



THIRTY-SEVENTH PARLIAMENT

REPORT OF THE

**STANDING COMMITTEE ON UNIFORM
LEGISLATION AND GENERAL PURPOSES**

IN RELATION TO THE

***CONSUMER CREDIT (WESTERN AUSTRALIA)
ACT 1996:
CONSUMER CREDIT AMENDMENT
REGULATION (No. 2) 2004 (QLD)***

Presented by Hon Adele Farina MLC (Chairman)

Report 24
May 2005

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:

Hon Adele Farina MLC (Chairman)

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

IN RELATION TO THE

***CONSUMER CREDIT (WESTERN AUSTRALIA) ACT 1996:
CONSUMER CREDIT AMENDMENT REGULATION (NO. 2) 2004 (QLD)***

1 INTRODUCTION

1.1 The *Consumer Credit Amendment Regulation (No. 2) 2004 (Qld)* (**Queensland Amendment Regulation**) was referred to the Uniform Legislation and General Purposes Committee (**Committee**) on January 4 2005 pursuant to section 6B of the *Consumer Credit (Western Australia) Act 1996* for inquiry and report to the Legislative Council.

1.2 The *Consumer Credit (Western Australia) Act 1996* is the Western Australian component of a template legislative scheme underpinning the national *Consumer Credit Code*. Therefore, before scrutinising the Queensland Amendment Regulation, it is appropriate to briefly outline the nature of the template legislative scheme.

2 CONSUMER CREDIT CODE - TEMPLATE LEGISLATIVE SCHEME¹

2.1 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. Additionally, all parties agreed not to submit legislation to their respective Parliaments that would conflict with, or negate, the uniform credit laws.

2.2 To achieve uniform laws, the 1993 Agreement bound signatories to either:

- adopt the Queensland template consumer credit legislation (**Queensland template legislation**) - which is referred to in this Report as the **template approach**; or
- enact and maintain legislation consistent with the Queensland template legislation.

¹ This section largely reproduces material presented by the Committee in its Twenty-First Report, Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No. 21: Consumer Credit (Western Australia) Code Regulations Amendment Draft Order 2004*, November 2004, pp2-4.

- 2.3 At that time, the Western Australian Government adopted the latter approach of maintaining consistent legislation and passed the *Consumer Credit (Western Australia) Act 1996*. This approach involved the Western Australian Parliament considering and passing separate amendments each time the Queensland template legislation was amended.
- 2.4 Except for Tasmania² and Western Australia, all other Australian States and Territories followed the template approach which required them to adopt the Queensland template legislation as a law of their State or Territory. 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)*.
- 2.5 In the relevant States and Territories the Queensland template legislation, as amended from time to time, automatically applies and is referred to as the *Code* or *Regulations* of that particular State or Territory.
- 2.6 The national legislative scheme of consumer credit laws commenced on November 1 1996 and is often simply referred to as the *Consumer Credit Code*.
- 2.7 The *Consumer Credit 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. Fundamental to the policy objectives of the *Consumer Credit Code* is the protection of all users of consumer credit. A main objective of the *Consumer Credit 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.³
- 2.8 In March 2003, the Consumer Credit (Western Australia) Amendment Bill 2002 was introduced in the Legislative Council. The purpose of the Bill was to amend the *Consumer Credit (Western Australia) Act 1996* to dispense with the approach of maintaining consistent legislation and adopt a template approach in Western Australia.⁴

² 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 *Consumer Credit 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.

³ 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.

⁴ Hon Nick Griffiths MLC, Minister for Racing and Gaming representing the Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, April 3 2003, p6052.

- 2.9 In April 2003, the Consumer Credit (Western Australia) Amendment Bill 2002 was referred to the Committee for examination. The Committee drew to the attention of the Legislative Council the fact that by adopting the template approach, future amendments would not come before the Western Australian Parliament for consideration.⁵
- 2.10 Consistently with the Committee's concerns, the Consumer Credit (Western Australia) Amendment Bill 2002 was amended in the Legislative Council to ensure that amendments to the Queensland template legislation would not automatically apply in Western Australia. The following two requirements were imposed:
- a copy of amendments to the Queensland template legislation are to be provided to the Clerk of each House of Parliament and then to the Committee; and
 - when amendments are made to the Queensland template legislation, the Western Australian Governor may also amend the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations* by an order published in the *Government Gazette* provided both Houses of Parliament approve a draft order.
- 2.11 On July 9 2003, the *Consumer Credit (Western Australia) Amendment Act 2003* commenced and Western Australia adopted the template approach. Thus the *Consumer Credit (Western Australia) Act 1996* provides that the *Consumer Credit Code* (Qld) and *Consumer Credit Regulation 1995* (Qld) apply as a law of Western Australia (subject to the requirements outlined at paragraph 2.10) and are referred to as the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations*.

3 REFERENCE

- 3.1 Section 6B of the *Consumer Credit (Western Australia) Act 1996* contains the first requirement in relation to amendments to the template legislative scheme.
- 3.2 Section 6B(1)(b) of the *Consumer Credit (Western Australia) Act 1996* provides that within seven days of the Minister becoming aware of a notification in the Queensland *Government Gazette* of regulations to amend the *Consumer Credit Regulation 1995* (Qld), the Minister must give the gazetted Queensland regulations to the Clerk of each House of the Western Australian Parliament.
- 3.3 Pursuant to this requirement, in a letter dated December 22 2004 (received January 4 2005) Hon John Kobelke MLA, Minister for Consumer and Employment Protection

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.

(**Minister**), provided a copy of the gazetted Queensland Amendment Regulation to the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.

- 3.4 Under section 6B(3) of the *Consumer Credit (Western Australia) Act 1996*, the Clerks are then to give the copy of the regulations to the:

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

- 3.5 In this manner, the Queensland Amendment Regulation was referred to the Committee on January 4 2005, for inquiry and report.

- 3.6 The second requirement with respect to amendments to the template legislative scheme is 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 *Western Australian Code or 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.

- 3.7 A copy of the Consumer Credit (Western Australia) Code Regulations Amendment Order 2005 (**Draft Order**), to implement the Queensland Amendment Regulation in Western Australia, was provided to the Clerk of the Legislative Council by the Minister in a letter dated April 6 2005. The Draft Order was tabled in the Legislative Council on the same day. 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 The Committee sought additional information and explanatory material from the Minister and received a response on April 21 2005.

- 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 AMENDMENTS

- 5.1 The Minister advised the Committee that the purpose of the Queensland Amendment Regulation (as contained in the Draft Order) is to:

- clarify the application of **comparison rate** provisions in the *Consumer Credit Code (Qld)* (as it applies in each State and Territory); and

- provide for a shorter version of the prescribed warning for advertisements containing a **comparison rate**.⁶

Comparison rates

5.2 Comparison rates were introduced by the *Consumer Credit Code (Queensland) Amendment Act 2002*, which inserted a new Part 9A in the *Consumer Credit Code (Qld)*. Part 9A requires the publication of mandatory comparison rates for fixed term consumer credit products,⁷ for example, a home loan with a term of 25 years or a car loan with a term of five years.⁸

5.3 The *Consumer Credit Code (Queensland) Amendment Act 2002* was assented to on April 24 2002 and commenced on July 1 2003. The amendments commenced in Western Australian on July 9 2003.⁹

5.4 The *Consumer Credit Code* website (produced by the Government Consumer Agencies) describes a comparison rate as:

... a tool to help consumers identify the true cost of a loan. It is a rate which includes both the interest rate and fees and charges relating to a loan, reduced to a single percentage figure. For example, a bank's advertised interest rate may be 5.49% and its comparison rate 6.75%.¹⁰

5.5 Section 146A of the *Consumer Credit (Western Australia) Code* indicates that the comparison rate will reflect the total cost of credit arising from interest charges and other prescribed fees and charges.

5.6 Comparison rates only apply to:

- credit which is wholly or mainly for personal, domestic or household purposes; and
- fixed term credit, namely, credit that must be repaid within a specified time.¹¹

⁶ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, December 22 2004.

⁷ Explanatory Notes, *Consumer Credit Code (Queensland) Amendment Bill 2002*, p1.

⁸ http://www.creditcode.gov.au/display.asp?file=/content/mandatory_comparison.htm, (viewed on March 18 2005) in relation to fixed term consumer credit products.

⁹ This is the date the *Consumer Credit (Western Australia) Amendment Act 2003* commenced.

¹⁰ http://www.creditcode.gov.au/display.asp?file=/content/mandatory_comparison.htm, (viewed on February 9 2005).

¹¹ See sections 6 and 146B of the *Consumer Credit (Western Australia) Code* and http://www.creditcode.gov.au/display.asp?file=/content/mandatory_comparison.htm, (viewed on February 9 2005).

5.7 The provisions relating to comparison rates in Part 9A of the *Consumer Credit (Western Australia) Code* are supplemented by Part 8A of the *Consumer Credit (Western Australia) Code Regulations*. Relevantly, it is Part 8A which is to be amended by the Draft Order.

6 BACKGROUND TO THE AMENDMENTS

6.1 All Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading, consumer protection laws and credit laws form the Ministerial Council on Consumer Affairs (**Ministerial Council**).¹² There are several sub-committees of the Ministerial Council. At the top level there is the Standing Committee of Officials of Consumer Affairs (**SCOCA**), which consists of all the Chief Executive Officers of consumer protection agencies.¹³

6.2 When issues were raised about the application and interpretation of Part 9A of the *Consumer Credit Code (Qld)* and Part 8A of the *Consumer Credit Regulation 1995 (Qld)* relating to comparison rates, SCOCA published a number of Statements of Enforcement Policy to clarify the various issues.¹⁴

6.3 Each Statement of Enforcement Policy indicated that an amendment was required to address each issue and that pending such amendments, the State and Territory agencies would adopt an enforcement approach in line with the proposed amendment.

6.4 On March 4 2004, the Ministerial Council approved the drafting of amendments to address the matters covered by a number of the Statements of Enforcement Policy.¹⁵ Six of the Statements of Enforcement Policy were converted into the Queensland Amendment Regulation¹⁶ (and thus the Draft Order).

6.5 On July 1 2004, the Ministerial Council approved the drafting of an amendment to comparison rate warnings and this is also contained in the Queensland Amendment Regulation (and the Draft Order).¹⁷

¹² <http://www.consumer.gov.au/html/protection.htm>, (viewed on February 2 2005).

¹³ Ibid.

¹⁴ http://www.creditcode.gov.au/display.asp?file=/content/mandatory_comparison.htm, (viewed on February 9 2005).

¹⁵ Explanatory Memorandum, Consumer Credit (Western Australia) Code Regulations Amendment Order 2005, p1.

¹⁶ http://www.creditcode.gov.au/display.asp?file=/content/mandatory_comparison.htm, (viewed on February 9 2005).

¹⁷ Explanatory Memorandum, Consumer Credit (Western Australia) Code Regulations Amendment Order 2005, p1.

7 SCRUTINY OF THE DRAFT ORDER

7.1 The Draft Order contains five amendments to the *Consumer Credit (Western Australia) Code Regulations*. These are examined below.

Clause 3 of the Draft Order: replacement of section 33C

7.2 Clause 3 of the Draft Order proposes to replace section 33C of the *Consumer Credit (Western Australia) Code Regulations*, relating to comparison rate warnings, with a new section 33C.

Comparison rate warnings - short and long form

7.3 Comparison rates may appear in:

- **credit advertisements;** or
- **a comparison rate schedule.**¹⁸

7.4 A **comparison rate schedule** is a list of comparison rates for a range of standard loan amounts and terms for a particular credit product.¹⁹ For example, a comparison rate schedule for a home loan might be as follows:

Amount of loan	Term	Annual Interest Rate	Comparison Rate
50,000	7 years	6.74%	7.54% pa
70,000	25 years	6.74%	7.02% pa
100,000	25 years	6.74%	6.95% pa
130,000	25 years	6.74%	6.89% pa
150,000	25 years	6.74%	6.88% pa
200,000	25 years	6.74%	6.84% pa

7.5 A **comparison rate schedule** must be displayed and available to the public at the premises of credit providers, finance brokers and 'linked suppliers',²⁰ where they display, or make available for collection, copies of documents advertising credit products or where applications for credit can be lodged. This also includes advertising on the Internet.²¹

7.6 In relation to the publication of comparison rates in either a **credit advertisement** or a **comparison rate schedule**, sections 146H and 146O of the *Consumer Credit*

¹⁸ Section 146A(2), *Consumer Credit (Western Australia) Code*.

¹⁹ http://www.creditcode.gov.au/display.asp?file=/content/mandatory_comparison.htm, (viewed on February 9 2005).

²⁰ This is defined in section 117 of the *Consumer Credit (Western Australia) Code*. The term essentially relates to situations where there is a business link between a credit provider and a supplier of goods and services.

²¹ Section 146K, *Consumer Credit (Western Australia) Code*.

(*Western Australia*) Code require the rate to be accompanied by a warning about its accuracy.

- 7.7 The relevant warning is currently set out in section 33C(1) of the *Consumer Credit (Western Australia) Code Regulations* which provides:

WARNING: This comparison rate applies only to the example or examples given. Different amounts and terms will result in different comparison rates. Costs such as redraw fees or early repayment fees, and cost savings such as fee waivers, are not included in the comparison rate but may influence the cost of the loan.

- 7.8 In relation to **credit advertisements** only, proposed section 33C(1) in clause 3 of the Draft Order provides that the warning can be in either a long or short form.

- 7.9 The Explanatory Memorandum indicates that this amendment arises from concerns that the commercial radio industry was losing revenue due to the time taken to broadcast the prescribed warning resulting in increased costs for advertisers.²²

- 7.10 The proposed long form warning is the current warning as set out above in paragraph 7.7. The proposed short form warning is:

WARNING: This comparison is true only for the examples given and may not include all fees and charges. Different terms, fees or other loan amounts might result in a different comparison rate.

- 7.11 Proposed section 33C(2) in clause 3 of the Draft Order provides that the long form warning *must* continue to be used for **comparison rate schedules**.

Comparison rate warnings - written or spoken form

- 7.12 In relation to **credit advertisements**, proposed section 33C(1)(b) in clause 3 of the Draft Order provides that the warning should be in the same form²³ as the comparison rate unless the advertisement is on television, the Internet or other electronic display medium. The proposed amendment arises out of the Statement of Enforcement Policy entitled “Comparison Rate Warning”.

- 7.13 This Statement of Enforcement Policy indicated that difficulties had arisen because section 33C(1) of the *Consumer Credit Regulation 1995* (Qld) provided that the warning should be in written form but, in contrast, section 146I of the *Consumer Credit Code* (Qld) (which relates to credit advertisements on television, the Internet or other electronic display medium) made specific provision for comparison rates to be

²² Explanatory Memorandum, Consumer Credit (Western Australia) Code Regulations Amendment Order 2005, p1.

²³ For example, written or spoken form. See section 146I(3), *Consumer Credit Code*.

in spoken form. Further, section 33C(1) failed to make provision for comparison rate warnings in radio advertisements.

- 7.14 As a result of these inconsistencies, the Statement of Enforcement Policy indicated that an amendment to the *Consumer Credit Regulation 1995* (Qld) was required.
- 7.15 Proposed section 33C(1)(b) in clause 3 of the Draft Order specifically indicates that the section does not apply to advertisements on television, the Internet or other electronic display medium and makes it clear that section 146I (which relates to these methods of presentation) applies instead.

Clause 4 of the Draft Order: amendment of section 33D

- 7.16 Clause 4 of the Draft Order proposes to amend section 33D of the *Consumer Credit (Western Australia) Code Regulations*.
- 7.17 Section 146M of the *Consumer Credit (Western Australia) Code* provides that comparison rate schedules are required to list comparison rates for the consumer credit product concerned, calculated for each of the amounts of credit and terms prescribed.
- 7.18 Section 33D of the *Consumer Credit (Western Australia) Code Regulations* sets out the prescribed amounts of credit and terms for credit providers offering comparison rate schedules. These include, for example:
- (a) \$250 for a term of 2 weeks;
 - (b) \$600 for a term of 8 weeks;
 - ...
 - (g) \$10 000 for a term of 3 years;
 - (h) \$15,000 for a term of 4 years;
 - ...
 - (l) \$50 000 for a term of 7 years;
 - (m) \$70 000 for a term of 25 years;
 - ...
 - (t) \$275 000 for a term of 30 years;
 - (u) \$300 000 for a term of 30 years.

- 7.19 Clause 4 of the Draft Order proposes to insert additional sub-sections in section 33D to implement two separate Statements of Enforcement Policy.

Proposed section 33D(2)

- 7.20 Clause 4 proposes to insert new section 33D(2) which implements amendments arising out of the Statement of Enforcement Policy “Comparison Rates for Loans Offered for Terms Other Than the Designated Term”. This Statement of Enforcement Policy stated:

Section 146M(3) provides that, if credit for one of the prescribed amounts is generally available, the comparison rate schedule is to list a comparison rate for that amount and its corresponding term, whether or not the credit is generally available for that term.

It has become apparent that this requirement could mislead consumers if it results in an interest rate designed for a loan such as a car loan being used to calculate a comparison rate for a prescribed amount and term which is intended to represent a home loan. For example, the prescribed amounts and terms include a category of \$70,000 for 25 years, which is designed to represent a rural home loan. Some credit providers, however, offer credit of \$70,000, but only for car loans, and at terms of around 5 years. In this case the interest rate is likely to be different from the rate that would be charged if the loan were offered for a home loan of 25 years. Using an interest rate designed for a car loan to provide a comparison rate for a 25 year home loan may therefore be misleading for consumers.

In response to this problem, the Standing Committee of Officials of Consumer Affairs (SCOCA) has agreed that the Consumer Credit Regulation 1995 should be amended to provide that, where a credit provider offers credit for any of the prescribed amounts which have 25 year terms (all of which are intended to represent categories of home loan), but the credit provider only offers that amount of credit for a term of less than 25 years and for purposes other than a home loan, the comparison rate schedule should provide a comparison rate which is based on the term for which that amount of credit is actually offered rather than the 25 year term. The schedule should state the term for which the comparison rate is calculated.²⁴

²⁴ http://www.creditcode.gov.au/display.asp?file=/content/sep_loans.htm, (viewed on February 11 2005).

Proposed sections 33D(3) and (4)

- 7.21 Clause 4 proposes to insert new sections 33D(3) and 33D(4) in the *Consumer Credit (Western Australia) Code Regulations*.
- 7.22 Section 33F of the *Consumer Credit (Western Australia) Code Regulations* contains the formula for calculating comparison rates and one of the variables in this formula is the interest rate. However, an issue arose regarding those situations where there is no set interest rate but there is, instead, an interest rate which varies according to the risk posed by each consumer.²⁵
- 7.23 With respect to this issue, the Minister advised that:

Some credit providers, particularly those who provide car finance, vary the interest rates they charge according to the risk profile of individual consumers. When preparing for the introduction of comparison rates, these credit providers sought guidance on whether, when a range of rates is charged, the comparison rate should be calculated on the basis of the minimum rate, the maximum rate, the average rate or the typical rate, or whether a range of interest rates and their corresponding comparison rates should be provided.

Choosing an average rate or typical rate could be quite misleading for a consumer because the rate they will be charged may be above or below this rate. Providing consumers with a range of rates would enable them to find the comparison rate which more closely corresponds to the interest rate which they will actually be charged.

The Australian Finance Conference advised that the range of rates for most credit products which are priced for risk would be around 7 percentage points. Accordingly, the Standing Committee of Officials of Consumer Affairs (SCOCA) agreed that the credit provider should be required to provide comparison rates for the average interest rate which is charged (rounded to the nearest whole number), and for interest rates one and two percentage points above and below the average rate. This would provide a range of five percentage points, which would cover most loans.²⁶

- 7.24 SCOCA issued the Statement of Enforcement Policy “Comparison Rates for Consumer Credit Products Which are Priced for Risk” to implement this solution²⁷

²⁵ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, April 21 2004.

²⁶ Ibid.

²⁷ http://www.creditcode.gov.au/display.asp?file=/content/sep_risk.htm, (viewed on February 11 2005).

and that Statement of Enforcement Policy is carried through in proposed new sections 33D(3) and 33D(4) in clause 4.

Clause 5 of the Draft Order: amendment of section 33E

- 7.25 Clause 5 of the Draft Order proposes to amend section 33E of the *Consumer Credit (Western Australia) Code Regulations* by inserting a new section 33E(2).
- 7.26 As indicated, section 146M of the *Consumer Credit (Western Australia) Code* requires a comparison rate schedule to provide comparison rates for prescribed amounts of credit and terms. Further to this, section 146M(4) of the *Consumer Credit (Western Australia) Code* provides that for certain prescribed amounts of credit, the comparison rate schedule must clearly state whether the comparison rate has been calculated for a secured or unsecured loan. This is because there can be a significant difference in the comparison rate for a secured loan and an unsecured loan of the same value, due to higher interest rates for unsecured loans and the higher up-front fees for secured loans.²⁸
- 7.27 Section 33E of the *Consumer Credit (Western Australia) Code Regulations* currently prescribes amounts between \$10,000 and \$30,000 (inclusive) as those amounts for which a statement must be made regarding whether the comparison rate is for a secured or unsecured loan.
- 7.28 Proposed new section 33E(2) provides that a comparison rate schedule may (but is not required to) contain a statement about whether the loan is secured or unsecured regardless of the amount of credit.
- 7.29 The basis for the amendment is the Statement of Enforcement Policy “Statements in Comparison Rate Schedules Regarding Secured and Unsecured Loans” which indicated that:

It has been pointed out that allowing comparison rate schedules to indicate whether a comparison rate is for a secured or unsecured loan for amounts other than those between \$10,000 and \$30,000 would be useful to consumers. However there are doubts about whether comparison rate schedules are permitted to contain this information, as section 146P(3) of the Act provides that a comparison rate schedule is not to contain any information other than that required or permitted by or under the Consumer Credit Code.

The Standing Committee of Officials of Consumer Affairs (SCOCA) has agreed that the Consumer Credit Regulation 1995 should be amended to allow comparison rate schedules to indicate whether

²⁸ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, April 21 2004.

*comparison rates are for secured or unsecured loans for all loan amounts in the schedule.*²⁹

Clause 6 of the Draft Order: amendment of section 33G

7.30 Clause 6 of the Draft Order proposes to amend section 33G of the *Consumer Credit (Western Australia) Code Regulations* by inserting a new sub-section (2) which relates to the exemption of certain premises from the requirement to provide a comparison rate schedule to consumers.

7.31 Comparison rate schedules are required to be available to consumers in certain premises (such as the premises of a credit provider or a finance broker) and in certain circumstances (such as publication on Internet sites).³⁰

7.32 However, section 33G of the *Consumer Credit (Western Australia) Code Regulations* currently exempts a credit provider from this requirement if the use of the premises is limited to one or more of the following:

- the display or provision of credit advertisements that do not, or information that does not, contain an annual percentage rate;
- the distribution, or collection, or both of credit applications.

7.33 Proposed section 33G(2) is based on the Statement of Enforcement Policy “Exemption from Requirement for a Comparison Rate Schedule to Accompany a Credit Application” which stated that:

This exemption [section 33G] is designed to ensure that distribution of general credit information and application forms in school staff rooms, office lunch rooms and information points, usually by volunteers, does not trigger a requirement to provide comparison rate schedules in these locations.

*Concern has now been expressed that, under section 146K(5), credit applications which are obtained from these staff rooms, office lunch rooms and information points will be required to be accompanied by a comparison rate schedule. This would negate the effect of the exemption from section 146K(1), as staff rooms, lunch rooms and information points would need to keep stocks of up-to-date schedules.*³¹

²⁹ Ibid.

³⁰ Section 146K, *Consumer Credit (Western Australia) Code*.

³¹ http://www.creditcode.gov.au/display.asp?file=/content/sep_exemption.htm, (viewed on February 10 2005).

7.34 However, as the Minister indicated:

It was the intention when drafting section 146K(5) to ensure that a comparison rate schedule is only required to accompany a credit application when the application is given or sent to a consumer by the credit provider, finance broker or supplier. The schedule need not be provided when the credit application is sent or given on behalf of the credit provider, finance broker or supplier themselves. However, CUSCAL [Credit Union Services Corporation] was concerned that staff in staff rooms, lunch rooms and information points will be seen as agents of the credit provider and therefore the application will be seen as being sent or given by the credit provider itself.³²

7.35 In order to address this issue, SCOCA agreed that there should be an amendment to extend the exemption in section 33G to a credit application which is given to a consumer at the premises referred to in section 33G, or sent to a consumer from those premises.³³ Such an amendment is contained in proposed new section 33G(2) in clause 6.

Clause 7 of the Draft Order: insertion of section 33HA

7.36 Clause 7 of the Draft Order proposes to insert a new section 33HA in the *Consumer Credit (Western Australia) Code Regulations*.

7.37 Currently, section 33F of the *Consumer Credit (Western Australia) Code Regulations* contains the formula used to calculate comparison rates. One of the elements of the formula is the number of repayments per annum required by the credit contract. If the credit contract does not provide for a particular repayment frequency then the credit provider is able to nominate a repayment frequency.³⁴

7.38 However, the Statement of Enforcement Policy “Statement in Comparison Rate Schedules of the Repayment Frequency used to Calculate a Comparison Rate” indicated that:

Increasing the repayment frequency can produce a lower comparison rate. Therefore, for two identical loans, the credit provider who uses a weekly repayment interval will produce a slightly lower comparison rate than the credit provider who uses a fortnightly repayment interval. The consumer would, however, be unaware that the

³² Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, April 21 2004.

³³ http://www.creditcode.gov.au/display.asp?file=/content/sep_exemption.htm, (viewed on February 10 2005).

³⁴ http://www.creditcode.gov.au/display.asp?file=/content/sep_statement.htm, (viewed on April 22 2005). See also letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, April 21 2004 in relation to this issue.

*difference was caused by a different repayment frequency, and the latter credit provider may be at a competitive disadvantage.*³⁵

- 7.39 Section 146P(3) of the *Consumer Credit (Western Australia) Code* prevents a comparison rate schedule containing information additional to that required or permitted under the *Consumer Credit (Western Australia) Code*. As the frequency of the repayment rate is not included in the prescribed information, SCOCA indicated that an amendment to the *Consumer Credit Regulation 1995 (Qld)* was required to allow a comparison rate schedule to state the repayment frequency used as the basis for a comparison rate calculation.³⁶
- 7.40 Clause 7 of the Draft Order proposes to insert new section 33HA to overcome the problems outlined in the Statement of Enforcement Policy.

8 CONCLUSION

- 8.1 The Committee has examined the proposed amendments to the *Consumer Credit (Western Australia) Code Regulations* in the Draft Order. The proposed amendments arise from concerns that were raised with SCOCA about the operation of a number of regulations relating to comparison rates. SCOCA was of the view that the issues should be clarified through amendments to the national *Consumer Credit Code*.
- 8.2 The Committee notes that the proposed amendments, particularly those in clauses 4, 5 and 7 of the Draft Order, are directed to ensuring consumers are fully informed when using comparison rates to assess credit products. These amendments are consistent with the objective of the *Consumer Credit Code* 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. Consequently, the Committee is of the view that if the House is asked to approve the Draft Order, then it should be approved.

Recommendation

Recommendation 1: The Committee recommends that if the House is asked to approve the draft Consumer Credit (Western Australia) Code Regulations Amendment Order 2005, then it be approved.



**Hon Adele Farina MLC
Chairman**

May 3 2005

³⁵ http://www.creditcode.gov.au/display.asp?file=/content/sep_statement.htm, (viewed on April 22 2005).

³⁶ Ibid.