

DEPARTMENT OF JUSTICE

SPEECH NOTES

Credit (Commonwealth Powers) Bill 2009

Mr Speaker, I move that the *Credit (Commonwealth Powers) Bill 2009* be read a second time.

On 3 July 2008, the Council of Australian Governments (COAG) announced that the regulation of mortgages, mortgage broking and margins loans should be transferred to the Commonwealth.

On 2 October 2008, COAG agreed that the Commonwealth would take over responsibility for the regulation of consumer credit.

The state-based Uniform Consumer Credit Code, which currently operates inconsistently across the eight jurisdictions, will be replaced with a single standard, nationally consistent system of consumer credit regulation and oversight.

COAG further agreed to a two phase implementation process for the transfer of credit regulation.

Phase 1 of the implementation schedule, which is the subject matter of this Bill, incorporates a 'text based' referral which includes the text

of the “*National Credit Legislation*” and provides a limited amendment power to enable implementation of the scheme.

The *National Consumer Credit Protection Bill 2009* (the NCCP Bill) and *National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009*, known collectively as the “National Credit Legislation”, were introduced into the Commonwealth Parliament on 25 June 2009. It is expected that these two pieces of legislation will be passed and proclaimed in late November of this year.

Phase 2 of the implementation schedule, which will be the subject of a second Bill, will incorporate the remaining areas of credit (credit card limit extensions, fringe lending and reverse mortgages).

The Commonwealth legislation implements phase 1 of the agreed action plan for single, standard, national regulation of consumer credit. The legislation allows credit providers to register with the Australian Securities and Investments Commission from 1 April 2009 and paves the way for full registration of credit providers to occur on 1 July 2010.

The Commonwealth has advised that it will not seek to enact the *National Credit Legislation* until one or more States have enacted their referral legislation.

It was anticipated that a referral bill would be tabled in the initially in the South Australian Parliament. However, following some minor delays, Tasmania is now in the position of being the 'lead jurisdiction' for this referral.

Mr Speaker, the Tasmanian Chief Parliamentary Counsel has worked in concert with the Parliamentary Counsels Committee, incorporating all jurisdictions, in drafting the Credit (Commonwealth Powers) Bill.

Safeguards that have been included to protect Tasmanian and other State and Territory interests include the provisions in the referral limiting the scope of the amendments that may be made in the future and providing a process for termination of the referral.

An inter-jurisdictional working group made up of State, Territory and Commonwealth agency senior officers, has taken great care to ensure that the scope of the subject amending reference is not too broad and that state laws in relation to property (such as the transfer of property, registration and enforcements of mortgages and sale of goods) remain unaffected.

Appropriate transitional arrangements will be developed to facilitate the transfer of functions to the Commonwealth. For example, the new legislation will reserve rights or liabilities under contracts entered into prior to 1 April 2010.

Transition arrangements will enable the transfer of information to ASIC in relation to investigations conducted and not concluded by the transfer date by the Tasmanian Office of Consumer Affairs and Fair Trading.

Transitional and consequential matters will be the subject of a separate Tasmanian Bill.

The text of the Intergovernmental Agreement (IGA), which will underpin the new national system for regulating the provision of credit, will be formally ratified by COAG, once finalised.

The IGA provides a 'political compact' between the Commonwealth, State and Territory governments dealing with various arrangements underpinning the National Credit Protection law.

Various safeguards are provided for in the IGA including:

- consultation mechanisms for legislative changes to the scheme;
- an ability for the States to call a meeting of the Ministerial Council to discuss the operation of the scheme; and
- resolution procedures in relation to potential inconsistency between relevant State and Commonwealth laws.

The IGA also sets out levels of service and the cooperative arrangements between the Commonwealth and States and Territory agencies in relation to access to information and investigations and prosecutions.

While the Tasmanian Government has played an active role in providing consumer protection utilising the *Uniform Consumer Credit Code*, both industry and consumers have argued for a truly national scheme.

When fully implemented, the changes will enable a speedy response to issues arising in the national and global market.

As Tasmania has taken a lead role in the administration of consumer credit since 1996, it is fitting that Tasmania is the lead jurisdiction with respect to the referral of credit regulation.

This legislative reform delivers on the Tasmanian Government's obligations under the Council of Australian Governments and also its commitment to participate in the development of a national seamless economy.

Mr Speaker, I commend the *Credit (Commonwealth Powers) Bill 2009* to the House.