

AUSTRALIAN CAPITAL TERRITORY

CREDIT (AMENDMENT) ORDINANCE (NO. 2) 1985
ORDINANCE NO. 60 1985

EXPLANATORY STATEMENT

The Credit Ordinance 1985 (the Principal Ordinance) regulates the provision of credit in the ACT. In particular the Principal Ordinance regulates contracts under which credit is provided and requires persons who provide credit to be licensed or registered.

The Senate Standing Committee on Regulations and Ordinances has expressed its concern in relation to certain provisions of the Principal Ordinance. The main concern of the Committee was that under the Principal Ordinance the Minister could exempt persons from the operation of the Principal Ordinance by way of a notice published in the Gazette. The exemption would not be subject to Parliamentary scrutiny. Accordingly, the Committee considered that exemptions under the Principal Ordinance should be made by way of regulation. The other concerns of the Committee related to the rights of individuals and the imprecision of certain expressions used in the Principal Ordinance.

In response to the Committee's request the Minister undertook to amend the Principal Ordinance.

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

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Section 1 and 2 deal with interpretation and citation.

Section 3 amends section 19 of the Principal Ordinance, which permits the Minister, by notice published in the Gazette, to declare that the provisions of the Ordinance do not have effect in relation to a specified person or a specified transaction so as to provide that such variations of the application of the Ordinance may be made only by way of regulation.

Section 4 amends sub-section 29(1) of the Principal Ordinance to provide for more precise terminology and omit a redundant word as follows:

- (a) by omitting the expression "A supplier who becomes aware" and substituting the phrase "As soon as a supplier knows"; and
- (b) by omitting the expression "shall forthwith" and substituting the phrase "the supplier shall".

Section 5 amends section 235 of the Principal Ordinance to ensure that powers of entry and search are exercised by reference to objective rather than subjective standards and to remove the power to seize things found during a search but not covered by the warrant as follows:

- (a) by omitting from sub-section 235(1) the expression "as he thinks necessary and, if necessary by force" and substituting the phrase "as is necessary and reasonable and by such force as is necessary and reasonable"; and
- (b) by omitting sub-section 235(4) which provides for the seizure of things connected with offences against the Ordinance which are not of a kind specified in the warrant.

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