

1996

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CONSUMER CREDIT (ADMINISTRATION) ACT 1996  
CONSUMER CREDIT (ADMINISTRATION) REGULATIONS

EXPLANATORY STATEMENT

Circulated by authority of

Gary Humphries

Minister for Consumer Affairs

## EXPLANATORY STATEMENT

### CONSUMER CREDIT (ADMINISTRATION) REGULATIONS

#### *Background*

The Consumer Credit (Administration) Regulations ("the Regulations") are made under the *Consumer Credit (Administration) Act 1996* ("the Administration Act"). Section 141 of the Administration Act confers a general power on the Executive to make regulations. The Administration Act creates the administrative framework essential for the functioning of the Consumer Credit Code ("the Code") in the ACT.

#### *Regulations 1, 2 and 3 - Citation, Commencement and Interpretation*

Regulations 1 and 2 provide for the citation and commencement of the Regulations, respectively. Regulation 1 provides that the Regulations may be cited as "the Consumer Credit (Administration) Regulations". Regulation 3 provides that "registration number" has the same meaning as in the Corporations Law, and for the purposes of the Regulations, "the Act" means the "*Consumer Credit (Administration) Act 1996*".

#### *Subregulation 4(1) - Commissions*

Section 35 of the Administration Act states that a finance broker shall not demand, receive or accept any commission for a finance broking transaction in excess of the maximum prescribed by the regulations. Subregulation 4(1) sets a formula for the maximum commission that a finance broker in the ACT can demand or receive. Under the formula, a finance broker who negotiates or obtains for the debtor, a credit contract for an amount of \$5000 or below, may charge a commission rate of 2 percent on that amount. A finance broker, however, may only charge 1.5 percent for any amount negotiated or obtained in a credit contract for an amount above \$5,000. This formula ensures that where a calculation yields an amount lower than \$6.50, the finance broker will receive a minimum commission of \$6.50.

This subregulation is the same as section 28 of the regulations under the *Credit Act 1985*. The regulations under the *Credit Act 1985* continue to apply to credit contracts entered into before the commencement of the Code. New South Wales and Victoria have also retained their previous formulae, setting a maximum commission rate that finance brokers can charge or receive in their respective jurisdictions, under their finance broking legislation.

### *Subregulation 4(2) - Commissions*

Subsection 35 of the Administration Act provides that if the Court finds that a finance broker is guilty of an offence as a result of a contravention of one of the requirements under section 35, the Court may order the finance broker to refund the amount paid by the consumer. In addition, paragraph 35(5)(b) gives the Court power to order the finance broker to pay interest on the refund amount, at an interest rate fixed by the Court; but not exceeding the maximum prescribed in regulations. Subregulation 4(2) sets the maximum interest rate that the Court can impose at 18 percent per annum. This maximum interest rate has operated in the ACT since the Credit Act scheme commenced operation in 1985.

### *Regulation 5 - Registration of undertakings*

Under section 106 of the Administration Act, the Director of Consumer Affairs is obliged to keep a register of undertakings given by credit providers or finance brokers. Subsection 106(1)(a) provides that the register shall contain prescribed particulars. Regulation 5 requires the register to contain a copy of the undertaking, and the names, addresses and contact numbers of the natural person and body corporate giving the undertaking. The register will help the ACT Consumer Affairs Bureau keep track of undertakings, and in accordance with subsection 106(1)(b) of the Administration Act, the register will be available for inspection by the public, free of charge.

# Business Impact Assessment

Title	Regulations under the Consumer Credit Act 1995 and the Consumer Credit (Administration) Act 1996
Minister	Minister for Consumer Affairs
Agency	ACT Attorney General's Department, ACT Consumer Affairs Bureau
Regulatory Proposal	To implement machinery regulations necessary on commencement of the Consumer Credit Code's operation in the ACT. Under this proposal relevant regulations under the present regime under the <i>Credit Act 1985</i> will be carried forward.
1. Current Regulatory Environment	The current regulatory environment under the <i>Credit Act 1985</i> is not uniform, unwieldy and does not allow for product diversification. The Consumer Credit Code better meets the demands of the modern market place. These regulations are non-contentious and establish only the required mechanisms necessary for the Code's functioning in the Territory.
2. Level of Risk	Low.
3. Statement of Objectives	Machinery regulations under the <i>Consumer Credit Act 1995</i> and the <i>Consumer Credit (Administration) Act 1996</i> .
4. Alternate Options to Regulation	None, these regulations need to be prescribed under the <i>Consumer Credit Act 1995</i> and the <i>Consumer Credit (Administration) Act 1996</i> .
5. Alternate Regulatory Techniques	Nil.
6. Methods of Compliance and Enforcement	ACT Consumer Affairs Bureau will operate as the main enforcement agency
7. Costs and benefits	N/A.
8. Would the Proposed Regulation Restrict Competition?	No.
9. Do the Benefits to the Community as a Whole of the Restriction on Competition Outweigh the Costs?	N/A.
10. Consultation with Other Agencies	Yes, NSW Office of Fair Trading and the Victorian Department of Fair Trading.
11. Consultation with the Business Community	Yes, there has been a long consultation period on the Consumer Credit Code regime with peak industry and consumer organisations.
12. Other State and Commonwealth Regulations.	These regulations are equivalent to regulations being introduced by New South Wales and Victoria under the Consumer Credit Code regime.
13. Removal of Unnecessary Regulation(s).	No.