CONSUMER CREDIT (QUEENSLAND) AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the legislation

The intention of the Bill is to extend the operation of the Consumer Credit Code (the Code), an appendix to the *Consumer Credit (Queensland) Act 1994*, to cover short term "pay-day" loans.

"Pay day" loans are short term loans of relatively small amounts of money offered by some financiers to consumers to be repaid on the consumer's next pay day. At present, section 7(1) of the Code provides that the Code does not apply loans of less than 62 days. As pay day loans are typically for less than 62 days, they are not regulated.

Reasons for the objectives and how they will be achieved

The Code is intended to apply the same sets of rules universally to all forms of consumer credit, that is credit for personal, domestic or household purposes. When the Code was introduced in 1994, pay day lending did not exist in Australia.

The parameters of the Code therefore need to be amended to ensure that it remains universally applicable to all consumer lenders, including pay day lenders.

The intention of the amendment is to add two conditions to the 62 day limit to extend coverage of the Code. The 62 day exemption will remain, but if the fees and charges for the loan exceed 5% of the amount of the loan and the interest rate exceeds 24% per annum, then the Code will apply. As pay day lenders charge far in excess of 5% in fees and 24% interest, they will be captured by the Code.

Section 7(1) will then provide that the Code applies unless 3 conditions are satisfied:

1. The loan is for less than 62 days; and

2. The fees and charges do not exceed 5% of the amount of the loan; and
3. The interest rate does not exceed 24% per annum.

These 3 conditions are intended to be cumulative – all 3 have to be satisfied to take advantage of the exemption in section 7(1).

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).

Consequently, 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 has been consulted and each of the States and Territories has approved the amendments.

A Consultation Draft of the Bill was circulated to key stakeholders, including consumer groups, mainstream financier industry bodies, academics, the legal profession and pay day lending organisations. Organisations consulted included:

Australian Consumers Association

Legal Aid (Queensland)

Consumer Law Centre Victoria

Consumer Credit Legal Centre New South Wales Inc.

Consumer Credit Legal Centre (Victoria) Inc.

Financial Counsellor’s Association of Australia

Financial Counselling Service (Queensland) Inc.
Queensland Consumers Association
Australian Bankers' Association
Credit Union Services Corporation Australia Limited
Australian Finance Conference
Australian Association of Permanent Building Societies
Law Council of Australia
Queensland Law Society
Clayton Utz Solicitors
Griffith University Law School
Monash University Faculty of Law
Australian Money Exchange Pty Ltd
ChequExchange Pty Ltd
Cash Converters

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.*

Amendment of s7 (Provisions of credit to which this Code does not apply)

Clause 4 amends section 7(1) of the *Consumer Credit Code*.

Clause 4(1) introduces a new section 7(1) that adds two additional conditions to the 62 day threshold. The 62 day exemption will remain, but if the fees and charges for the loan exceed 5% of the amount of the loan or the interest rate exceeds 24% per annum, then the Code will apply.

Therefore, the Code applies unless 3 conditions are satisfied:

1. The loan is for less than 62 days; and
2. The fees and charges do not exceed 5% of the amount of the loan; and
3. The interest rate does not exceed 24% per annum.

These 3 conditions are cumulative – all 3 have to be satisfied to take advantage of the exemption in section 7(1).

For the purposes of determining the 24% per annum interest rate threshold, paragraph (c) permits the use of the provisions of the Code itself to determine whether a particular transaction exceeds the interest rate threshold. In particular section 26 of the Code, which provides the manner in which interest charges are to be calculated, can be used for this purpose.

Clauses 4(2), 4(3) and 4(4) amend section 7(2) of the Code. This is to overcome an unintended consequence of the amendment to section 7(1). If a customer of a bank or authorised deposit taking institution overdraws a cheque or savings account where there is implied agreement or agreement by conduct to permit the overdrawing, the Code will apply to this situation if the fee imposed exceeds 5% of the amount overdrawn. The credit provider in this situation will not have the benefit of the exemption in section 7(2) or section 7(1) and the Code will apply.

It is not the intention of amendment to apply the Code to this situation. Consequently, the amendment makes it clear that the Code will only apply to this situation if there has been express agreement between the parties to provide credit.

Insertion of new Part 12

Clause 5 inserts a new Part 12 to the Code that provides a transitional period for the amendment to section 7(1). It provides that the amendments only apply to contracts entered into after the commencement of the amendment to section 7(1).