

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

CREDIT (AMENDMENT) ORDINANCE 1988

ORDINANCE NO. 76 OF 1988

The Credit Ordinance 1985 (the Principal Ordinance) is an Ordinance relating to the provision of consumer credit, the regulation of contracts providing consumer credit and the licensing of credit providers. It is part of a uniform legislative scheme operating in all States except Tasmania and the Northern Territory.

The Credit (Amendment) Ordinance 1988 (the Ordinance) amends section 250 and paragraph 116(1)(a) of the Principal Ordinance.

Section 250 of the Principal Ordinance requires a person or his or her agent, entering into a credit contract to have his or her signature on the relevant document witnessed by someone else who is neither the credit provider nor anyone associated with the credit provider. In addition, an agent signing a contract on behalf of a debtor must indicate that he or she signs with the debtor's authority. Failure to comply with this independent witnessing procedure will make the contract void and, in some circumstances, may result in a penalty.

The independent witnessing requirement was inserted into section 250 by the Credit (Amendment) Ordinance (No. 4) 1986 at the request of the Senate Standing Committee On Regulations and Ordinances (the Committee). It was intended to be a procedural barrier against possible fraud or undue influence to protect those whose circumstances forced them to act through agents. The amendment has not achieved the effect which was intended. Industry groups and other interested people have said that it was an unnecessary imposition and an invasion of privacy. The Committee has agreed to the proposed amendments.

The Ordinance amends section 250 to remove the requirement that a credit contract, signed in person by the borrower, be independently witnessed. The witnessing procedure remains where an agent signs a credit contract on behalf of a borrower, and is changed slightly. The amendments require an agent to sign his or her own name (instead of the borrower's) and indicate on the face of the document that he or she is signing for and on behalf of the borrower. It is this signature which an independent witness must attest.

Section 116 of the Principal Ordinance establishes a mechanism whereby a credit provider's rights may be postponed. Paragraph 116(1)(a) refers to notice under subsection 107(5). This is a

drafting error. The provision should refer instead to notice under subsection 107(4).

The Attachment contains notes on the individual sections of the Ordinance.

ISSUED BY THE AUTHORITY OF THE  
MINISTER OF STATE FOR THE ARTS AND  
TERRITORIES

**Section 1** cites the short title of the proposed Ordinance as the Credit (Amendment) Ordinance 1988.

**Section 2** defines the "Principal Ordinance" as the Credit Ordinance 1985.

**Section 3** corrects a wrong cross-reference in paragraph 116(1)(a) of the Principal Ordinance by omitting the reference to subsection 107(5) and substituting subsection 107(4).

**Section 4** amends section 250 of the Principal Ordinance in ten particulars, which are described below, which vary the independent witnessing procedure.

Paragraph 4(a) amends subsection 250(1) to provide that a document required to be signed by a person is effectively signed if signed by another person acting for and on behalf of that first person. In effect, an agent may act for someone who is entering into a regulated credit contract.

Paragraph 4(b) omits subsection 250(2) and thereby delete the present requirement that a debtor who signs a credit document in person have his or her signature witnessed by an independent witness.

Paragraphs 4(c) and 4(d) amend the procedure in subsection 250(3) by requiring an agent, who signs a document for and on behalf of a debtor, to sign his or her own name and to indicate on the face of the document that he or she signs as agent of the debtor. This replaces the former procedure whereby the agent wrote the debtor's name on the document(s).

Paragraph 4(e) amends paragraph 250(4)(b); as a consequence of the change in procedure in subsection 250(3); to refer to the agent's signature, rather than to the debtor's name written by the agent, on the document.

Paragraphs 4(f) and 4(g) delete cross-references in subsections 250(5) and 250(6) made obsolete by the proposed repeal of subsection 250(2).

Paragraph 4(h) amends subsection 250(7) to refer to an agent's signature, written for and on behalf of a debtor, instead of that debtor's signature. This is a consequence of the proposed change of procedure in subsection 250(3).

Paragraphs 4(i) and 4(j) delete from subsection 250(7) cross-references to subsection 250(2) which is repealed.