *Trade Measurement Administration Act 1990*.

Clause 34 Amendment of s 10 (Fees and charges may be prescribed)

(1) Section 10(1)—

insert—

‘(ca) fees payable for providing weighbridge suitability statements or duplicates of weighbridge suitability statements; and’.

(2) Section 10—

insert—

‘(4) For this section, it does not matter whether the fee prescribed for a public weighbridge licence and a weighbridge suitability statement is a combined fee for the same period.’.