



THIRTY-SEVENTH PARLIAMENT

REPORT 1

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

***CONSUMER CREDIT (FIREFIGHTER'S BENEFIT
FUND) AMENDMENT REGULATION (No. 1) (QLD)***

Presented by Hon Simon O'Brien MLC (Chairman)

September 2005

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

August 17 2005

Terms of Reference:

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

“8. Standing Committee on Uniform Legislation and Statutes Review

8.1 A *Standing Committee on Uniform Legislation and Statutes Review* 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;
- (f) to consider and report on any matter referred by the House or 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 Sheila Mills MLC

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

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RECOMMENDATIONS FOR THE
REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES
REVIEW

IN RELATION TO THE

CONSUMER CREDIT (FIREFIGHTER'S BENEFIT FUND) AMENDMENT
REGULATION (NO. 1) 2005 (QLD)

RECOMMENDATIONS

Recommendations appear at the page number indicated below.

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Recommendation 1: The Committee recommends that when the Minister for Consumer and Employment Protection provides to the Clerk of the Legislative Council a copy of regulations pursuant to section 6B(1) of the *Consumer Credit (Western Australia) Act 1996*, an explanatory memorandum is also provided.

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Recommendation 2: The Committee recommends that when a draft order is tabled in the Legislative Council pursuant to section 5(3) or section 6(3) of the *Consumer Credit (Western Australia) Act 1996*, an explanatory memorandum should also be tabled.

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Recommendation 3: The Committee recommends that if the Legislative Council is asked to approve a draft order which adopts the *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No. 1) 2005 (Qld)*, then it be approved.

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

IN RELATION TO THE

***CONSUMER CREDIT (FIREFIGHTER'S BENEFIT FUND) AMENDMENT
REGULATION (No. 1) 2005 (QLD)***

1 INTRODUCTION

- 1.1 The *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No. 1) 2005* (Qld) (**Queensland Amendment Regulation**) was referred to the former Uniform Legislation and General Purposes Committee (**UG Committee**) on May 6 2005, pursuant to section 6B of the *Consumer Credit (Western Australia) Act 1996*, for inquiry and report to the Legislative Council. On August 17 2005, the UG Committee ceased and the Uniform Legislation and Statutes Review Committee (**Committee**) was appointed. The Committee resolved to continue the inquiry of the former UG Committee into the Queensland Amendment Regulation.
- 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* which commenced on November 1 1996.
- 1.3 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. The 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.¹
- 1.4 Before scrutinising the Queensland Amendment Regulation, it is appropriate to briefly outline the nature of the template legislative scheme underpinning the *Consumer Credit Code*.

2 CONSUMER CREDIT CODE - TEMPLATE LEGISLATIVE SCHEME²

- 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

¹ 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.

² This section largely reproduces material presented by the UG 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.

ensuring that the same consumer credit laws apply across Australia. 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.

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*.

2.4 Except for Tasmania³ 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.

2.5 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).

2.6 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.

2.7 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

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 *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.

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.

2.8 In April 2003, the Consumer Credit (Western Australia) Amendment Bill 2002 was referred to the UG Committee for examination. The UG 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

2.9 Consistently with the UG 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 amend the Western Australian consumer credit laws⁶ by an order published in the *Government Gazette* provided both Houses of Parliament approve a draft order.

2.10 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 laws of Western Australia (subject to the requirements outlined at paragraph 2.9) and are referred to as the:

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

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

- 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 received on May 5 2005, Hon John Kobelke MLA, Minister for Consumer and Employment Protection (**Minister**), provided a copy of the gazetted Queensland Amendment Regulation to the Clerk of the Legislative Council.
- 3.4 Under section 6B(3) of the *Consumer Credit (Western Australia) Act 1996*, the Clerk is to then 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 UG Committee on May 6 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 (No. 2) 2005 (**Draft Order**) was tabled in the Legislative Council on August 30 2005.⁷ The Committee notes that unlike the Queensland Amendment Regulation, the title of the Draft Order does not refer to the Firefighter's Benefit Fund; however, its content reflects that of the Queensland Amendment Regulation.
- 3.8 Although it is the Queensland Amendment Regulation and not the Draft Order which is referred to the Committee 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 The UG Committee sought additional information and explanatory material from the Minister and received a response on June 7 2005.

⁷ Tabled Paper 651.

- 4.2 The UG 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 BACKGROUND TO THE AMENDMENTS

- 5.1 The Minister indicated that the purpose of the Queensland Amendment Regulation (as contained in the Draft Order) is to:⁸

- exempt the Firefighter's Benefit Fund of WA (Incorporated) (**Fund**) from parts of the *Consumer Credit (Western Australia) Code*; and
- clarify provisions applying to exemptions from the *Consumer Credit (Western Australia) Code*.

Firefighter's Benefit Fund

- 5.2 The Fund was established in 1932 with Fund members contributing a proportion of their salaries on a fortnightly basis. The objects of the Fund are to:⁹

- provide a certain weekly allowance, as may be decided upon from time to time, for the purposes of rendering aid to contributing members in the case of sickness or accident;
- provide a certain sum in the case of death of any contributing member in addition to dependent death benefit; and
- provide a retiring allowance for contributing members.

- 5.3 The Fund commenced issuing loans in 1967 and at any one time approximately 400 members have accessed loans ranging from \$500 to \$3,000.¹⁰ However, following a due diligence assessment of the Fund in early 2002, it ceased to offer loans based on concerns regarding non-compliance with the *Consumer Credit Code*. The Fund then applied for an exemption from the *Consumer Credit Code*.¹¹

Exemptions from the *Consumer Credit Code*

- 5.4 Section 7 of the *Consumer Credit (Western Australia) Code* sets out the circumstances where the *Consumer Credit Code* does not apply.

⁸ Copy of letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection to the Clerk to the Legislative Council, received May 5 2005.

⁹ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, June 7 2005, Attachment 2, p3.

¹⁰ Ibid.

¹¹ Ibid.

- 5.5 Section 7(10) enables regulations to be made that exclude the provision of credit of a specified class from the application of all or any provisions of the *Consumer Credit (Western Australia) Code*.
- 5.6 However, the 1993 Agreement requires any amendments to the *Consumer Credit Code*, including the regulations, to be approved by two thirds of the Ministerial Council on Consumer Affairs (**Ministerial Council**).¹² The Ministerial Council consists of all Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading, consumer protection laws and credit laws.¹³
- 5.7 On January 16 2004, the Ministerial Council approved a *partial* exemption for the Fund which is considered in more detail at paragraphs 6.3 to 6.5.¹⁴
- 5.8 Following the approval of the *partial* exemption by the Ministerial Council, the *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No. 1) 2005* (Qld) was gazetted on April 29 2005. In order to implement the *partial* exemption in Western Australia, the Draft Order must be passed by both the Legislative Council and the Legislative Assembly.

6 SCRUTINY OF THE DRAFT ORDER

General

- 6.1 The clauses in the Draft Order propose amendments to Part 2 of the *Consumer Credit (Western Australia) Code Regulations* which contains regulations relating to exemptions.
- 6.2 The Draft Order contains three substantive clauses (clauses 3, 4 and 5). Clauses 3 and 4 flow from the proposed amendments in clause 5 and therefore, clause 5 will be examined first.

Clause 5 of the Draft Order: insertion of new section 6I (Firefighter's Benefit Fund of WA Incorporated)

- 6.3 Clause 5 proposes to insert a new section 6I into the *Consumer Credit (Western Australia) Code Regulations*. Proposed section 6I exempts the Fund from the operation of the *Consumer Credit (Western Australia) Code* except for:
- **Part 2, Division 3** - interest charges in credit contracts;¹⁵

¹² Clause 10, *Australian Uniform Credit Laws Agreement 1993*.

¹³ The role of MCCA is to consider consumer affairs and fair trading matters of national significance and, where possible, develop a consistent approach to those issues, <http://www.consumer.gov.au/html/protection.htm>, (viewed on June 27 2005).

¹⁴ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, June 7 2005, Attachment 2, p2.

- **Part 4, Division 3** - changes to obligations under credit contracts, mortgages and guarantees on the grounds of hardship or unjust transactions;
- **Part 5, Division 1** - the ending of a credit contract by a debtor; and
- **Part 5, Division 2** - the enforcement of credit contracts, mortgages and guarantees.

6.4 The Minister advised that the rationale for the *partial* exemption was as follows:

Central to the MCCA [Ministerial Council] reaching a decision on this matter was the weighing up of the Fund's needs against the potential for any disadvantage to consumers.

It should be noted that MCCA did not support the provision of a full exemption from the Code as this would have had the effect of removing important debtor protections afforded by the Code. MCCA instead supported the granting of a partial exemption which would ensure that borrowers' access to specific baseline protections afforded by the Code would be preserved.

In reaching its decision, MCCA also took into account the benevolent nature of the Fund's activities. In summary it was MCCA's view that the granting of a partial exemption would not compromise the objectives of the Code. Further the granting of a partial exemption would ensure that the Fund would remain in a strong position to continue providing financial assistance to members and their families in the form of retirement, sickness, accident, and death benefits.¹⁶

6.5 The Ministerial Council approved the *partial* exemption on certain conditions¹⁷ which are contained in proposed section 6I, namely:

- the person applying for the credit must be a member of the Fund;
- the application form must state an annual percentage rate for the credit; and

¹⁵ The exemption does not apply to Part 2, Division 3 because it contains the definition of "annual percentage rate" and the Office of Parliamentary Counsel in Queensland advised that this should also apply to the Queensland Amendment Regulation. The term is referred to in clause 5, proposed section 6I. Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, June 7 2005, Attachment 1, p2.

¹⁶ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, June 7 2005, Attachment 2, p3.

¹⁷ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, June 7 2005, Attachment 2, p2.

- the credit contract must fix, for the whole term of the contract, an annual percentage rate.

Clause 3 of the Draft Order: insertion of new section 5A (Continued application of Part 11 of the Code and interpretation)

6.6 Proposed section 5A in clause 3 seeks to make it clear that although the exemption provisions in Part 2 of the *Consumer Credit (Western Australia) Code Regulations* refer to the *Consumer Credit (Western Australia) Code* not applying in certain circumstances:

- the *Consumer Credit (Western Australia) Code* generally applies to the extent necessary to interpret an exemption; and
- Part 11 of the *Consumer Credit (Western Australia) Code* (which contains miscellaneous provisions such as the form of notices) applies to the extent the context permits.

6.7 The Minister advised that this clause was included on the basis of advice from the Office of Queensland Parliamentary Counsel.¹⁸

Clause 4 of the Draft Order: amendment of section 6C (Partnership loans - exemption from certain provisions of Code)

6.8 Currently, section 6C partially exempts partnership loans from the *Consumer Credit (Western Australia) Code*. The exemption does not extend to Part 11 (which contains miscellaneous provisions) and Schedules 1 and 2 (which contain definitions and interpretation clauses) which section 6C indicates continue to apply to partnership loans.

6.9 As a result of proposed section 5A (considered at paragraphs 6.6 to 6.7) section 6C no longer needs to specifically ensure that Part 11 and Schedules 1 and 2 apply to partnership loans. Therefore, clause 4 proposes to amend section 6C to delete the reference to Part 11 and Schedules 1 and 2 applying to partnership loans.

7 EXPLANATORY MATERIAL

7.1 The proposed amendments to the *Consumer Credit (Western Australia) Code Regulations* in the Draft Order are such that, without explanatory material, it was difficult for the Committee to assess the appropriateness of the amendments. Consequently, the explanatory material provided to the UG Committee by the Minister was particularly helpful to the examination of the Draft Order.

¹⁸ Letter from Hon John Kobelke MLA, Minister for Consumer and Employment Protection, June 7 2005, Attachment 1, p2.

- 7.2 The Committee notes that from November 2004 to August 17 2005 when the UG Committee ceased, three Amendment Regulations affecting the *Consumer Credit Regulation 1995* (Qld) were referred to that Committee. In relation to two of those referrals, the UG Committee wrote to the Minister seeking explanatory material.
- 7.3 When a bill is referred to a parliamentary committee, the committee usually has the benefit of the second reading speech and an explanatory memorandum (if the bill has been presented in the Legislative Assembly).¹⁹ When the Joint Standing Committee on Delegated Legislation scrutinises subordinate legislation it also has an explanatory memorandum available pursuant to a Premier's Circular.²⁰ In contrast, with respect to amendments to the *Consumer Credit (Western Australia) Code Regulations*, the statutory referral process contained in section 6B(1) of the *Consumer Credit (Western Australia) Act 1996* does not include a method for explanatory material to be made available to the Committee or the Parliament.
- 7.4 If the amendments to the Queensland template legislation are amendments to the Act (namely the *Consumer Credit Code* (Qld) which is an Appendix to the Queensland Act) the Committee will be able to access a copy of the explanatory note which is required to be tabled in the Queensland Parliament.²¹ However, when the amendments to the Queensland template legislation are amendments to the *Consumer Credit Regulation 1995* (Qld), explanatory notes are only available in limited circumstances.²²
- 7.5 The Committee considers that its process for examining amendments to the *Consumer Credit (Western Australia) Code Regulations* could be expedited if the Minister provided an explanatory memorandum when the copy of the regulations is provided to the Clerk of the Legislative Council pursuant to section 6B(1). Therefore, the Committee makes Recommendation 1.
- 7.6 The Committee also considers that an explanatory memorandum could assist the Legislative Council to consider the Draft Order when it is submitted for approval. Therefore, the Committee makes Recommendation 2.

¹⁹ Standing Order 162 of the *Legislative Assembly Standing Orders* requires an explanatory memorandum to be tabled with all bills initiated in that House. There is no equivalent requirement to table an explanatory memorandum in the Legislative Council.

²⁰ See Premier's Circular 2005/06 available on the Parliament website <http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Committees+-+Current> (viewed on June 27 2005).

²¹ Section 22(1), *Legislative Standards Act 1992* (Qld).

²² Section 22(2) of the *Legislative Standards Act 1992* (Qld) provides that when "significant subordinate legislation" is tabled in the Legislative Assembly it must be accompanied by an explanatory note. "Significant subordinate legislation" is legislation for which a regulatory impact statement must be prepared under the *Statutory Instruments Act 1992* (Qld). Section 43 of this Act provides that a regulatory impact statement must be prepared if the proposed subordinate legislation is likely to impose appreciable costs on the community or a part of the community.

Recommendations

Recommendation 1: The Committee recommends that when the Minister for Consumer and Employment Protection provides to the Clerk of the Legislative Council a copy of regulations pursuant to section 6B(1) of the *Consumer Credit (Western Australia) Act 1996*, an explanatory memorandum is also provided.

Recommendation 2: The Committee recommends that when a draft order is tabled in the Legislative Council pursuant to section 5(3) or section 6(3) of the *Consumer Credit (Western Australia) Act 1996*, an explanatory memorandum should also be tabled.

8 CONCLUSION

8.1 The Committee notes that the purpose of the Queensland Amendment Regulation is to:

- exempt the Fund from parts of the *Consumer Credit (Western Australia) Code*; and
- clarify provisions relating to exemptions.

8.2 With respect to the partial exemption for the Fund, the Committee notes that it required the approval of two thirds of the Ministerial Council and, based on the advice of the Minister, it appears that during that process the merits of the exemption application were carefully weighed up. The partial exemption which was approved is reflected in clause 5 of the Queensland Amendment Regulation.

8.3 The Committee also notes that the amendments in clauses 3 and 4 of the Queensland Amendment Regulation were based on advice from the Office of Queensland Parliamentary Counsel and operate to clarify the law.

8.4 In these circumstances, the Committee recommends that if the Legislative Council is asked to approve the Draft Order adopting the Queensland Amendment Regulation, then it be approved.

Recommendation

Recommendation 3: The Committee recommends that if the Legislative Council is asked to approve a draft order which adopts the *Consumer Credit (Firefighter's Benefit Fund) Amendment Regulation (No. 1) 2005 (Qld)*, then it be approved.



Hon Simon O'Brien MLC
Chairman

September 13 2005