

EXPLANATORY MEMORANDUM

Consumer Credit (Charge Card) Amendment Regulation (No.1) 2005 (Queensland)

The national structure of the Code, the uniform piece of legislation governing consumer credit transactions taking place in Australia, utilises a legislative template which is held by the Queensland Parliament. The *Consumer Credit (Queensland) Act 1994* (Credit Act) is the instrument that contains this template. All State and Territory jurisdictions have passed enabling legislation which adopts the template legislation and applies it in the other State or Territory as 'in force from time to time'. By doing this, any amendments to the Code or its regulations need only be made to the template legislation. These amendments will then apply in other States and Territories. (Note: Adoption of amendments is, however, subject to specific processes in Western Australia and Tasmania.)

Section 10 of the Credit Act empowers the Queensland Governor in Council to make regulations under the Code. Section 7(10) of the Code permits a regulation to exclude the provision of credit of a class specified in the regulations from the application of all, or any provisions of the Code.

The Ministerial Council on Consumer Affairs (MCCA), the national body responsible for authorising any changes to the Code, has approved the form and content of the Regulation. The Regulation amends the *Consumer Credit Regulation 1995* by exempting the provision of credit under a charge card contract made available by AMEX, Diners Club and Motorcharge from the application of the Code.

Charge cards offered by AMEX, Diners Club and Motorcharge provide credit from the time a transaction takes place to the time the card holder receives a statement of account for using the card (ie. the demand for payment for the provision of that credit). The usual terms and conditions of charge cards require the full balance of an account to be paid immediately upon receipt of the statement. Failure to do so may result in liquidated damages being charged to an account and then recovered after non-payment. This entitlement usually arises after 3 to 4 weeks of non-payment.

In 2001, the *Consumer Credit (Queensland) Amendment Act 2001* (Amendment Act) amended the Code by restricting the then existing provision exempting 'short term credit' from the application of the Code. These amendments were made for the Code to apply to the 'payday lending' industry, an industry which previously was not captured by consumer protection provisions of the Code. On 23 November 2001, AMEX, Diners Club and Motorcharge received legal opinion on the application of the Code to contracts for their charge cards prior to the Amendment Act. Counsel was of the opinion that the credit provided under these charge card contracts fell into the then existing 'short term credit' exemption for the Code. After commencement of the Amendment Act, Counsel advised AMEX, Diners Club and Motorcharge that credit provided under their charge cards would no longer be exempt as 'short term credit' as this had been modified by the Amendment Act. Based upon Counsel's opinion, AMEX, Diners Club and Motorcharge submitted to the MCCA that the credit provided under their charge card contracts was considered to be 'exempted short term credit' prior to the Amendment Act and their credit is not part of the 'payday lending industry'.

Purpose

The purpose is to approve the making of the Regulation which exempts the provision of credit through the use of charge cards made available by AMEX, Diners Club and Motorcharge from the application of the Code.