CONSUMER CREDIT (WESTERN AUSTRALIA) AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

INTRODUCTION

The purpose of this Bill is to amend the *Consumer Credit (Western Australia) Act 1996* ("the Act") and the *Consumer Credit (Western Australia) Code* ("the Code") (which forms an Appendix to the Act) to extend coverage to payday lending and to set a maximum total cost of credit for loans of less than 62 days.

The principal objective of the Act and Code is to ensure that borrowers and guarantors are provided with adequate information, at all stages of consumer credit transactions, to enable them to make informed choices and decisions. The Act and Code also provide significant redress mechanisms for borrowers and guarantors in the event that credit providers fail to comply with their requirements.

The Act forms part of a national legislative scheme of consumer credit laws, generally referred to as the Consumer Credit Code, which commenced on 1 November 1996, pursuant to the *Australian Uniform Credit Laws Agreement 1993* ("the Agreement"), to which Western Australia is a signatory.

The Agreement binds signatories to either adopt (Queensland) template consumer credit legislation or to enact legislation that is consistent with the template. The Western Australian Government's policy at the time was to adopt the latter approach.

The Agreement extends to the enactment of amendments to the Code, and requires the approval of the Ministerial Council of Consumer Affairs, before any amendments can be made to the Code by the Queensland Parliament.

The Ministerial Council of Consumer Affairs formally approved the payday lending amendments to the Code following a period of consultation with key stakeholders. Key stakeholders included: consumer groups; mainstream financiers; industry bodies; academics; the legal profession; and payday lending organizations.

As a result, a *Consumer Credit (Queensland) Amendment Bill 2001,* was drafted and subsequently enacted by the Queensland Parliament in August 2001. The *Consumer Credit (Western Australia) Amendment Bill 2001* ("the Bill") has been drafted to be consistent with the Queensland amendments.

GENERAL OUTLINE

"Payday" 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 payday. At present, section 7(1) of the Code provides that the Code does not apply to loans of less than 62 days. As payday loans are typically for less than 62 days, they are not regulated.

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 1996, payday 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 credit lenders, including payday 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 or the interest rate exceeds 24% per annum, then the Code will apply. As payday lenders charge far in excess of 5% in fees and 24% interest, they will be captured by the amendments to the Code.

Pursuant to the proposed amendments, section 7(1) will provide that the Code applies unless three conditions are satisfied:

1. the loan is for less than 62 days;
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.

Provisions already exist under section 12 of the Act to prescribe, by regulation, a maximum annual percentage rate for a credit contract or class of credit contract. Western Australia has not, to date, utilised this provision, however in response to the payday lending issue, it is intended that Western Australia will move to set a maximum annual percentage rate.

The amendments contained in this Bill will further strengthen this maximum interest rate provision, by setting a "total cost of credit". This will mean that short-term credit providers will be required to incorporate the fees and charges for providing credit into their interest rate calculations to produce a "total cost of credit" figure.

Outlined below is an examination of the contents of the Bill on a clause-by-clause basis**.**

Clauses 1 to 3:	are purely formal. Clause 1 sets out the short title, clause 2 deals with commencement of the provisions of the Act, and clause 3 states that the Act amends provides that the Act amends the *Consumer Credit (Western Australia) Act 1996.*
Clause 4:	amends Section 12(1) of the Act.
Clause 4(1):	inserts a new section 12(1a) into the Act which will allow regulations to be made to require all interest charges and all other fees and charges relating to the provision of short-term credit to be included for the purpose of calculating the maximum annual percentage rate which may be fixed by regulations made under section 12(1) of the Act. This will mean that short-term credit providers will be required to incorporate the fees and charges for providing credit into their interest rate calculations to produce a "total cost of credit" figure.
Clause 4(2):	inserts a new section 12(4) into the Act which defines a short-term credit contract as a credit contract where the total period does not exceed 62 days and which is not exempted from the Code under section 7(1) or which is not a contract prescribed by the regulations.
Clauses 5 and 6:	these Clauses make amendments to section the *Consumer Credit (Western Australia) Code* which is set out as an Appendix to the *Consumer Credit (Western Australia) Act 1996.*
Clause 5(1):	makes it clear that clause 5 of the Bill will amend section 7(1) of the Consumer Credit (Western Australia) Code.

Clause 5(2): introduces a new section 7(1) of the Code 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 three conditions are satisfied:

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

These three conditions are cumulative – all three 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 5(3) and 5(4): amend section 7(2) of the Code. 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.

<u>Clause 6:</u> 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).