

House of Assembly—No 16

As received from the Legislative Council and read a first time, Standing Orders suspended, passed through all stages without amendment, 27 May 2010

South Australia

Credit (Commonwealth Powers) Bill 2010

A BILL FOR

An Act to adopt the *National Consumer Credit Protection Act 2009* of the Commonwealth (as amended) and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth, and to refer certain matters relating to the provision of credit and certain other financial transactions to the Parliament of the Commonwealth, for the purposes of section 51(xxxvii) of the *Constitution of the Commonwealth*.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Credit (Commonwealth Powers) Act 2010*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- 5 (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Definitions

In this Act, unless the contrary intention appears—

adoption means the adoption under section 4(1);

10 *amendment reference* means the reference under section 6(1);

Commonwealth Credit instrument means any instrument (whether or not of a legislative character) that is made or issued under the National Credit legislation;

15 *express amendment* of the National Credit legislation means the direct amendment of the text of the National Credit legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the National Credit legislation;

National Credit legislation means—

20 (a) the *National Consumer Credit Protection Act 2009* of the Commonwealth;
and

(b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth,

as in force from time to time;

referred credit matter means a matter relating to either of the following:

(a) credit, being credit the provision of which would be covered by the expression "provision of credit to which this Code applies" in the relevant version of the National Credit Code;

(b) consumer leases, being consumer leases each of which would be covered by the expression "consumer lease to which Part 11 applies" in the relevant version of the National Credit Code;

relevant version of the National Credit Code means the text of Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth as originally enacted, and as later amended by the *National Consumer Credit Protection Amendment Act 2010* of the Commonwealth;

relevant version of the National Credit legislation means—

(a) the *National Consumer Credit Protection Act 2009* of the Commonwealth as originally enacted, and as later amended by the *National Consumer Credit Protection Amendment Act 2010* of the Commonwealth; and

(b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth.

4—Adoption of National Credit legislation

(1) The relevant version of the National Credit legislation is adopted within the meaning of section 51(xxxvii) of the *Constitution of the Commonwealth*.

(2) The adoption has effect for a period—

(a) beginning when this section commences; and

(b) ending at the end of the day fixed under section 5 as the day on which the adoption is to terminate,

but no longer.

5—Termination of adoption

(1) The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the adoption is to terminate.

(2) The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 4) never to have been published.

(3) A revoking proclamation has effect only if published before the day fixed under subsection (1).

(4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

6—Reference of matters

(1) Subject to section 7, any referred credit matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to such a matter by making express amendments of the National Credit legislation.

- (2) The reference of a matter under subsection (1) has effect only—
- (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under section 51(xxxvii) of the *Constitution of the Commonwealth*); and
 - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (3) Despite any other provision, the reference has effect for a period—
- (a) beginning when this section commences; and
 - (b) ending at the end of the day fixed under section 8 as the day on which the reference is to terminate,
- but no longer.

7—Matters excluded from reference

- (1) A matter referred by section 6(1) does not include—
- (a) the matter of making provision with respect to the imposition or payment of State taxes, duties, charges or other imposts, however described; or
 - (b) the matter of making provision with respect to the general system for the recording of estates or interests in land and related information; or
 - (c) the matter of providing for the priority of interests in real property; or
 - (d) the matter of making a law that excludes or limits the operation of a State law, to the extent that the State law makes provision with respect to the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right.

- (2) In this section—

forfeiture means confiscation, seizure, extinguishment, cancellation, suspension or any other forfeiture;

State law means—

- (a) any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time; or
- (b) the general law, being the principles and rules of common law and equity to the extent that they have effect in the State from time to time;

State statutory right means a right, entitlement or authority that is granted by or under any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time, other than a right, entitlement or authority that relates to—

- (a) credit covered by paragraph (a) of the definition of **referred credit matter** in section 3; or
- (b) a consumer lease covered by paragraph (b) of that definition.

8—Termination of reference

- (1) The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the amendment reference terminates.

- (2) The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 6) never to have been published.
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

9—Amendment of Commonwealth law

For the avoidance of doubt, it is the intention of the Parliament of the State that—

- (a) the National Credit legislation may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts the operation of which is based on any legislative powers that the Parliament of the Commonwealth has on account of a reference of any matters, or the adoption of the relevant version of the National Credit legislation, under section 51(xxxvii) of the *Constitution of the Commonwealth*; and
- (b) the National Credit legislation may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters, or the adoption of the relevant version of the National Credit legislation, under section 51(xxxvii) of the *Constitution of the Commonwealth*; and
- (c) the National Credit legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of Commonwealth Credit instruments.

10—Effect of termination of amendment reference before termination of adoption of Commonwealth Acts

- (1) If the amendment reference is terminated but the adoption of the relevant version of the National Credit legislation is not terminated, the termination of the amendment reference does not affect—
- (a) laws that were made under the amendment reference (but not repealed) before that termination (whether or not they have come into operation before that termination); or
- (b) the continued operation in this State of the National Credit legislation as in operation immediately before that termination or as subsequently amended or affected by—
- (i) laws referred to in paragraph (a) that come into operation after that termination; or
- (ii) provisions referred to in section 9(b) or (c).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.

(3) Subsection (1) does not apply to or in relation to an amendment of the National Credit legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.

(4) For the purposes of subsection (1)—

5 (a) the laws referred to in subsection (1)(a) include Commonwealth Credit instruments; and

10 (b) the reference in subsection (1)(b) to the National Credit legislation as in operation immediately before the termination of the amendment reference includes that legislation as affected by Commonwealth Credit instruments that have come into operation before that time.