

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY CREDIT (AMENDMENT) ORDINANCE 1987 ORDINANCE NO. 4 OF 1987

ISSUED BY AUTHORITY OF THE MINISTER OF STATE FOR TERRITORIES

The Credit Ordinance 1985 (the Principal Ordinance) regulates the consumer credit industry in the ACT. It regulates contracts which involve providing credit, and also provides for the licensing or registration of persons who provide credit.

Section 19 of the Principal Ordinance provides that the Minister may make regulations to vary the application of any or all of the provisions of the Ordinance to certain specified persons or classes of persons. The Minister may also make regulations to vary the application of any or all of the provisions of the Ordinance to certain transactions or matters or classes of transactions or matters.

The Principal Ordinance was amended by the Credit (Amendment) Ordinance (No.2) 1985 to provide that variations were to be made by regulation, rather than by notice in the Gazette, to allow for Parliamentary scrutiny as recommended by the Senate Standing Committee on Regulations and Ordinances. It has, however, proved administratively burdensome for the variations to be drafted as regulations.

The Credit (Amendment) Ordinance 1987 overcomes these difficulties by providing that the Minister may declare variations by notice published in the Gazette. The amending Ordinance continues to give effect to the Senate Standing Committee's recommendations by providing that such a declaration should be laid before each House of Parliament and be subject to Parliamentary scrutiny and disallowance in the same way as an ACT Ordinance.

The amending Ordinance also provides that the Minister may declare that the Principal Ordinance will have effect subject to any exemption or exception that has been declared under a corresponding law in a recognised State. This allows variations to be made by reference to exemptions or exceptions made under a law for the regulation of the provision of credit in another State or Territory declared under section 17 of the Principal Ordinance to be a recognised State.

The effect of each of the provisions in the amending Ordinance is outlined in the attachment.

CREDIT (AMENDMENT) ORDINANCE 1987

Section 1 cites the short title of the Ordinance as the Credit (Amendment) Ordinance 1987.

Section 2 defines "Principal Ordinance" for the purposes of the amending Ordinance as the Credit Ordinance 1985.

Paragraphs 3(a) and (b) amend sub-section 19(1) of the Principal Ordinance by removing the references to regulations and replacing them with references to a notice published in the Gazette.

Paragraphs 3(c) and (d) insert into sub-section 19(1) a new paragraph (g) which provides that the Minister may declare that the Principal Ordinance has effect subject to exemptions or exceptions declared under a corresponding law in a recognised State.

Paragraph 3(e) inserts into section 19 a new sub-section 1A which provides that a declaration made under sub-section 19(1) of the Principal Ordinance will take effect from the date of publication in the Gazette, or from a later date if specified in the notice.

Paragraphs 3(f) and (i) remove specified references to regulations from sub-section 19(2) and replace them with references to a notice.

Paragraphs 3(g) and (h) remove specified references to regulations from sub-section 19(2) and replace them with references to declarations.

Paragraph 3(j) defines "corresponding law" for the purposes of section 19 of the Principal Ordinance as a law for the regulation of the provision of credit, being a law of a State or Territory declared under section 17 of the Principal Ordinance to be a recognised State.

Paragraph 3(k) removes specified references to regulations from sub-section 19(4) and replaces them with references to declarations.

Section 4 inserts a new section 19A into the Principal Ordinance. Sub-section 19A(1) provides that a declaration made under sub-section 19(1) of the Principal Ordinance must be laid before each House of Parliament within 15 sitting days after the day on which the declaration was made.

Sub-section 19A(2) provides that if a declaration is not laid before Parliament as required in sub-section 19A(1), then it is void and of no effect.

Sub-section 19A(3) incorporates by reference the tabling provisions set out in sub-sections 12(4) to (7) (inclusive) of the Seat of Government (Administration) Act 1910. The tabling provisions are to apply in relation to a declaration as if references to an Ordinance were references to a declaration.

- . sub-section 12(4) of the Seat of Government (Administration) Act 1910 provides that either House of Parliament may by resolution disallow an Ordinance if notice of the motion has been given within 15 days after the Ordinance has been laid before that House. The effect of disallowance is that the Ordinance or part thereof shall cease to have effect.
- . sub-section 12(5) provides that if a motion to disallow an Ordinance has not been acted on or withdrawn after 15 sitting days from the date the notice of motion was given, then the Ordinance is deemed to have been disallowed.
- . sub-section 12(5A) provides that if the House of Representatives is dissolved or expires or Parliament is prorogued, and notice of a motion to disallow an Ordinance has been given in a House of Parliament but has not been acted on or withdrawn, then that Ordinance is deemed to have been laid before Parliament on the first sitting day of that House after the dissolution, expiry or prorogation.
- . sub-section 12(6) provides that where an Ordinance is disallowed, deemed to be disallowed or becomes void and of no effect because it was not laid before Parliament as required, this has the same effect as if the Ordinance had been repealed.
- . sub-sections 12(6A) and (6B) provide that if an Ordinance which repeals another or part of another Ordinance is disallowed or becomes void and of no effect because it was not laid before Parliament as required, then the repealed Ordinance or part thereof revives.
- . sub-section 12(7) provides that if a provision in an Ordinance that is essentially the same as a provision in an Ordinance that has been disallowed or deemed to have been disallowed, is made within 6 months of that disallowance, then the provision is void and of no effect unless:
 - . the disallowing resolution has been rescinded; or

the House of Parliament in which the Ordinance was deemed to have been disallowed has approved by resolution the making of the provision.

Sub-section 19A(4) provides that references to sub-section 12(3) of the Seat of Government (Administration) Act 1910 in sub-sections 12(6) and 12(6A) of that Act are to be read as references to sub-section 19A(2) of the proposed Ordinance.