

TASMANIA

**CREDIT (COMMONWEALTH POWERS) BILL
2009**

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**CREDIT (COMMONWEALTH POWERS) BILL
2009**

*(Brought in by the Minister for Corrections and Consumer
Protection, the Honourable Lisa Maria Singh)*

A BILL FOR

An Act 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

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Credit (Commonwealth Powers) Act 2009*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

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“amendment reference” means the reference under section 4(1)(b);

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

“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;

“initial National Credit Code” means the text of Schedule 1 to the *National Consumer Credit Protection Bill 2009* under paragraph (a) of the definition of “tabled text”;

“initial reference” means the reference under section 4(1)(a);

“initial referred provisions” means the tabled text to the extent to which that text deals with matters that are included in the

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legislative powers of the Parliament of the State;

“National Credit legislation” means Commonwealth Acts enacted in the terms, or substantially in the terms, of the tabled text set out as –

- (a) the *National Consumer Credit Protection Bill 2009*; and
- (b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009* –

and as in force from time to time;

“reference” means –

- (a) the initial reference; or
- (b) the amendment reference;

“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 initial National Credit Code;
- (b) consumer leases, being consumer leases each of which would be covered by the expression “consumer lease to which Part 11

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applies” in the initial National Credit Code;

“tabled text” means the text of the following Bills for Commonwealth Acts:

- (a) *National Consumer Credit Protection Bill 2009*;
- (b) *National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009* –

as tabled, by or on behalf of the Minister introducing the Bill for this Act, in the House of Assembly at any time during the period between the Minister receiving the call and presenting the Bill for this Act to the House of Assembly, in accordance with Standing Order No. 229 of the House of Assembly, and the second reading of that Bill in the House of Assembly.

4. Reference of matters

- (1) The following matters are referred to the Parliament of the Commonwealth:
 - (a) the matters to which the initial referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the initial referred provisions in Acts enacted in the

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- terms, or substantially in the terms, of the tabled text;
- (b) any referred credit matter, 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) The operation of each paragraph of subsection (1) is not affected by the other paragraph.
- (4) 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 legislative powers that the Parliament of the Commonwealth has

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apart from under the references under subsection (1); and

(b) the National Credit legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of Commonwealth Credit instruments.

(5) Despite any other provision of this section, a reference under this section 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 reference is to terminate –

but no longer.

5. Termination of references

(1) The Governor may, at any time, by proclamation published in the *Gazette*, fix a day as the day on which –

(a) the references terminate; or

(b) 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

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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.
- (5) If the amendment reference has terminated, the expression “the references” in subsection (1)(a) refers only to the initial reference.

6. Effect of termination of amendment reference before initial reference

- (1) If the amendment reference terminates before the initial reference terminates, 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 the State of the National Credit legislation as in operation immediately before that termination or as subsequently amended or affected by –

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- (i) laws referred to in paragraph (a) that come into operation after that termination; or
 - (ii) provisions referred to in section 4(4)(a) or (b).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the initial reference 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) –
 - (a) the laws referred to in subsection (1)(a) include Commonwealth Credit instruments; and
 - (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.

7. Evidence

- (1) A certificate of the Clerk of the House of Assembly certifying that a document is an

accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence –

- (a) of the matter certified; and
 - (b) that the text of the proposed Commonwealth Bills was tabled in the House of Assembly as referred to in the definition of “tabled text” in section 3.
- (2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.

8. Administration of Act

Until provision is made in relation to this Act under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Protection; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.