

South Australia

Credit (Transitional Arrangements) Bill 2010

A BILL FOR

An Act to enact ancillary provisions, including transitional provisions, relating to the enactment by the Parliament of the Commonwealth of legislation relating to the provision of credit and certain other financial transactions under its legislative powers, including powers with respect to matters referred to that Parliament for the purposes of section 51(xxxvii) of the *Constitution of the Commonwealth*; to amend the *Bills of Sale Act 1886*, the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*, the *Second-hand Vehicle Dealers Act 1995*, the *Security and Investigation Agents Act 1995*, and the *Stamp Duties Act 1923*; and to repeal the *Consumer Credit (South Australia) Act 1995* and the *Credit Administration Act 1995*.

Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Pre-Code contracts
- 5 Consumer Credit Fund
- 6 Provision of information and assistance to ASIC
- 7 ASIC has certain functions and powers
- 8 References
- 9 Regulations

Schedule 1—Related amendments and repeals

Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Bills of Sale Act 1886*

- 2 Amendment of section 28—Bills of sale to be void in certain circumstances

Part 3—Amendment of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*

- 3 Amendment of section 3—Interpretation

Part 4—Amendment of *Second-hand Vehicle Dealers Act 1995*

- 4 Amendment of section 3—Interpretation

Part 5—Amendment of *Security and Investigation Agents Act 1995*

- 5 Amendment of section 4—Application of Act

Part 6—Amendment of *Stamp Duties Act 1923*

- 6 Amendment of section 76—Interpretation

Part 7—Repeal of Acts

- 7 Repeal of *Consumer Credit (South Australia) Act 1995*
 - 8 Repeal of *Credit Administration Act 1995*
-

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Credit (Transitional Arrangements) Act 2010*.

2—Commencement

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

3—Interpretation

In this Act—

ASIC means the Australian Securities and Investments Commission;

Commissioner means the Commissioner for Consumer Affairs;

5 **National Credit Code** means the *National Credit Code* in Schedule 1 of the NCCP Act;

National Credit legislation means—

(a) the NCCP Act; and

(b) the NCCP Transitional Provisions Act;

10 **NCCP Act** means the *National Consumer Credit Protection Act 2009* of the Commonwealth;

NCCP Transitional Provisions Act means the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* of the Commonwealth;

15 **relevant day** means a day appointed by proclamation as the relevant day for the purposes of the provision in which the term is used.

4—Pre-Code contracts

(1) In this section—

20 **old system law** means the *Consumer Credit Act 1972* or the *Consumer Transactions Act 1972*, as in force immediately before the commencement of the *Consumer Credit (South Australia) Code*.

(2) A contract which, immediately before the relevant day, is subject to the application of an old system law by virtue of regulations under section 10 of the *Consumer Credit (South Australia) Act 1995* will continue to be subject to the old system law to the extent provided by those regulations immediately before the relevant day.

5—Consumer Credit Fund

25 (1) The Consumer Credit Fund continues in existence (and will continue to be constituted in the manner provided by section 14(2) of the *Credit Administration Act 1995* immediately before the repeal of that Act by this Act).

30 (2) Money standing to the credit of the Consumer Credit Fund may be applied by the Commissioner for any purpose authorised by the Minister.

(3) The Commissioner may, when the Commissioner considers it appropriate to do so, after consultation with the Minister, wind up the Consumer Credit Fund and apply any remaining money for any purpose authorised by the Minister.

6—Provision of information and assistance to ASIC

35 (1) The Commissioner is authorised, on his or her own initiative or at the request of ASIC—

(a) to provide ASIC with such documents and other information in the possession or control of the Commissioner that is reasonably required by ASIC in connection with the performance or exercise of its functions or powers under the National Credit legislation; and

40

- (b) to provide ASIC with such other assistance as is reasonably required by ASIC to perform or exercise a function or power under the National Credit legislation.

(2) This section has effect despite any other Act or law.

5 **7—ASIC has certain functions and powers**

(1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with ASIC for the performance of functions or exercise of powers by ASIC as an agent of the State, even if those functions or powers are or may be conferred on another person or body by or under a law of the State.

10 (2) An agreement or arrangement of a kind referred to in subsection (1) has effect by force of this section despite any provision of a law of the State with respect to any function or power that is the subject of the agreement or arrangement.

8—References

15 (1) Unless the contrary intention appears or the context requires a different interpretation, a reference in an Act, a statutory instrument, or any other kind of instrument or a contract, agreement or other document, to an Act, code or regulations specified in column 1 of the following table will have effect as if it were a reference to the Act, code or regulations specified opposite it in column 2 of the table.

20 **Table**

Column 1	Column 2
<i>Consumer Credit (South Australia) Act 1995</i>	NCCP Act
<i>Credit Administration Act 1995</i>	NCCP Act
<i>Consumer Credit (South Australia) Code</i>	<i>National Credit Code</i>
<i>Consumer Credit (South Australia) Regulations</i>	Regulations made under the NCCP Act for the purposes of the <i>National Credit Code</i>

25 (2) Unless the contrary intention appears or the context requires a different interpretation, a reference in an Act, a statutory instrument, or any other kind of instrument or a contract, agreement or other document, to a provision of the *Consumer Credit (South Australia) Code* will have effect as if it were a reference to the corresponding provision of the National Credit Code.

(3) For the purposes of subsection (2), a question of correspondence will be determined in the manner set out in section 5 of the NCCP (Transitional and Consequential Provisions) Act.

9—Regulations

30 (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on—

(a) the enactment of this Act; or

(b) the transition from the application of provisions of the *Consumer Credit (South Australia) Code*, or related laws, of the State to the application of provisions of the National Credit legislation.

35

- (2) A provision of a regulation made under subsection (1) may, if the regulation so provides, take effect from the commencement of the relevant Act or from a later day.
- (3) To the extent to which a provision takes effect under subsection (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Related amendments and repeals

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bills of Sale Act 1886*

2—Amendment of section 28—Bills of sale to be void in certain circumstances

- (1) Section 28(2)—delete subsection (2) and substitute:
- (2) A bill of sale that constitutes a goods mortgage to which the *National Credit Code* applies is not rendered void as against any person under subsection (1) by reason of the fact that it is not registered.
- (2) Section 28—after subsection (3) insert:
- (4) In this section—

National Credit Code means the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth.

Part 3—Amendment of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*

3—Amendment of section 3—Interpretation

Section 3(1), definition of *credit provider*, (a)—delete "the *Consumer Credit (South Australia) Code*" and substitute:

the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth

Part 4—Amendment of *Second-hand Vehicle Dealers Act 1995*

4—Amendment of section 3—Interpretation

Section 3—definition of *credit provider*—delete the definition and substitute:

5 *credit provider* means a credit provider within the meaning of the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth;

Part 5—Amendment of *Security and Investigation Agents Act 1995*

5—Amendment of section 4—Application of Act

10 Section 4(f)(viii)—delete subparagraph (viii) and substitute:

(viii) a person lawfully carrying on the business of providing credit within the meaning of the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth; or

Part 6—Amendment of *Stamp Duties Act 1923*

6—Amendment of section 76—Interpretation

Section 76, definition of *mortgage*—delete "section 10(3) of the *Consumer Credit (South Australia) Code*" and substitute:

20 section 9(3) of the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth

Part 7—Repeal of Acts

7—Repeal of *Consumer Credit (South Australia) Act 1995*

The *Consumer Credit (South Australia) Act 1995* is repealed.

8—Repeal of *Credit Administration Act 1995*

25 The *Credit Administration Act 1995* is repealed.