

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CONSUMER CREDIT (ADMINISTRATION) (AMENDMENT) BILL 1998**

**EXPLANATORY MEMORANDUM**

Circulated by authority of  
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## **EXPLANATORY MEMORANDUM**

### **Consumer Credit (Administration) (Amendment) Bill 1998**

#### **Outline**

This is an amending Bill. It makes two amendments to the *Consumer Credit (Administration) Act 1996*, referred to in the amending Bill as the 'Principal Act'. The Consumer Credit Code ('the Code') regulates the provision of all consumer credit throughout Australia. Although the Code is a national scheme of regulation, each State and Territory has the legal responsibility for administering the Code in its own jurisdiction. The Code is administered in the ACT through the Principal Act.

To overcome uncertainty as to the ability of the Director of Consumer Affairs to use information obtained under a notice to produce in disciplinary proceedings, and to enable its use in other civil proceedings under the *Fair Trading Act 1992*, the Bill amends the Principal Act by removing the reference to civil proceedings from subsection 121(5).

Currently, subsection 121(5) provides that information or documents obtained under a written notice to produce are not admissible as evidence in any civil or criminal proceedings, other than for offences with respect to obstructing an investigation or the falsity of information or documents provided. In contrast, the equivalent section in the *NSW Consumer Credit Administration Act 1995* ('the NSW Act') only restricts such information from being used in criminal proceedings.

The amendment to subsection 121(5) is considered essential to the maintenance of a viable, ongoing compliance program in relation to the Consumer Credit Code and supporting legislation.

The amending Bill also provides for civil penalties to enable a debtor to recover any amounts paid to a credit provider or a finance broker during the period when their licences are cancelled or suspended. Similar provision is made in the NSW Act. This will provide an alternative to criminal prosecution, and is consistent with the principle of self-enforcement encouraged by the Code.

#### **Revenue/Cost Implications**

This Bill has no revenue or cost implications.

## **Formal Clauses**

**Clauses 1, 2 and 3** are formal requirements. They refer to the short title to the Bill, commencement and definition of the Principal Act.

## **Insertion**

**Clause 4** inserts a new section into Division 5 of Part II of the Principal Act to provide for a civil penalty where the registration of a credit provider is suspended or cancelled under Part II of the Principal Act. The aim of the provision is to provide an alternative deterrent to criminal prosecution.

The new section provides that the debtor is not liable to pay any amount under the credit contract and that any amount paid under the credit contract whilst the registration was suspended or cancelled is recoverable by the debtor as a debt due and payable by the credit provider. The new section is not retrospective, only applying to consumer credit provided by a consumer credit provider after the commencement of the legislation.

The section does not affect any liability of a person to be convicted of an offence.

## **Insertion**

**Clause 5** inserts a new section into Division 5 of Part III of the Principal Act to provide for a civil penalty where the registration of a finance broker is suspended or cancelled under Part III of the Principal Act. The aim of the provision is to provide an alternative deterrent to criminal prosecution.

The new section provides that the debtor is not liable to pay any amount under the finance broking contract and that any amount paid under the contract whilst the registration was suspended or cancelled is recoverable by the debtor as a debt due and payable by the finance broker. The new section is not retrospective, only applying to amounts paid under a finance broking contract entered into with a debtor after the commencement of the legislation.

The section does not affect any liability of a person to be convicted of an offence.

## **Power to obtain information or documents**

**Clause 6** amends subsection 121 of the Principal Act by removing the reference to 'civil' proceedings from subsection 5. The aim of this amendment is to overcome uncertainty as to the capacity of the Director of Consumer Affairs to use information obtained under a section 121 notice in disciplinary proceedings, and to enable its use in other civil proceedings under the *Fair Trading Act 1992*.