



THIRTY-SEVENTH PARLIAMENT

REPORT 27

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES REVIEW**

**CONSUMER CREDIT (BILL FACILITIES)
AMENDMENT REGULATION (NO 1) 2007 (QLD)**

Presented by Hon Simon O'Brien MLC (Chairman)

March 2008

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

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

“8. Uniform Legislation and Statutes Review Committee

8.1 *A Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 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 review the form and content of the statute book;
- (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
- (f) to consider and report on any matter referred by the House or under SO 125A.

8.4 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:

Hon Simon O’Brien MLC (Chairman)

Hon Donna Faragher MLC

Hon Matt Benson-Lidholm MLC

Hon Sheila Mills MLC

Staff as at the time of this inquiry:

Jan Paniperis, Committee Clerk

Dr Colin Huntly, Advisory Officer (Legal)

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

unileg@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 1 921243 51 1

CONTENTS

REPORT.....	1
1 INTRODUCTION	1
2 <i>CONSUMER CREDIT CODE</i> - TEMPLATE LEGISLATIVE SCHEME	2
3 REFERENCE.....	3
4 INQUIRY PROCEDURE.....	4
5 PURPOSE OF THE AMENDMENT	4
6 SCRUTINY OF THE DRAFT ORDER.....	7
7 CONCLUSION	7
Recommendation	8
APPENDIX 1 CONSUMER CREDIT (BILL FACILITIES) AMENDMENT REGULATION (NO 1) 2007 (QLD)	9
APPENDIX 2 DRAFT ORDER	15
APPENDIX 3 EXPLANATORY NOTES FOR CONSUMER CREDIT (BILL FACILITIES) AMENDMENT REGULATION (NO 1) 2007 (QLD)	19
APPENDIX 4 FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES.....	27
APPENDIX 5 “LOOPHOLE CLOSED”	31

**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW**

IN RELATION TO THE

CONSUMER CREDIT (BILL FACILITIES) AMENDMENT REGULATION (NO 1) 2007 (QLD)

1 INTRODUCTION

- 1.1 The Minister for Consumer Protection, Hon Sheila McHale MLA (the “**Minister**”) notified Mr Malcolm Peacock, Clerk of the Legislative Council, by means of an undated letter received 15 January 2008, of the publication in the Queensland Government Gazette on 30 November 2007 of the Consumer Credit (Bill Facilities) Amendment Regulation (No 1) 2007 (Qld) (**Queensland Amendment Regulation**).¹ No explanatory notes were included with this letter. However, the Minister’s letter indicated at paragraph one that; “*The amendment removes the exemption provided for in the Consumer Credit Code for the provision of credit arising out of a bill facility*”.
- 1.2 The Queensland Amendment Regulation was tabled in the Legislative Council by the Hon Adele Farina MLC, Parliamentary Secretary to the Minister for Consumer Protection on 19 February 2008.²
- 1.3 In a letter dated and received on 21 February 2008, the Department of Consumer Protection (**Department**) provided the Committee with a copy of the “*Consumer Credit (Western Australia) Code Amendment Order 2007 (Draft)*” (**Draft Order**) purporting to give effect to the amendments in the Queensland Amendment Regulation within Western Australia.³ In addition, in the same correspondence the Department also provided the Committee with a copy of the explanatory notes to the Queensland Amendment Regulation.⁴
- 1.4 The *Consumer Credit (Western Australia) Act 1996* is the Western Australian component of a template legislative scheme underpinning the national *Consumer Credit Code* which commenced on 1 November 1996.
- 1.5 The *Consumer Credit Code* (the “**Code**”) regulates all consumer credit lending for personal, domestic or household purposes in Australia such as home loans, personal loans, credit cards and in-store finance. The main objective of the *Consumer Credit*

¹ Appendix 1.

² Tabled Paper No. 3638.

³ Appendix 2.

⁴ Appendix 3.

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.⁵

1.6 Before scrutinising the Queensland Amendment Regulation, it is appropriate to briefly review the nature of the template legislative scheme underpinning the *Consumer Credit Code*.

2 CONSUMER CREDIT CODE - TEMPLATE LEGISLATIVE SCHEME

2.1 The *Consumer Credit Code* is a template legislative scheme which means that one jurisdiction passes the main piece of legislation and other jurisdictions pass Acts which adopt that Act and any subsequent amendments. For the purposes of the *Consumer Credit Code*, Queensland is the template jurisdiction. The Queensland template legislation consists of the:

- *Consumer Credit Code* (Qld) which is an appendix to the *Consumer Credit (Queensland) Act 1994* (Qld); and
- *Consumer Credit Regulation 1995* (Qld).

2.2 Thus the *Consumer Credit (Western Australia) Act 1996* provides that the:

- *Consumer Credit Code* (Qld); and
- *Consumer Credit Regulation 1995* (Qld)

apply as laws of Western Australia and are to be referred to as the:

- *Consumer Credit (Western Australia) Code*; and
- *Consumer Credit (Western Australia) Code Regulations*.

2.3 Unlike in other jurisdictions,⁶ amendments to the Queensland template legislation do not automatically apply in Western Australia.⁷ The *Consumer Credit (Western*

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, p8.

⁶ As with Western Australia, Tasmania does not automatically apply amendments to the Queensland template legislation.

⁷ Previous reports of this Committee and the former Uniform Legislation and General Purposes Committee with respect to similar amendment regulations set out a detailed history relating to the *Consumer Credit Code* and its application in Western Australia. See for example, Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Consumer Credit Amendment Regulation (No. 2) 2004 (Qld)*, May 2005, pp1-3 and Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No 1) (Qld)*, September 2005, pp1-3.

Australia) Act 1996 imposes two requirements before such amendments can operate, namely:

- a copy of amendments to the Queensland template legislation are to be provided to the Clerk of each House of the Western Australian Parliament and then to the Committee; and
- both Houses of the Western Australian Parliament must approve a draft order and then the Governor of Western Australia may amend the consumer credit laws⁸ by an order published in the *Government Gazette*.

3 REFERENCE

3.1 Section 6B of the *Consumer Credit (Western Australia) Act 1996 (WA Act)* contains the first requirement in relation to amendments to the template legislative scheme.

3.2 Section 6B(1)(b) of the WA Act provides that within seven days of the Minister becoming aware of either the introduction into the Legislative Assembly of Queensland, of a Bill to amend the *Consumer Credit Code (Qld)*, or a notification in the Queensland *Government Gazette* of regulations to amend the *Consumer Credit Regulation 1995 (Qld)*, the Minister must give the introduced or gazetted Queensland Bill or regulations to the Clerk of each House of the Western Australian Parliament.

3.3 Section 6B(3) of the *Consumer Credit (Western Australia) Act 1996*, requires the Clerks to then give the copy of any amendments to the:

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

3.4 The additional requirements with respect to amendments to the template legislative scheme are contained in sections 5 and 6 of the *Consumer Credit (Western Australia) Act 1996*. These sections provide that when the *Consumer Credit Code (Qld)* or the *Consumer Credit Regulation 1995 (Qld)* are amended, the Western Australian Governor may similarly amend the *Consumer Credit (Western Australia) Code* or *Consumer Credit (Western Australia) Code Regulations* by an order published in the *Government Gazette*. However, such an order cannot be made unless both Houses of Parliament have first approved a draft order.

3.5 As indicated above, a copy of the Draft Order was provided to the Committee by the Department in a letter dated 21 February 2008.⁹ Although it is the Queensland Amendment Regulation, and not the Draft Order which is referred to the Committee

⁸ The *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations*.

⁹ Copy of letter from Ms Lorraine Scherpenzeel, Policy Officer, Department of Consumer Protection, 21 February 2008 to the Committee Advisory Officer (Legal) Dr Colin Huntly.

for inquiry, in order to assist the Legislative Council, the Committee has reported its scrutiny of the Queensland Amendment Regulation in relation to the terms of the Draft Order.

4 INQUIRY PROCEDURE

4.1 As indicated above, the Minister provided the Committee with Explanatory Notes in relation to the Queensland Amendment Regulation. The provision of an explanatory memorandum or Explanatory Notes was part of the Committee's recommendations in its report on the *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No 1) 2005* (Qld).¹⁰ The Explanatory Notes assisted the Committee to promptly deal with the Queensland Amendment Bill in accordance with its established Fundamental Legislative Scrutiny Principles.¹¹

4.2 The Committee did not advertise for or invite submissions. However, details of the inquiry were placed on the parliamentary website at: www.parliament.wa.gov.au.

5 PURPOSE OF THE AMENDMENT

5.1 The Minister indicated that the purpose of the Queensland Amendment Regulation (as contained in the Draft Order) is to remove the "*exemption provided for in the Consumer Credit Code for the provision of credit arising out of a bill facility.*"¹² The official Uniform Consumer Credit Code website explains this amendment as follows:¹³

By bringing bill facilities within the Code, consumers will benefit from key protections in the Code, including full disclosure of fees and charges, controls on the calculation of interest, access to hardship arrangements and procedural protections in enforcement situations.

Bill facilities were previously exempt from the Code, as they are predominantly used for commercial purposes. However, bill facilities (especially promissory notes) have also been used by some consumer credit providers to avoid the Code. Promissory notes generally carry very high interest and other charges, and are targeted towards vulnerable and disadvantaged consumers. The enactment of this

¹⁰ Western Australia, Legislative Council, Uniform Legislation and Statutes Review Committee, Report 1, *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No.1) (Qld)*, September 2005, p10.

¹¹ Appendix 4.

¹² See Appendix 5. Details about this change to the application of the Consumer Credit Code can be obtained from the official website of the Uniform Credit Code (viewed on 21 February 2008) at: <http://www.creditcode.gov.au/display.asp?file=/content/whatsnew.htm#promissory>.

¹³ Id.

Regulation closes this loophole, and will ensure greater consumer protection for vulnerable and disadvantaged consumers.

It is important to note that this amendment will not apply to commercial bill facilities or to any bill facility (no matter what the purpose) provided by an [authorised deposit-taking institution].

- 5.2 The official website also notes that these amendments were intended to take effect in most jurisdictions from December 2007:

As of Friday 30 November 2007, the Consumer Credit Code (the Code) applies to the use of bill facilities (promissory notes and bills of exchange) where the credit is provided wholly or predominantly for personal, domestic or household purposes. In Western Australia and Tasmania, this change will take effect at a slighter later date.

- 5.3 Additional information is linked to the relevant page of the official website which explains the impetus for the proposed amendment. This information is as follows:¹⁴

Why was there a need for the bill facilities regulation amendment?

State and Territory Consumer Protection Ministers decided to proceed with the bill facilities regulation amendment due to concerns about a serious predatory lending issue which was causing detriment to vulnerable consumers. These consumers were being offered short-term cash advances by lenders by way of bill facilities (includes promissory notes and bills of exchange).

By structuring short-term loans as a bill facility, lenders were able to avoid the requirements of the Consumer Credit Code. This was based on the fact that section 7(5) of the Consumer Credit Code provided for an exemption for the provision of credit arising out of a bill facility.

Ministers were therefore keen to close this regulatory loophole to ensure that consumers were provided with the proper protections as intended under the Consumer Credit Code.

What was the problem?

The short-term loans were generally for \$200 to \$500, and were offered at annual percentage rates around 800%. If debtors defaulted, they would incur interest calculated at 5% per day plus other

¹⁴ See Appendix 4. http://www.creditcode.gov.au/content/downloads/Background_info.rtf, (viewed on 21 February 2008).

excessive default charges. This sometimes translated into an annual percentage rate of over 4000%.

In these cases, consumers who obtained initial cash advances of a few hundred dollars often ended up owing many thousands of dollars within a relatively short time. These debtors were also often aggressively pursued through the courts.

- 5.4 The Explanatory Notes indicate that there is some question regarding the constitutional validity of the proposed amendment. This issue is addressed in the following passage:¹⁵

Bills of exchange and promissory notes play an important role in the short-term commercial money market in Australia and are primarily regulated by the Commonwealth Government's Bills of Exchange Act 1909 (Bills of Exchange Act). This is why the Code currently does not apply to bill facilities.

There is a potential inconsistency between the Commonwealth Bills of Exchange Act and the Code. As both pieces of legislation would relate to bills of exchange, any direct inconsistencies would render the inconsistent Code provision ineffective in that to the extent that the Code is inconsistent with the Bills of Exchange Act; the Bills of Exchange Act prevails as it is a Commonwealth Act.

The Commonwealth has recently indicated that it is prepared to consider amending the Bills of Exchange Act to disapply [sic] its provisions that will directly conflict with the Code, but will not commit to a timeframe to make the amendments. It is likely that there will be a delay before the Commonwealth amends its Bills of Exchange Act to address the inconsistencies.

Further delay is seen as untenable in light of the considerable consumer detriment being caused to vulnerable and disadvantaged consumers who are currently not being afforded the protections intended under the Code. The risks associated with proceeding with implementing the Amendment Regulation in advance of the Commonwealth's amendments are considered minimal by comparison to the significant risks to consumers in delaying the regulation amendments.

¹⁵ Explanatory Notes p2.

As many jurisdictions are experiencing severe consumer detriment, the Ministerial Council on Consumer Affairs decided to proceed even though the Amendment Regulation could cause some temporary practical difficulties for credit providers until the Commonwealth amends its Bills of Exchange Act. These practical difficulties will not be long lasting if the Commonwealth proceeds with their related amendments in a timely manner.

6 SCRUTINY OF THE DRAFT ORDER

- 6.1 Clause 5 of the Draft Order proposes to amend the *Consumer Credit (Western Australia) Regulations* (the “**Western Australian Regulations**”) to insert a new section 5B into the Regulations. The proposed inserted text reads as follows:

5B. Application of Code to provision of credit under bill facilities

The Code applies to the provision of credit arising out of a bill facility unless the credit is provided by an authorised deposit-taking institution.

- 6.2 The Draft Order, at clause 4, proposes to insert the following definition of “*authorised deposit-taking institution*” into the Western Australian Regulations:

“authorised deposit-taking institution” has the meaning given in the Banking Act 1959 (Commonwealth) section 5(1);

- 6.3 The Draft Order, at clause 6, proposes to delete the exemption of authorised deposit-taking institutions from the operation of the *Code* in the following manner:

Section 6F amended Section 6F(2) is repealed.¹⁶

7 CONCLUSION

- 7.1 The Committee is of the view that in all material respects the Queensland Amendment Regulation reproduced at Appendix 1 is identical to the Draft Order provided to the Committee by the Minister and reproduced at Appendix 2. Therefore, the Committee makes recommendation 1:

¹⁶ Section 6F of the Western Australian Regulations reads as follows:

- (1) The Code does not apply to the provision of credit by an authorised deposit-taking institution limited by the contract to a total period not exceeding 62 days.
- (2) In this section -

“authorised deposit-taking institution” has the meaning given under the Banking Act 1959 (Cwlth), section 5(1).

Recommendation

Recommendation 1: The Committee recommends that if the Legislative Council is asked to approve an order to amend the *Consumer Credit (Western Australia) Code Regulations* in the same terms as that reproduced at Appendix 2 to this Report, then it be approved.



Hon Simon O'Brien MLC

Chairman

11 March 2008

APPENDIX 1
CONSUMER CREDIT (BILL FACILITIES) AMENDMENT
REGULATION (NO 1) 2007 (QLD)

APPENDIX 1
CONSUMER CREDIT (BILL FACILITIES) AMENDMENT
REGULATION (NO 1) 2007 (QLD)



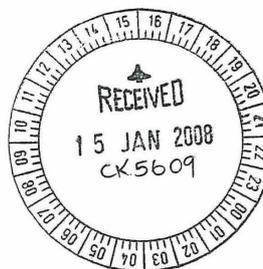
*Noted
mchale*

MINISTER FOR DISABILITY SERVICES; TOURISM;
CULTURE AND THE ARTS; CONSUMER PROTECTION

12TH FLOOR, DUMAS HOUSE, 2 HAVELOCK STREET, WEST PERTH, WESTERN AUSTRALIA 6005
TELEPHONE: +61 8 9213 6900 FACSIMILE: +61 8 9213 6901 TTY: +61 8 9213 6924
EMAIL: sheila-mchale@dpc.wa.gov.au WEB: www.ministers.wa.gov.au/mchale

*mcid
31/2/08*

Our Ref: 05-012361



CLERK OF THE LEGISLATIVE COUNCIL

CONSUMER CREDIT (WESTERN AUSTRALIA) ACT 1996
FOR TABLING AND REFERRAL: COPY OF THE QUEENSLAND CONSUMER
CREDIT AMENDMENT REGULATION (NO. 1) 2007

In accordance with section 6B (1) of the *Consumer Credit (Western Australia) Act 1996*, I have attached a copy of the Queensland Consumer Credit Amendment Regulation (No. 1) 2007, which was published in the Queensland Government Gazette on 30 November 2007. The Regulation amends the Consumer Credit Regulations 1995 made under the *Consumer Credit (Queensland) Act 1994* (Attachment 1). The amendment removes the exemption provided for in the Consumer Credit Code for the provision of credit arising out of a bill facility.

As required under section 6B (3) of the *Consumer Credit (Western Australia) Act 1996*, please provide a copy of the Queensland Regulations to the Standing Committee on Uniform Legislation and Statutes Review (the Committee). A copy of the draft Order will be provided to you and to the Committee as soon as it has been prepared by Parliamentary Counsel.

Sheila M^cHale MLA
MINISTER FOR CONSUMER PROTECTION

Attach



Queensland

Consumer Credit (Bill Facilities) Amendment Regulation (No. 1) 2007

Subordinate Legislation 2007 No. 302

made under the

Consumer Credit (Queensland) Act 1994

Contents

		Page
1	Short title	2
2	Regulation amended	2
3	Replacement of s 3 (Definition)	2
	3 Definitions.	2
4	Insertion of new s 5B	2
	5B Application of Code to provision of credit under bill facilities	2
5	Amendment of section 6F (Authorised deposit-taking institutions—exemption from Code)	2

Consumer Credit (Bill Facilities) Amendment *No. 302, 2007*
Regulation (No. 1) 2007

ENDNOTES

- 1 Made by the Governor in Council on 29 November 2007.
- 2 Notified in the gazette on 30 November 2007.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.

© State of Queensland 2007

APPENDIX 2
DRAFT ORDER

APPENDIX 2

DRAFT ORDER

Consumer Credit (Western Australia) Act 1996

Consumer Credit (Western Australia) Code Regulations Amendment Order 2008

Made by the Governor in Executive Council under section 6 of the Act.

1. Citation

This order is the *Consumer Credit (Western Australia) Code Regulations Amendment Order 2008*.

2. The regulations amended

The amendments in this order are to the *Consumer Credit (Western Australia) Code Regulations*.

3. Commencement

This order comes into operation as follows:

- (a) clauses 1 and 2 — on the day on which this order is published in the *Gazette*;
- (b) the rest of the order — on the day after that day.

4. Section 3 amended

Section 3 is amended by inserting in the appropriate alphabetical position —

**Consumer Credit (Western Australia) Code Regulations Amendment
Order 2008 (draft)**

cl. 5

“

“authorised deposit-taking institution” has the
meaning given in the *Banking Act 1959*
(Commonwealth) section 5(1);

”.

5. Section 5B inserted

After section 5A the following section is inserted —

“

**5B. Application of Code to provision of credit under bill
facilities**

The Code applies to the provision of credit arising out
of a bill facility unless the credit is provided by an
authorised deposit-taking institution.

”.

6. Section 6F amended

Section 6F(2) is repealed.

By Command of the Governor,

Clerk of the Executive Council.

APPENDIX 3
EXPLANATORY NOTES FOR CONSUMER CREDIT (BILL
FACILITIES) AMENDMENT REGULATION (NO 1) 2007
(QLD)

APPENDIX 3
**EXPLANATORY NOTES FOR CONSUMER CREDIT (BILL
FACILITIES) AMENDMENT REGULATION (NO 1) 2007 (QLD)**



Queensland

**Consumer Credit (Bill Facilities)
Amendment Regulation (No. 1) 2007**

Explanatory Notes for SL 2007 No. 302

made under the

Consumer Credit (Queensland) Act 1994

Short title

Consumer Credit (Bill Facilities) Amendment Regulation (the Amendment Regulation)

Authorising Law

Section 4 and 5 of the *Consumer Credit (Queensland) Act 1994*

Section 7(5) of the *Consumer Credit Code (the Code)*

Objectives of the legislation

The Amendment Regulation 2007 will apply the Code to credit arising out of a bill facility.

Reasons for the subordinate legislation

The legislative structure of the Code is based upon a template scheme and under the Australian Uniform Credit Laws Agreement, Queensland holds the template legislation. The Code is an appendix to the *Consumer Credit (Queensland) Act 1994*. Any amendment to the Code must first be made to the Queensland template legislation. Once the amendments are passed in Queensland, the amended Code will automatically apply in the other

jurisdictions, except in Western Australia and Tasmania, which have special additional Executive and Parliamentary processes to undertake.

The Code does not currently apply to the provision of credit arising out of a bill facility, such as a bill of exchange or promissory note. A bill of exchange is an unconditional order in writing to pay a fixed sum of money at a nominated time to a nominated person. The borrower obtains credit by selling the bill. Promissory notes involve an unconditional obligation to pay a fixed sum of money on a future date. The borrower obtains credit by issuing or selling the note.

This gap has allowed fringe credit lenders to provide high cost loans to vulnerable consumers and avoid the application of the Code. The exploitation by fringe credit providers of the bill facilities exemption is clearly in conflict with the Code's policy objectives of ensuring credit laws apply equally to all forms of consumer lending and to all credit providers.

Applying the Code to bill facilities will ensure adequate and appropriate disclosure of information is provided to borrowers; that interest caps applying in certain states are not being circumvented; and debt collection practices abide by the Code's protective provisions including the requisite notice periods and rights in relation to repossession.

Consistency with authorising law

The Amendment Regulation is consistent with section 7(4) of the Code which provides the Code may be made to apply to bill facilities through a regulation to that effect.

Estimated cost of government implementation

Any expenditure associated with the implementation of the regulation will be met through existing budget allocations.

Fundamental legislative principles

The proposed regulation is consistent with fundamental legislative principles.

Consultation

(a) Community

National consultation was undertaken on a draft Amendment Regulation last year. Consultation consisted of an e-mail distribution to approximately 200 credit providers across Australia together with the public release of the Amendment Regulation on the official Consumer Credit Code website. Consultation with stakeholders additional to those normally contacted for matters was also conducted at the suggestion of the Commonwealth Treasury.

(b) Government

All agencies were consulted in relation to the proposed regulation. In August 2007, the Ministerial Council on Consumer Affairs approved the submission of the *Consumer Credit (Bill Facilities) Regulation (No. 1) 2007* to the Queensland Governor in Council, requesting that the regulation be made.

Results of consultation

(a) Community

Key stakeholder groups generally support the legislative amendments.

(b) Government

Bills of exchange and promissory notes play an important role in the short-term commercial money market in Australia and are primarily regulated by the Commonwealth Government's *Bills of Exchange Act 1909* (Bills of Exchange Act). This is why the Code currently does not apply to bill facilities.

There is a potential inconsistency between the Commonwealth Bills of Exchange Act and the Code. As both pieces of legislation would relate to bills of exchange, any direct inconsistencies would render the inconsistent Code provision ineffective in that to the extent that the Code is inconsistent with the Bills of Exchange Act; the Bills of Exchange Act prevails as it is a Commonwealth Act.

The Commonwealth has recently indicated that it is prepared to consider amending the Bills of Exchange Act to disapply its provisions that will directly conflict with the Code, but will not commit to a timeframe to make the amendments. It is likely that there will be a delay before the Commonwealth amends its Bills of Exchange Act to address the inconsistencies.

Further delay is seen as untenable in light of the considerable consumer detriment being caused to vulnerable and disadvantaged consumers who are currently not being afforded the protections intended under the Code. The risks associated with proceeding with implementing the Amendment Regulation in advance of the Commonwealth's amendments are considered minimal by comparison to the significant risks to consumers in delaying the regulation amendments.

As many jurisdictions are experiencing severe consumer detriment, the Ministerial Council on Consumer Affairs decided to proceed even though the Amendment Regulation could cause some temporary practical difficulties for credit providers until the Commonwealth amends its Bills of Exchange Act. These practical difficulties will not be long lasting if the Commonwealth proceeds with their related amendments in a timely manner.

The proposed Amendment Regulation has been endorsed by all Queensland Government stakeholders.

NOTES ON PROVISIONS

Clause 1 – provides that the regulation may be cited as the *Consumer Credit (Bill Facilities) Regulation Amendment Regulation (No. 1) 2007*.

Clause 2 – identifies the *Consumer Credit Regulation 1995* as the Regulation being amended.

Clause 3 – inserts a definition of 'authorised deposit-taking institution' into the Regulation.

Clause 4 – inserts new section 5B into the Regulation which states that the Code applies to the provision of credit arising out of a bill facility unless the credit is provided by an authorised deposit-taking institution. Authorised deposit-taking institutions are exempted from the Amendment Regulation to provide for the occurrence where credit is provided via promissory notes to high net-worth customers for domestic purposes.

Clause 5 – amends section 6F of the Regulation by omitting subsection (2). Subsection (2) has been omitted as the definition of 'authorised deposit-taking institution' has been moved to the definitions section.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

© State of Queensland 2007

APPENDIX 4
FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

APPENDIX 4

FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

Does the legislation have sufficient regard to the rights and liberties of individuals?
--

1. **Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?**
2. **Is the Bill consistent with principles of natural justice?**
3. **Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?** Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.
4. **Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?**
5. **Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?**
6. **Does the Bill provide appropriate protection against self-incrimination?**
7. **Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?**
8. **Does the Bill confer immunity from proceeding or prosecution without adequate justification?**
9. **Does the Bill provide for the compulsory acquisition of property only with fair compensation?**
10. **Does the Bill have sufficient regard to Aboriginal tradition and Island custom?**
11. **Is the Bill unambiguous and drafted in a sufficiently clear and precise way?**

Does the Bill have sufficient regard to the institution of Parliament?

12. **Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?**
13. **Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?**
14. **Does the Bill allow or authorise the amendment of an Act only by another Act?**
15. **Does the Bill affect parliamentary privilege in any manner?**
16. **In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?**

APPENDIX 5
“LOOPHOLE CLOSED”

APPENDIX 5

“LOOPHOLE CLOSED”

LOOPHOLE CLOSED

AMENDMENT TO THE CONSUMER CREDIT REGULATION 1995

CONSUMER CREDIT (BILL FACILITIES) AMENDMENT REGULATION 2007

What does the regulation amendment achieve?

From 30 November 2007*, the Consumer Credit Code applies to the provision of credit arising out of a bill facility (includes promissory notes and bills of exchange).

(*Note: Tasmania and Western Australia are expected to adopt the regulation amendment in the first half of 2008.)

What benefits will this regulation amendment deliver to consumers?

The bill facilities regulation amendment will ensure that:

- consumers have access to key protections and redress mechanisms provided for under the Consumer Credit Code;
- consumers are provided with adequate and appropriate disclosure of material information;
- interest rate caps applying in some jurisdictions are not circumvented simply via the use of bill facilities; and
- debt collection practices will be covered by the Consumer Credit Code’s protective provisions including the requisite notice periods and rights in relation to repossession.

Why was there a need for the bill facilities regulation amendment?

State and Territory Consumer Protection Ministers decided to proceed with the bill facilities regulation amendment due to concerns about a serious predatory lending issue which was causing detriment to vulnerable consumers. These consumers were being offered short-term cash advances by lenders by way of bill facilities (includes promissory notes and bills of exchange).

By structuring short-term loans as a bill facility, lenders were able to avoid the requirements of the Consumer Credit Code. This was based on the fact that section 7(5) of the Consumer Credit Code provided for an exemption for the provision of credit arising out of a bill facility.

Ministers were therefore keen to close this regulatory loophole to ensure that consumers were provided with the proper protections as intended under the Consumer Credit Code.

What was the problem?

The short-term loans were generally for \$200 to \$500, and were offered at annual percentage rates around 800%. If debtors defaulted, they would incur interest calculated at 5% per day plus other excessive default charges. This sometimes translated into an annual percentage rate of over 4000%.

In these cases, consumers who obtained initial cash advances of a few hundred dollars often ended up owing many thousands of dollars within a relatively short time. These debtors were also often aggressively pursued through the courts.

Are there any other initiatives aimed at addressing fringe lending problems?

Yes, this is one of a number of initiatives to provide better protection for consumers accessing loans provided by fringe credit providers.

Why was this initiative ‘fast tracked’?

Consumer Protection Ministers supported ‘fast tracking’ the bill facility regulation in advance of the broader fringe lending initiative because of growing concerns about the seriousness of the bill facility issue which was affecting a growing number of vulnerable and disadvantaged consumers. Also causing concern was the rapid growth in the number of fringe lending businesses utilising the bill facilities exemption.

Why did the Consumer Credit Code originally provide an exemption for bill facilities?

The original inclusion of a bill facility exemption was based on the view that bill facilities were not generally considered to be consumer credit products as they had traditionally been used for business to business “credit” arrangements.

Are some lenders exempt?

Authorised Deposit-taking Institutions are exempt from the regulation to provide for situations where Authorised Deposit-taking Institutions provide credit via promissory notes to high net-worth customers for domestic purposes.

Why were Authorised Deposit-taking Institutions excluded?

Authorised Deposit-taking Institutions (ADI) have been excluded on the basis that their use of bill facilities was limited to high net worth clients and

sufficient controls over the use of their funds would be exercised by the Australian Prudential Regulation Authority.

(This approach is consistent with the ADI exemption provided for under section 6F of the Regulations.)