



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON
UNIFORM LEGISLATION AND
GENERAL PURPOSES
IN RELATION TO THE
CONSUMER CREDIT (WESTERN AUSTRALIA)
CODE REGULATIONS AMENDMENT
DRAFT ORDER 2004**

Presented by Hon Adele Farina MLC (Chairman)

Report 21
November 2004

STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL PURPOSES

Date first appointed: April 11 2002

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“7. Uniform Legislation and General Purposes Committee

- 7.1 A *Uniform Legislation and General Purposes Committee* is established.
- 7.2 The Committee consists of 3 members with power in the Committee to co-opt 2 additional members for a specific purpose or inquiry.
- 7.3 The functions of the Committee are –
- (a) to consider and report on bills referred under SO 230A;
 - (b) of its own motion or on a reference from a minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
 - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
 - (d) to consider and report on any matter referred by the House.
- 7.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

Members as at the time of this inquiry:

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND GENERAL
PURPOSES**

IN RELATION TO THE

**CONSUMER CREDIT (WESTERN AUSTRALIA) CODE REGULATIONS
AMENDMENT DRAFT ORDER 2004**

1 REFERENCE AND PROCEDURE

1.1 On November 9 2004, a draft of the Consumer Credit (Western Australia) Code Regulations Amendment Order 2004 (**Draft Order**) accompanying a copy of Queensland's gazetted Consumer Credit Amendment Regulation (No.1) 2004 made under the *Consumer Credit (Queensland) Act 1994* was referred to the Uniform Legislation and General Purposes Committee (**Committee**) pursuant to section 6B of the *Consumer Credit (Western Australia) Act 1996*.

1.2 Section 6B(1)(b) of the *Consumer Credit (Western Australia) Act 1996* provides that within seven days of the Minister (in this case the Minister for Consumer and Employment Protection) becoming aware of a notification in the *Queensland Government Gazette* of regulations to amend the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994*, the Minister must give those gazetted Queensland regulations to the Clerk of each House of Parliament.

1.3 Under section 6B(3) of the *Consumer Credit (Western Australia) Act 1996*, the Clerk is then to give the copy of the regulations to the:

*committee or committees of the Parliament whose terms of reference
cover uniform legislation...*

1.4 The Draft Order is a draft of the subsidiary instrument proposed to be made under section 6(2) of the *Consumer Credit (Western Australia) Act 1996*. It provides that when regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* are amended, the Western Australian Governor may amend the Consumer Credit (Western Australia) Code Regulations by an Order published in the *Government Gazette*. However pursuant to section 6(3) of the *Consumer Credit (Western Australia) Act 1996*, an order cannot be made unless a draft of the order has first been approved by both Houses of Parliament.

1.5 On November 8 2004 Hon John Kobelke MLA, Minister for Consumer and Employment Protection, provided a copy of the gazetted Queensland regulations and

Draft Order to the Clerk of the Legislative Council. The Queensland regulations and Draft Order were tabled in the Legislative Council on Tuesday, November 9 2004.¹

1.6 The purpose of the current Draft Order is, by regulation, to increase the monetary limit prescribed in:

- section 66 of the *Consumer Credit Code* to vary consumer credit contracts resulting from hardship; and
- section 86 of the *Consumer Credit Code* relating to the enforcement of credit contracts, mortgages and guarantees.²

2 INQUIRY PROCEDURE

2.1 The Committee resolved not to seek any additional information or explanatory material from the Minister for Consumer and Employment Protection. The Committee did not advertise for or invite submissions because of its strict reporting timeframes. However, details of the inquiry were placed on the parliamentary website at: www.parliament.wa.gov.au.

3 BACKGROUND

3.1 In 1993, all Australian States and Territories entered into the *Australian Uniform Credit Laws Agreement 1993 (1993 Agreement)* which committed all jurisdictions to ensuring that the same consumer credit laws apply across Australia and bound signatories to the process of maintaining uniformity between the jurisdictions. In addition, all parties are bound not to submit legislation to their respective Parliaments that conflict with or negate the uniform credit laws. The 1993 Agreement binds signatories to *either* adopt the Queensland template consumer credit legislation *or* to enact and maintain legislation which is consistent with the template. The Western Australian Government's policy at the time was to adopt the *latter* approach.

3.2 Except for Tasmania³, all other Australian States and Territories followed the template legislation model and adopted the Queensland Act as a law of their State or Territory under application of laws legislation. As a result, the Queensland *Consumer Credit Code* and the Queensland regulations, as amended from time to time, automatically apply (except for Tasmania and Western Australia) as a law of each State or Territory

¹ Legislative Council Tabled Paper No. 2840.

² Consumer Credit (Western Australia) Code Regulations Amendment Order 2004, Explanatory Note, p2.

³ The Consumer Credit (Tasmania) Bill 1996 was adopted with amended application of laws provisions. This means that the Consumer Credit Code, as in force from time to time in Queensland, applies as a law of Tasmania once the Governor - by Proclamation - declares that the Code in Tasmania is also amended. A Proclamation cannot be made until both Houses of the Tasmanian Parliament have approved a draft of the Proclamation.

but are referred to as the *Consumer Credit Code* or Consumer Credit Regulations of the particular State or Territory.

- 3.3 In March 2003, the Consumer Credit (Western Australia) Amendment Bill 2003 was introduced into the Legislative Council. The principal purpose of that bill was to amend the *Consumer Credit (Western Australia) Act 1996* and the *Consumer Credit (Western Australia) Code* to adopt the *Consumer Credit Code*, as set out from time to time in Queensland's *Consumer Credit Code* and Queensland's Consumer Credit Regulation 1995, as laws of Western Australia. The rationale was that the adoption was preferable to enacting consistent legislation and amending regulations each time the *Consumer Credit Code* was amended.⁴
- 3.4 The proposed effect of the Consumer Credit (Western Australia) Amendment Bill 2003 was that amendments made by the Queensland Parliament to the Queensland *Consumer Credit Code* and amendments to Queensland's Consumer Credit Regulation 1995 would automatically apply in Western Australia without the need for separate, legislative adoption. The Committee reported on the Consumer Credit (Western Australia) Amendment Bill 2003 in its *Ninth Report* and raised the issue of adequate parliamentary scrutiny.⁵
- 3.5 Subsequently, when the Consumer Credit (Western Australia) Amendment Bill 2003 was being debated in the Legislative Council, the issue of adequate Western Australian parliamentary scrutiny was raised as a matter of concern.
- 3.6 At the time, the Minister for Racing and Gaming gave an assurance that the Minister for Consumer and Employment Protection intended "*as a matter of policy to advise of any amendments prior to their introduction into the Queensland Parliament.*"⁶ However, this was seen as inadequate and the Legislative Council made amendments that included section 6B to provide for a higher threshold of parliamentary scrutiny of any amendments.
- 3.7 As a result of those amendments:
- section 6B(3) of the *Consumer Credit (Western Australia) Act 1996* was enacted to provide that a copy of the Queensland legislation is to be provided to (in effect) the Committee; and

⁴ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No. 9: Consumer Credit (Western Australia) Amendment Bill 2002*, May 2003, p10.

⁵ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No. 9: Consumer Credit (Western Australia) Amendment Bill 2002*, May 2003, p12.

⁶ Second Reading Speech, Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, Thirty-Sixth Parliament Second Session, April 3 2003, pp6053-6054.

- sections 5 and 6 of the *Consumer Credit (Western Australia) Act 1996* were amended to require that a copy of a draft order amending the State's legislation was to be approved by both Houses of Parliament before it could be made by the Governor.

4 SCRUTINY OF THE DRAFT ORDER

4.1 On November 8 2004 Hon John Kobelke MLA, Minister for Consumer and Employment Protection, provided a copy of the gazetted Queensland regulations and Draft Order to the Clerk of the Legislative Council. The Queensland regulations and Draft Order were tabled in the Legislative Council on November 9 2004. The Clerk of the Legislative Council provided the Committee with copies of both the Queensland regulations and the Draft Order. To assist the House, the Committee has reported its scrutiny in relation to the terms of the Draft Order.

4.2 The Draft Order contains two amendments to the Consumer Credit (Western Australia) Code Regulations.⁷ These amendments are a result of the Ministerial Council on Consumer Affairs authorising changes to the *Consumer Credit Code*.

4.3 The amendments will have an effect on Western Australian debtors, mortgagors and guarantors who have been given default notices to enforce credit contracts. The amendments insert new sections 22A and 23A into the Consumer Credit (Western Australia) Code Regulations.

Clause 4 of the Draft Order: Proposed new section 22A

4.4 New section 22A is inserted into Part 5 which deals with matters that can be prescribed for the purposes of Part 4 of the *Consumer Credit Code*. The subject matter of Part 4 is 'changes to obligations under credit contracts, mortgages and guarantees'.

4.5 New section 22A concerns the application of sections 66 to 69 of the *Consumer Credit Code*. The subject matter of those four sections is how changes to a credit contract can be made on the grounds of "*illness, unemployment or other reasonable cause*".

4.6 Relevantly, section 66(3) states that the section 67 to 69 hardship provisions do not apply to a credit contract under which the maximum amount of credit that is provided is more than \$125,000 or such other amount prescribed in regulations.

4.7 The Explanatory Note accompanying the Draft Order states that the prescribed amount has not been amended since 1996 and is now well below current average household

⁷ Queensland's Consumer Credit Regulation 1995 is the template document for the Consumer Credit (Western Australia) Code Regulations.

borrowings.⁸ New section 22A(1) is updated to reflect a more realistic debt level. It states that the section 67 to 69 hardship provisions will not apply to a credit contract:

under which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for new dwellings in New South Wales.

- 4.8 The Explanatory Note refers to a publication by the Australian Bureau of Statistics in July 2004 titled: *Housing Finance, Australia*, which listed the average Australian housing loan at \$288,000.

Clause 5 of the Draft Order: Proposed new section 23A

- 4.9 Similar to new section 22A above, new section 23A is inserted into Part 5 which concerns the application of Part 5, Division 3 of the *Consumer Credit Code*. The subject matter of that Part and Division is the postponement of enforcement proceedings.

- 4.10 Currently, a debtor, mortgagor or guarantor who has been given a default notice or a demand for payment may negotiate with the credit provider a postponement of the enforcement proceedings or the operation of any acceleration clause. However, this does not apply to a credit contract when the maximum amount of credit that is provided is more than \$125,000 or such other amount prescribed by regulations.

- 4.11 The amendment provides that Part 5, Division 3 does not apply to a credit contract:

in respect of which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for new dwellings in New South Wales.

- 4.12 As the Explanatory Note states, the amendment seeks to increase the dollar ceiling threshold for the application of the *Consumer Credit Code* in the same manner as the hardship provisions in new section 22A.⁹ This will ensure consistency in the application of the *Consumer Credit Code* for consumers who borrow more than \$125,000.

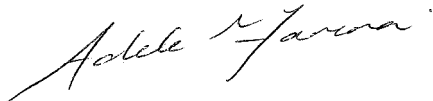
5 CONCLUSION

- 5.1 The Committee considers that the amendments in the Draft Order will have positive effects for Western Australian consumers of credit. These consumers will be able to apply for a variation of the terms of their credit contracts based on a more realistic debt threshold.

⁸ Consumer Credit (Western Australia) Code Regulations Amendment Order 2004, Explanatory Note, p2.

⁹ Consumer Credit (Western Australia) Code Regulations Amendment Order 2004, Explanatory Note, p2.

Recommendation 1: The Committee recommends that if the House is asked to approve the draft Consumer Credit (Western Australia) Code Regulations Amendment Order 2004, then it be approved.



**Hon Adele Farina MLC
Chairman**

November 16 2004