



Western Australia

Consumer Credit (Western Australia) Act 1996

Compare between:

[01 Jan 2005, 02-b0-10] and [01 Jul 2010, 02-c0-05]

Western Australia

Consumer Credit (Western Australia) Act 1996

An Act to make provision for a uniform legislative scheme to regulate the provision of consumer credit, to make special provision in certain cases, and for related purposes.

[Long title inserted by No. 43 of 2003 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Consumer Credit (Western Australia) Act 1996*¹.

2. Commencement

This Act comes into operation on 1 November 1996.

3. Definitions

(1) In this Act —

Consumer Credit (Queensland) Act 1994 means the *Consumer Credit (Queensland) Act 1994* of Queensland;

Consumer Credit (Western Australia) Code means the provisions applying because of section 5(1) of this Act, as amended under section 5(2) of this Act (if there are such amendments);

Consumer Credit (Western Australia) Code Regulations means the provisions applying because of section 6(1) of this Act, as amended under section 6(2) of this Act (if there are such amendments).

(1a) If this Act uses an expression that is given a meaning in the *Consumer Credit (Western Australia) Code*, the expression has the meaning so given unless the contrary intention appears.

(2) Notes included in this Act do not form part of the Act.

[Section 3 amended by No. 43 of 2003 s. 5.]

4. Crown to be bound

This Act binds the Crown in right of Western Australia and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Part 2 — Consumer Credit (Western Australia) Code
and Consumer Credit (Western Australia) Code
Regulations**

[Heading inserted by No. 43 of 2003 s. 6.]

- 5. Application in Western Australia of the Consumer Credit Code**
- (1) The Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994* as in force on the commencement of section 6 of the *Consumer Credit (Western Australia) Amendment Act 2003* applies, as if amended as set out in Part 5 of this Act, as a law of Western Australia.
 - (2) If the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994* is amended, the Governor may amend the *Consumer Credit (Western Australia) Code* by order published in the *Gazette*.
 - (3) An order cannot be made under subsection (2) unless a draft of the order has first been approved by each House of Parliament.
 - (4) The provisions applying because of subsection (1), as amended under subsection (2) (if there are such amendments), may be cited as the *Consumer Credit (Western Australia) Code*.

[Section 5 inserted by No. 43 of 2003 s. 6.]

- 6. Application of uniform regulations under the Consumer Credit Code**
- (1) The regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* on the commencement of section 6 of the *Consumer Credit (Western Australia) Amendment Act 2003* apply, as if amended as set out in regulations made for the purposes of this section, as regulations in force for the purposes of the *Consumer Credit (Western Australia) Code*.
 - (2) If the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* are amended, the Governor may amend

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the *Consumer Credit (Western Australia) Code Regulations* by order published in the *Gazette*.

- (3) An order may not be made under subsection (2) unless a draft of the order has first been approved by each House of Parliament.
- (4) The provisions applying because of subsection (1), as amended under subsection (2) (if there are such amendments), may be cited as the *Consumer Credit (Western Australia) Code Regulations*.
- (5) Schedule 2 to the *Consumer Credit (Western Australia) Code* applies in relation to the *Consumer Credit (Western Australia) Code Regulations*.

[Section 6 inserted by No. 43 of 2003 s. 6.]

6A. Interpretation of certain expressions in the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations*

- (1) Unless the contrary intention appears, in the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations* —
 - (a) a reference to ***the Legislature of this jurisdiction*** is to be read as a reference to the Parliament of Western Australia;
 - (b) a reference to ***the Code*** or ***this Code*** is to be read as a reference to the *Consumer Credit (Western Australia) Code*; and
 - (c) a reference to **“the jurisdiction”** or **“this jurisdiction”** is to be read as a reference to Western Australia.
- (2) The *Acts Interpretation Act 1954*, and other Acts, of Queensland do not apply to, or in relation to, the *Consumer Credit (Western Australia) Code* or the *Consumer Credit (Western Australia) Code Regulations*.

[Section 6A inserted by No. 43 of 2003 s. 6.]

6B. Minister to give Queensland Bills and regulations to the Clerk of each House of Parliament

- (1) Within 7 days of the Minister becoming aware of —
 - (a) the introduction into the Legislative Assembly of Queensland of a Bill to amend the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994*; or
 - (b) the notification in the Queensland Government Gazette of regulations to amend the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994*,the Minister is to give a copy of the Bill or regulations to the Clerk of each House of Parliament.
- (2) The Minister is to use his or her best endeavours to comply with subsection (1) but a failure to do so does not affect the validity of any other action under this Part.
- (3) The Clerk of each House of Parliament is to give a copy of the Bill or regulations to the committee or committees of the Parliament whose terms of reference cover uniform legislation (that is, legislation that gives effect to an intergovernmental agreement or that is part of a uniform system of laws throughout the Commonwealth).
- (4) A copy of the Bill or regulations given to the Clerk of a House is to be regarded as having been laid before that House.
- (5) The laying of a copy of the Bill or regulations that is to be regarded as having occurred under subsection (4) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 6B inserted by No. 43 of 2003 s. 6.]

Part 3 — Conferral of judicial and administrative functions

7. Conferral of judicial functions

(1) The jurisdiction that is expressed to be exercisable by *the Court* under the *Consumer Credit (Western Australia) Code* and the *Consumer Credit (Western Australia) Code Regulations* is exercisable —

(a) only by the State Administrative Tribunal (*the Tribunal*) —

(i) in the case of any jurisdiction under section 34(5), 36(6) or (7), 44(4), 47(3), 68 to 72, 74, 77, 79, 82(b), 83(1), 88, 89, 91(1)(a), 92, 93, 98, 99(3), 162(2) or Part 6 of the Code; or

(ii) in the case of any jurisdiction prescribed for the purposes of this subparagraph by regulations made under section 10;

or

(b) in any other case, either by the Tribunal or a court.

(2) The jurisdiction conferred on a court by subsection (1)(b) is subject to the court's general jurisdictional limits (so far as they relate to the amounts or the value of property with which the court may deal), but is not subject to the court's other jurisdictional limits.

(3) Regulations may be made under section 10 making provision for or with respect to the transfer of proceedings between the Tribunal and a court or between courts.

[Section 7 amended by No. 57 of 1997 s. 40; No. 43 of 2003 s. 7; No. 55 of 2004 s. 145.]

8. Conferral of administrative functions

(1) The chief executive officer of the Department has the functions of the Government Consumer Agency under the *Consumer*

*Credit (Western Australia) Code and the Consumer Credit
(Western Australia) Code Regulations.*

(2) In subsection (1) —

Department means the department of the Public Service principally assisting the Minister in the administration of this Act.

[Section 8 amended by No. 43 of 2003 s. 7.]

Part 4 — Miscellaneous

[Heading inserted by No. 43 of 2003 s. 8.]

[9. Deleted by No. 43 of 2003 s. 9.]

10. General regulation making power

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[Section 10 inserted by No. 43 of 2003 s. 10(1).]

11. Specific savings and transitional regulations for Western Australia

- (1) The regulations may make provision of a savings or transitional nature consequent on —
 - (a) the enactment or amendment of this Act;
 - (b) the enactment of an Act of Queensland amending the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994*.
- (2) If the regulation so provides, it has effect despite any provision of this Act or the *Consumer Credit (Western Australia) Code*.
- (3) Without limiting subsection (1), a regulation may be made under this section for or with respect to the following —
 - (a) permitting for a limited period or periods provisions requiring the payment or debiting of interest charges in advance under credit contracts or classes of credit contracts;
 - (b) permitting, subject to conditions, pre-determined credit charges for a limited period or periods.
- (4) A regulation made under this section may, if the regulation so provides, take effect from the day of commencement of the Act concerned or from a later day.

- (5) To the extent to which a provision takes effect from a day earlier than the day of the regulation's publication in the *Gazette*, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by —
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

[Section 11 amended by No. 43 of 2003 s. 11.]

12. Maximum annual percentage rate

- (1) A regulation under this Part may prescribe a maximum annual percentage rate for a credit contract or class of credit contract, within the meaning of the *Consumer Credit (Western Australia) Code*.
- (1a) In the case of a short term credit contract, the regulations may require interest charges and all credit fees and charges under the contract to be included for the purpose of calculating the maximum annual percentage rate under the contract for the purposes of subsection (1).
- (2) Division 2 of Part 2 of the *Consumer Credit (Western Australia) Code* (which limits the debtor's monetary obligations) applies in relation to a prescribed maximum annual percentage rate as if that rate had been prescribed by the *Consumer Credit (Western Australia) Code*.

NOTE: Note:

The effect of subsection (2) is that the contract is void to the extent it imposes a monetary liability prohibited by subsection (1) and that any amount paid under the contract may be recovered. In addition the credit provider commits an offence for entering into such a contract.

- (3) Nothing in this section affects the powers expressed to be conferred on the Court by Division 3 of Part 4 of the *Consumer Credit (Western Australia) Code* in relation to a contract that is not, by reason of this section, void.

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~~NOTE:~~ Note:

Division 3 of Part 4 allows (among other things) the re-opening of unjust transactions.

(4) In this section —

short term credit contract means —

- (a) a contract for the provision of credit limited to a total period that does not exceed 62 days that is not exempted from the *Consumer Credit (Western Australia) Code* under section 7(1) of the *Consumer Credit (Western Australia) Code*; or
- (b) a contract of a kind prescribed by the regulations.

[Section 12 amended by No. 30 of 2001 s. 4; No. 43 of 2003 s. 12.]

Part 5 — Amendment of the Consumer Credit Code

[Heading inserted by No. 43 of 2003 s. 13.]

13. Amendment of the Consumer Credit Code

For the purposes of section 5(a), the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994* applies as if the provisions listed in the Table to this section were amended as set out in the Table.

Table

Provision of the Code	Amendment
Section 53(1)	Delete paragraph (a) and “or” after it, insert instead — “ (a) withdraw from the guarantee unless the debtor has — (i) ceased to be entitled to terminate the credit contract under section 19; or (ii) entered into another contract in reliance on the availability of credit under the credit contract; or ”.

Provision of the Code	Amendment
Section 66	After section 66(1) insert — “ (1a) The Government Consumer Agency may, if requested in writing by a debtor, assist a debtor in applying for a change in the terms of a credit contract under subsection (1) and in any negotiations with the credit provider relating to the change. ”.
Section 101(2)	Delete “anywhere in Australia” and “or a corresponding law of another jurisdiction”.
Section 108(2)	Delete “for the purposes of this Code in relation to the contraventions occurring in this jurisdiction”.

[Section 13 inserted by No. 43 of 2003 s. 13.]

[Appendix deleted by No. 43 of 2003 s. 14.]

Notes

- ¹ This is a compilation of the *Consumer Credit (Western Australia) Act 1996* and includes the amendments made by the other written laws referred to in the following table². The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Consumer Credit (Western Australia) Act 1996</i>	30 of 1996	10 Sep 1996	1 Nov 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 40 and 41	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Consumer Credit (Western Australia) Amendment Act 2000</i>	14 of 2000	9 Jun 2000	28 Oct 2000 (see s. 2 and <i>Gazette</i> 3 Oct 2000 p. 5573)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 15	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Consumer Credit (Western Australia) Amendment Act 2001</i>	30 of 2001	21 Dec 2001	1 Jun 2002 (see s. 2 and <i>Gazette</i> 21 May 2002 p. 2589)
Reprint of the <i>Consumer Credit (Western Australia) Act 1996</i> as at 6 Sep 2002 (includes amendments listed above) (correction in <i>Gazette</i> 2 May 2003 p. 1495)			
<i>Consumer Credit (Western Australia) Amendment Act 2003</i> ³	43 of 2003	30 Jun 2003	9 Jul 2003 (see s. 2 and <i>Gazette</i> 9 Jul 2003 p. 2735)
Reprint 2: The <i>Consumer Credit (Western Australia) Act 1996</i> as at 13 Feb 2004 (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 25 ⁴	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<u>This Act was repealed by the <i>Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010</i> s. 4⁵ (No. 14 of 2010) as at 1 Jul 2010 (see s. 2(b) and <i>Gazette</i> 30 Jun 2010 p. 3185)</u>			

- ² The amendment in the *Statutes (Repeals and Minor Amendments) Act 2003* s. 41 is not included because the Schedule that it sought to amend had been repealed by No. 43 of 2003 s. 14.

³ The *Consumer Credit (Western Australia) Amendment Act 2003* s. 15 reads as follows:

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15. Savings and transitional provisions

- (1) The repeal of the Appendix to the *Consumer Credit (Western Australia) Act 1996* by section 14 of this Act and the application of the Consumer Credit Code set out in the Appendix to the *Consumer Credit (Queensland) Act 1994* by section 5 of the *Consumer Credit (Western Australia) Act 1996* (as in force after the commencement of this Act) is taken to be the repeal and re-enactment of an enactment for the purposes of section 36 of the *Interpretation Act 1984*.
- (2) The repeal of the *Consumer Credit (Western Australia) Regulations 1996* by section 10(2) of this Act and the application of the regulations in force under Part 4 of the *Consumer Credit (Queensland) Act 1994* by section 6 of the *Consumer Credit (Western Australia) Act 1996* (as in force after the commencement of this Act) is taken to be the repeal and re-enactment of an enactment for the purposes of section 36 of the *Interpretation Act 1984*.
- (3) The enactment of section 6A of the *Consumer Credit (Western Australia) Act 1996* is not, by implication, to have any effect on the interpretation of the former *Consumer Credit (Western Australia) Code* or the former *Consumer Credit (Western Australia) Regulations*.
- (4) In this section —
Consumer Credit (Queensland) Act 1994 means the *Consumer Credit (Queensland) Act 1994* of Queensland;
former Consumer Credit (Western Australia) Code means the *Consumer Credit (Western Australia) Code* within the meaning of the *Consumer Credit (Western Australia) Act 1996* as in force before the commencement of this Act;
former Consumer Credit (Western Australia) Regulations means the *Consumer Credit (Western Australia) Regulations* within the meaning of the *Consumer Credit (Western Australia) Act 1996* as in force before the commencement of this Act.

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⁴ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administration Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁵ The Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010 Pt. 2 Div. 2 reads as follows:

Division 2 — Transitional Provisions

5. Proceedings

- (1) Proceedings brought in relation to a provision of the *Consumer Credit (Western Australia) Code* —
- (a) which are not proceedings to which the *National Consumer Credit Protection Act 2009* (Commonwealth) Schedule 1 item 4 applies; and
- (b) which upon section 4 coming into operation are pending before a court,
- are to be dealt with under the *Consumer Credit (Western Australia) Act 1996* despite the repeal of that Act.

- (2) Proceedings brought in relation to a provision of the *Consumer Credit (Western Australia) Code* which upon section 4 coming into operation are pending before the State Administrative Tribunal are to be dealt with under the *Consumer Credit (Western Australia) Act 1996* despite the repeal of that Act.

6. Arrangements for conduct of proceedings

- (1) The CEO may make an arrangement with ASIC about the conduct of any proceedings to which section 5 applies.
- (2) In particular, an arrangement may provide —
- (a) for the performance of functions and the exercise of powers conferred by subsection (3) on ASIC; or
- (b) for the performance of functions or the exercise of powers of the CEO in relation to the conduct of proceedings to which section 5 applies by staff members of ASIC.
- (3) Subject to subsection (4), ASIC has the functions and powers of the CEO in relation to the conduct of proceedings to which section 5 applies.
- (4) ASIC must not perform a function or exercise a power conferred by subsection (3) except in accordance with an arrangement under this section.

7. Information

- (1) This section applies to information obtained by the CEO in connection with the administration or enforcement of the

Consumer Credit (Western Australia) Act 1996 or the Consumer Credit (Western Australia) Code.

(2) The CEO may —

(a) disclose information to which this section applies; or

(b) give copies of records which contain information to which this section applies and which are in the CEO's possession or under the CEO's control.

to ASIC for the purpose of the administration or enforcement of the National Consumer Credit Protection Act 2009 (Commonwealth).