

NATIONAL CREDIT LAW AGREEMENT 2009

National Credit Law Agreement 2009

An agreement made among the following parties:

The Commonwealth of Australia

The State of New South Wales

The State of Victoria

The State of Queensland

The State of Western Australia

The State of South Australia

The State of Tasmania

The Australian Capital Territory

The Northern Territory of Australia

Recitals

- A. In accordance with the Council of Australian Governments' (COAG) agreement in March and June 2008 that the Commonwealth would assume responsibility for the regulation of credit and a related cluster of additional financial services, the parties agree to establish by co-operative legislative action a national system for regulating the provision of credit in accordance with the National Consumer Credit Implementation Plan, and the *National Partnership Agreement to Deliver a Seamless National Economy*, as modified by COAG from time to time.
- B. The national system will be implemented by Commonwealth legislation, supported by State referrals of certain matters to the Commonwealth Parliament in accordance with subsection 51 (xxxvii) of the Commonwealth Constitution.
- C. The national system will comprise Commonwealth legislation regulating the provision of credit to Australian consumers, including a national licensing system for credit providers, brokers and other providers of credit-related advice services.
- D. It is intended that the national system will operate concurrently with the State and Territory Fair Trading Acts, the *Trade Practices Act 1974*, and the *Australian Securities and Investments Commission Act 2001*.

THE PARTIES AGREE:

Part 1—Preliminary

1.1 Citation

1. This Agreement may be referred to as the National Credit Law Agreement 2009.

1.2 Definitions

1. In this Agreement, unless the contrary intention appears:

Commonwealth Minister means the Commonwealth Minister appointed to represent the Commonwealth at the Ministerial Council from time to time;

Commission means the Australian Securities and Investments Commission;

Code means the *old Credit Code* as defined in the *National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 (Cth)*;

credit has the same meaning that it has in the National Credit Law;

Interaction Provisions means the provisions of the National Credit Law having substantially the same effect as clauses 23 to 26 of the *National Consumer Credit Protection Bill 2009 (Cth)* introduced into the Commonwealth Parliament on 25 June 2009, and includes any subordinate legislation made pursuant to those provisions;

Fair Trading Acts means a State or Territory Fair Trading Act or similar legislation, namely the *Fair Trading Act 1987 (NSW)*, the *Fair Trading Act 1999 (VIC)*, the *Fair Trading Act 1989 (QLD)*, the *Fair Trading Act 1987 (SA)* and the *Consumer Transactions Act 1972 (SA)*, the *Fair Trading Act 1987 (WA)* and the *Consumer Affairs Act 1971 (WA)*, the *Fair Trading Act 1990 (TAS)*, the *Fair Trading Act 1987 (ACT)* and the *Fair Trading (Consumer Affairs) Act 1973 (ACT)* and the *Consumer Affairs and Fair Trading Act 1990 (NT)*;

general law means the principles and rules of the common law and equity to the extent to which they have effect in a State from time to time;

interest, in relation to property, includes a right in the property;

law of a State means any Act of a State or any instrument made under such an Act, whenever enacted or made and as in force from time to time;

licence means either of the following:

- (a) a transferable right, entitlement or authority to do 1 or more of the following:
 - (i) to manufacture, produce, sell, transport or otherwise deal with property;
 - (ii) to provide services;
 - (iii) to explore for, exploit or use a resource;
- (b) a transferable water right;

Ministerial Council means the Ministerial Council for Corporations established by the Corporations Agreement and continued by the Corporations Agreement 2002;

National Consumer Credit Implementation Plan means Schedule 1 to this Agreement;

National Credit Law means the Commonwealth Act or Acts relating to credit and for related purposes, which are the subject of referrals under this Agreement, specifically the Acts resulting from the passage of:

- a) the *National Consumer Credit Protection Bill 2009 (Cth)*; and
- b) the *National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 (Cth)*;

introduced into the Commonwealth Parliament on 25 June 2009 and includes any subordinate legislation made under any of those Acts;

party means a party to this Agreement;

property includes a licence;

referring State means a State which has enacted State Referral Legislation;

State Referral Legislation means an Act of a Parliament of a State to refer certain matters relating to the provision of credit and certain other financial transactions to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Commonwealth Constitution;

State means a State of the Commonwealth of Australia;

State Minister means a State Minister appointed to represent that State at the Ministerial Council from time to time;

State or Territory statutory right means a right, entitlement or authority that is granted by or under a law of a State or Territory;

Territory means the Australian Capital Territory or the Northern Territory;

Territory Minister means a Territory Minister appointed to represent that territory at the Ministerial Council from time to time;

transferable, in relation to a right, entitlement or authority, means transferable under the general law or a law of the State by the holder of the right, entitlement or authority (whether or not the right, entitlement or authority is exclusive, and whether or not a transfer is restricted or requires consent);

water right means a right, entitlement or authority, whether or not exclusive, that is granted by or under the general law or a law of the State in relation to the control, use or flow of water.

2. In this Agreement, a reference to an Act, whether of the Commonwealth, a State or a Territory includes a reference to:

- a) that Act as amended and in force for the time being; and
- b) an Act passed in substitution for the Act.

Part 2—Effect and Operation of Agreement

2.1 Commencement

1. This Agreement comes into operation on the day that it is signed by one party or the first day of November 2009, whichever occurs first.
2. A party which signs this Agreement after this date, becomes bound by this Agreement from the date it signs.

2.2 Amendment of Agreement

This Agreement may be amended only by the unanimous agreement of all the parties.

Part 3—Commission’s Responsibilities

3.1 Commission’s Responsibilities

The Commission will have sole responsibility for the general administration of the National Credit Law and will have the functions and powers in relation to the provision of credit set by the National Credit Law and subject to this Agreement.

Part 4— Role of the Ministerial Council

4.1 Scope and objectives

The principal function under this Agreement of the Ministerial Council is the consideration of:

- (i) proposals for amendment of the National Credit Law and the State Referral Legislation;
- (ii) proposals for changes to this Agreement; and
- (iii) issues arising from the administration and enforcement of the National Credit Law affecting all parties to this Agreement.

Part 5 —Legislative Scheme

5.1 Overview of the Legislative Scheme

1. The legislative scheme agreed to by the parties involves:
 - a) the enactment by State Parliaments of State Referral Legislation;
 - b) the enactment by the Commonwealth Parliament of the National Credit Law, in reliance on the referrals mentioned in (a); and
 - c) the amendment from time to time of the National Credit Law in accordance with this Agreement and the State Referral Legislation.
2. The legislative scheme is to be implemented in two phases, as broadly set out in the

National Consumer Credit Implementation Plan, subject to the following:

- (a) in relation to the first phase, the State Referral Legislation will include a text-based referral, along with a limited subject-matter referral for the purpose of allowing amendments to the National Credit Law limited to such amendments as are required in order to make the National Credit Law effective;
 - (b) in relation to the second phase, which will include the enactment by State Parliaments of further State Referral Legislation followed by the enactment by the Commonwealth Parliament of amendments to the National Credit Law in reliance on that further referral, the proposed scope of the referral is subject to further consideration.
3. In relation to the second phase of implementation, the Commonwealth agrees to consult with the States and Territories for the purposes of determining and settling the content of the National Credit Law and the State Referral Legislation.
4. For the avoidance of doubt, the State Referral Legislation is not intended to refer to the Commonwealth Parliament a matter:
- (a) in relation to the sales of goods or supplies of services, except to the extent that those matters are provided for in the Code; that is, where the sale or supply is financed or proposed to be financed, wholly or partly by the provision of credit, the following matters-
 - (i) in the case of such a sale or supply where the person providing the credit is linked in any way to the person supplying the goods or services-
 - (A) the liability of the person providing credit for any representation, warranty or statement by the person supplying the goods or services; and
 - (B) the liability of the person providing the credit or supplying the goods or services for loss or damage,
 and matters arising out of any such liability; and
 - (ii) the termination of any transaction in relation to such a sale of goods or supply of services and matters arising out of any such termination;
 - (b) which would allow for the enactment or amendment of the National Credit Law such that the operation of a law of a State of a kind described in clause 5.6 would be excluded or limited.

5.2 Concurrent Operation and Interaction Provisions

- 1. The National Credit Law is not intended to exclude the operation of State and Territory legislation that is capable of operating concurrently with it, including:
 - (a) the Fair Trading Acts; and
 - (b) the enactment by State and Territory Parliaments of consequential amendments to, or repeal of, State and Territory legislation, or other transitional arrangements, as required to establish and support the National Credit Law.
- 2. The National Credit Law will include provisions relating to the interaction between the National Credit Law and State and Territory laws ('the Interaction Provisions'). The Interaction Provisions will, amongst other things, provide for the operation of certain State or Territory legislation to prevail over the National Credit Law where:
 - a) subordinate legislation made under the National Credit Law provides that the

National Credit Law does not apply to certain matters dealt with by prescribed State or Territory legislation; or

- b) the State or Territory legislation expressly indicates that certain matters are excluded from the operation of the National Credit Law in accordance with the provisions of the National Credit Law.
3. Nothing in this clause 5.2 is intended to limit the Commonwealth's power to legislate in reliance on its legislative powers without the State Referral Legislation.

5.3 Parties to notify Ministerial Council of proposed amendments

1. A Commonwealth or State Minister will not introduce a Bill into their respective Parliaments or make subordinate legislation that would amend the National Credit Law or the State Referral Legislation unless the Ministerial Council has been consulted about the proposed amendments in accordance with clause 5.4.
2. Without limiting clause 5.3.1, a Commonwealth or State Minister will notify the Ministerial Council of all legislative proposals for Commonwealth or State legislation that would alter the effect, scope or operation of the National Credit Law or the State Referral Legislation.
3. The notification required under clause 5.3.2 should ordinarily occur at the earliest practicable time after development of a legislative proposal and preferably before the introduction of the Bill or submission of subordinate legislation to the Governor-General or Governor as the case may be.
4. Where, because of unavoidable considerations of government, the notification required under clause 5.3.2 cannot be undertaken before the introduction of the Bill concerned or the submission of subordinate legislation concerned, the Minister concerned will provide copies of the Bill or subordinate legislation to the Ministerial Council.

5.4 Further consideration of legislation by Ministerial Council

1. Where the Commonwealth Minister consults the Ministerial Council in accordance with clause 5.3.1, and within 21 days the chairperson of the Ministerial Council is advised by 3 or more State Ministers that they consider the proposed amendment is for a purpose other than for the regulation of matters referred by way of the State Referral Legislation, the chairperson must convene a meeting to consider the proposed amendment.
2. The Commonwealth Minister will not pursue a proposed amendment in relation to which a meeting under clause 5.4.1 is convened if 3 or more State Ministers at the meeting vote against the proposed amendment.
3. Where a State Minister consults the Ministerial Council in relation to a proposed amendment to the State Referral Legislation, the chairperson of the Ministerial Council must convene a meeting to consider the proposed amendment.
4. The State Minister will not pursue a proposed amendment in relation to which a meeting under clause 5.4.3 is convened if 3 or more State Ministers at the meeting vote against the proposed amendment.

5.5 Amendment of Interaction Provisions

Despite anything else in this Agreement, the Commonwealth Minister will not introduce a Bill into the Commonwealth Parliament or make subordinate legislation that would amend the Interaction Provisions without the unanimous approval of all members of the Ministerial Council.

5.6 State laws with respect to property or other statutory rights not affected

Despite anything else in this Agreement, the Commonwealth Minister will not introduce a Bill into the Commonwealth Parliament amending the National Credit Law, or make subordinate legislation, which would have the effect of excluding or limiting the operation of:

(a) a law of a State or Territory relating to the creation, registration, recording, transfer or enforcement of interests in property; or

(b) a law of a State or Territory that makes provision with respect to:

(i) the sale of land; or

(ii) the creation, holding, transfer, assignment, disposal or forfeiture of a State or Territory statutory right; or

(iii) limitations, restrictions or prohibitions concerning the kinds of interests that may be created or held in, or the kinds of persons or bodies that may create or hold interests in, a State or Territory statutory right; or

(iv) the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State or Territory; or

(v) the transfer, by operation of that law of the State or Territory, of property or interests in property from any specified person or body to any other specified person or body (whether or not for valuable consideration or a fee or other reward).

5.7 Collection of State and Territory Taxes not Affected

The National Credit Law is not intended to affect the continued collection of taxes (however described) by States and Territories on relevant transactions.

Part 6—Administration of the National Credit Law

6.1 Levels of Service

From the commencement of the National Credit Law, the Commonwealth will, through the Commission, use its best endeavours to maintain existing general levels of service provided to the public by State and Territory agencies in relation to the regulation of credit, including the administration and enforcement of the Code.

6.2 Access by State and Territory Ministers to Information

1. State and Territory Ministers may request information regarding the administration and enforcement of the National Credit Law from the Commission.
2. The Commission will provide the information requested by a State or Territory Minister unless the Commission determines that it is not reasonable or practicable to provide such information.
3. Where the information requested is not provided by the Commission the requesting State or Territory Minister may raise the matter with the Commonwealth Minister.

6.3 Cooperative Arrangements with relevant State and Territory Agencies

1. The Commission will maintain ongoing cooperative arrangements with relevant State and Territory agencies.
2. These arrangements will include, subject to compliance with relevant laws:
 - a) providing State and Territory agencies with access to relevant information for the purpose of enabling that agency to exercise functions or powers under any law (including the National Credit Law and the Fair Trading Acts);
 - b) agreements for the exchange of records, information, data and related matters; and
 - c) such other arrangements as agreed in writing by the Commission.
3. Subject to compliance with relevant laws, the Commission will be entitled to access all data in the possession of relevant State and Territory agencies in discharging its functions and obligations under the National Credit Law in a form (which takes into consideration reasonableness and practicalities) that is agreed between the Commission and the relevant agency.

6.4 Prosecutions

National Credit Law Offences

1. The Commission and the Commonwealth Director of Public Prosecutions will have responsibility for the prosecution of offences under the National Credit Law.
2. Notwithstanding subclause (1), arrangements may be entered into under which:
 - (a) State or Territory prosecuting authorities may prosecute offences under the National Credit Law, where the relevant conduct is associated with the prosecution of offences under State or Territory criminal law; and
 - (b) the Commonwealth Director of Public Prosecutions may prosecute offences under State or Territory criminal law, where the relevant conduct is associated with the prosecution by the Commonwealth Director of Public Prosecutions of offences under the National Credit Law or arises out of an investigation by the Commission.
3. The National Credit Law and State and Territory law will enable such arrangements to be entered into.

Code Rights and Liabilities

4. The National Credit Law will, to the greatest extent possible:
 - (a) confer rights and liabilities (whether criminal or civil) on persons under that law, equivalent to the rights and liabilities they had under the Code; and

- (b) enable court proceedings under the Code in progress at the time of commencement to continue as if they were proceedings under the National Credit Law.
5. To the extent that rights and liabilities are so conferred and court proceedings are so continued:
 - (a) the Commission and the Commonwealth Director of Public Prosecutions are to be responsible for any enforcement action in the same way as they are responsible for prosecution of other offences under the National Credit Law under clause 6.4.1; and
 - (b) the States and Territories will ensure, to the extent necessary, that any relevant rights and liabilities under the Code are extinguished.
 6. The States and Territories may enact legislation to preserve rights and liabilities in relation to which equivalent rights and liabilities are not created under the National Credit Law ('Code rights and liabilities').
 7. In respect of Code rights and liabilities, State and Territory legislation may:
 - (a) confer on the Commonwealth Director of Public Prosecutions and the Commission the function of continuing to carry out any enforcement action, including the continuation of any prosecutorial or appeal action, or civil litigation, in relation to Code rights and liabilities; and
 - (b) enable the relevant State or Territory Minister to appoint any other person to perform such functions where it appears to the Minister on reasonable grounds that such an appointment is appropriate or necessary in all the circumstances.

Ancillary Provisions

8. The National Credit Law will:
 - (a) enable the Commonwealth Director of Public Prosecution, or his or her delegate, or the Commission to perform the functions referred to in this clause; and
 - (b) enable the Commonwealth Director of Public Prosecutions or the Commission to make available any information or evidence and to provide any other assistance to persons appointed under clause 6.4.7(b) necessary for the purposes of carrying out the functions for which they are appointed.
9. State and Territory law will make provision for any information/evidence or other assistance so provided to only be used for the purpose of carrying out those functions.

6.5 State and Territory Archives

1. Subject to compliance with relevant laws, an agreement (or agreements) between the States and Territories and the Commission may be made which provides that the Commission will have responsibility on and from the commencement date of the National Credit Law for:
 - (a) public registers of documents administered by relevant State and Territory agencies for the purposes of the administration and enforcement of the Code in that State or Territory;
 - (b) relevant files held by State and Territory agencies in relation to current administration and enforcement activity in respect of credit providers, brokers

- and other providers of credit-related advice services in that State or Territory;
and
- (c) other classes of files held by relevant State and Territory agencies identified by the Commission as necessary for the carrying out by the Commission of its functions and powers under the National Credit Law.
2. To the extent necessary to support and implement an agreement made in accordance with clause 6.5.1, the National Archives of Australia will confer with relevant State and Territory authorities regarding storage of and access to relevant archives currently held by a State or Territory.

Part 7—Termination of a Reference and Withdrawal from the Agreement

1. A party will not withdraw from the Agreement without providing 6 months notice to the other parties.
2. A referring State will not terminate a reference under State Referral Legislation without providing 6 months notice to the other parties. Where a notice under this clause indicates a referring State's intention to terminate the reference of all matters referred under the State Referral Legislation, the notice will be deemed to be notice to withdraw from the Agreement under clause 7.1.
3. If a party withdraws from this Agreement, this Agreement will remain in force in relation to the remaining parties.
4. If a party withdraws from this Agreement, the Commonwealth will, within two months, hold a meeting of the remaining parties for the purpose of negotiating such variations to this Agreement as are necessary or convenient to take account of that fact.

Part 8—Review of National Credit Law Scheme

8.1 Review of National Credit Law Scheme

In consultation with all other parties, the Commonwealth will commence a review of the operation of the National Credit Law, no later than 2 years from commencement.

Schedule

National Consumer Credit Implementation Plan

The following outlines the National Consumer Credit Implementation Plan which may be modified by the Council of Australian Governments from time to time.

Phase One

Key elements of phase one of the Action Plan include:

- Enacting the existing State legislation, the Uniform Consumer Credit Code (UCCC), into Commonwealth legislation.
- Establishing a national licensing regime to require providers of consumer credit and credit-related brokering services and advice to obtain a licence from ASIC.
- Extending the powers of the Australian Securities and Investment Commission (ASIC) to be the sole regulator of the new national credit framework with enhanced enforcement powers.
- Requiring licensees to observe a number of general conduct requirements including responsible lending practices.
- Requiring mandatory membership of an external dispute resolution (EDR) body by all providers of consumer credit and credit-related brokering services and advice.
- Extending the scope of credit products covered by the UCCC to regulate the provision of consumer mortgages over residential investment properties.
- Extending the operation of the Corporations Act to regulate margin lending.
- Regulation of trustee corporations.

Phase One legislation in place by mid 2009.

Phase Two

Key elements of phase two of the Action Plan include:

- Enhancements to specific conduct obligations to stem unfavourable lending practices, such as a review of credit card limit extension offers, an examination of State approaches to interest rate caps; and other fringe lending issues as they arise.
- Regulation of the provision of credit for small businesses.
- Regulation of investment loans other than margin loans and mortgages for residential investment properties.
- Reform of mandatory comparison rates and default notices.
- Enhancements to the regulation and tailored disclosure of reverse mortgages.
- Examination of remaining existing State and Territory reform projects.

Phase Two legislation in place by mid 2010.

The Government will conduct continued consultation with industry, the community and the States and Territories to inform the implementation of the Action Plan.

Signed for and on behalf of each of the Parties by:

The Honourable Kevin Rudd MP)
Prime Minister of the Commonwealth of Australia)
7 December 2009)

The Honourable Kristina Keneally MP)
Premier of New South Wales)
7 December 2009)

The Honourable John Brumby MP)
Premier of Victoria)
7 December 2009)

The Honourable Anna Bligh MP)
Premier of Queensland)
7 December 2009)

The Honourable Colin Barnett MLA)
Premier of Western Australia)
7 December 2009)

The Honourable Michael Rann MP)
Premier of South Australia)
7 December 2009)

The Honourable David Bartlett MP)
Premier of Tasmania)
7 December 2009)

Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory)
7 December 2009)

The Honourable Paul Henderson MLA)
Chief Minister of the Northern Territory)
7 December 2009)