

# Australian Uniform Credit Laws Agreement 1993

THIS AGREEMENT is made the 30th day of July 1993

BETWEEN:

**The State of New South Wales**  
**The State of Victoria**  
**The State of Queensland**  
**The State of South Australia**  
**The State of Western Australia**  
**The State of Tasmania**  
**The Northern Territory of Australia**  
**The Australian Capital Territory**

RECITALS:

- (A) It is generally acknowledged to be in the interests of the public and of persons and authorities concerned with the administration of the laws regulating the provision of consumer credit that there should as far as possible be uniformity both in those laws and their administration in the States and the Territories of Australia.
- (B) The Governments of the States and the Territories of Australia are agreed that as far as possible such uniformity will be achieved by establishing and implementing a co-operative scheme the objects of which are to ensure that:
- (a) the legislation relating to the Scheme is, and continues to be either:
    - (i) uniform throughout Australia; or
    - (ii) in any State or Territory where it is not uniform, consistent with the uniform laws;
  - (b) the legislation is administered as far as possible on a uniform basis;
  - (c) changes in the legislation are proposed for consideration as appropriate from time to time and amendments made when the need for reform arises.
- (C) Agreement has been reached between the States and the Territories that without fettering the powers of future Parliaments the Scheme will provide for the introduction of Initial Legislation into the Parliament of the State of Queensland and require the other States and Territories to do one of the following:
- (i) adopt that Initial Legislation; or
  - (ii) enact and maintain legislation which is consistent with the Initial Legislation.

NOW IT IS AGREED as follows:

### **Part I - Interpretation**

1. In this Agreement, except where a contrary intention appears:

- (a) "State" means a State of Australia that is for the time being a party to this Agreement;
- (b) "Party" means a State or Territory and "the Parties" has a corresponding meaning; and
- (c) "Territory" means a Territory of Australia that is for the time being a party to this Agreement.

2. In this Agreement, unless the contrary intention appears or the context otherwise requires:

"Amend" means directly amend Credit Legislation by the insertion or omission (or both) of matter or indirectly amend Credit Legislation by making provisions that would significantly alter its effect, scope or operation;

"Amending Legislation" means:

- (a) legislation amending, repealing or adding to any previous Credit Legislation already enacted in accordance with this Scheme;
- (b) regulations amending, repealing or adding to regulations made under the Credit Legislation; and
- (c) exemption orders made under the Credit Legislation;

"Alternative Consistent Legislation" means the proposed legislation referred to in clause 9(3)(b);

"Application of Laws Legislation" means the legislation referred to in clause 9(3)(a) and regulations thereunder;

"Credit Legislation" includes the Initial Legislation, Application of Laws Legislation and Amending Legislation and regulations made under any of them but does not include Alternative Consistent Legislation;

"Initial Legislation" means the proposed legislation referred to in clause 9(1);

"Legislation" includes regulations made under the Credit Legislation;

"MCCA" means the Ministerial Council on Consumer Affairs or, if there is no longer a body by that name, such body as succeeds it or for the time being performs the functions carried out by the Ministerial Council on Consumer Affairs as at the date of this Agreement;

"Ministerial Council" or "Council" means the Ministerial Council established under Part VIII of the Agreement;

"Parliament" includes the Legislative Assembly of each of the Northern Territory of Australia and the Australian Capital Territory;

"the Scheme" means the scheme of legislative and administrative acts and procedures that it is contemplated by this Agreement;

"Transitional Legislation" means saving and transitional legislation of a Party dealing with the introduction of the Scheme.

3. In this Agreement, unless a contrary intention appears:

- (a) a reference to a Part is a reference to the relevant Part of this Agreement;
- (b) a reference to a clause is a reference to the relevant clause of this Agreement;
- (c) a reference to a sub-clause of the clause in which the reference appears, or of such other clause as the reference indicates, is a reference to the relevant clause of this Agreement; and
- (d) where a fraction of members of the Council is not equal to a whole number, then the next highest whole number shall be deemed to be equal to that fraction.

4. This Agreement may be referred to as the Uniform Credit Laws Agreement.

## **Part II - Operation of Agreement**

5.

- (1) This Agreement shall come into force when it has been executed by all the Parties.
- (2) This Agreement may be amended only by unanimous resolution of the Ministerial Council.

6. In the event that a Party ceases to be a party to this Agreement this Agreement shall nevertheless continue in force with respect to the other Parties.

7.

- (1) A State or Territory (except the State of Queensland) shall cease to be a Party to this Agreement if it fails within six (6) months, or such further time as may be approved by unanimous resolution of the Ministerial Council, of the assent to the Initial Legislation to do one of the following:

- (a) to secure the passing and proclamation (or in the case of the Australian Capital Territory the commencement) of the Application of Laws Legislation; or
  - (b) to secure the passing and proclamation (or in the case of the Australian Capital Territory the commencement) of Alternative Consistent Legislation.
- (2) A State or Territory shall cease to be a Party to this Agreement if:
- (a) that State or Territory:
    - (i) withdraws from this Agreement pursuant to Part X;
    - (ii) breaches clause 10(2); or
  - (b)
    - (i) any legislation is introduced by that State or Territory which, if passed, would amend directly or indirectly; or
    - (ii) any exemption order is made in that State or Territory which changes the application or operation of, the Alternative Consistent Legislation so that it or its application or operation (as the case may be) is not uniform or consistent with the Initial Legislation amended and in force for the time being.
- (3) The State of Queensland shall secure the proclamation of the Initial Legislation.

### **Part III - Establishment of Scheme**

8. The States and the Territories of Australia will take such action as is provided for by this Agreement and is otherwise requisite on their respective parts to achieve the objectives set out in the Recitals by initiating and operating the Scheme.

### **Part IV - Initial Legislation and Alternative Consistent Legislation**

9.

- (1) The State of Queensland will submit to its Parliament legislation which has been approved by a unanimous resolution of the Ministerial Council to form the basis of the Scheme and take such steps as are appropriate to secure the passage of the legislation by 31 March 1994 or such other date as may be approved by a unanimous resolution of the Ministerial Council.
- (2) The State of Queensland will as soon as practicable after the passage of the legislation referred to in Clause 9(1) submit to its Executive Council for making by it regulations under the Initial Legislation which have been approved by a unanimous resolution of the Ministerial Council.

- (3) Each State and Territory (other than the State of Queensland) will as soon as practicable after the steps referred to in clause 9 (1) have been satisfied either –
- (a) submit to the Parliament of that State or Territory its Application of Laws Legislation which has been approved by a unanimous resolution of the Ministerial Council; or
  - (b) submit to the Parliament of that State or Territory legislation which is either uniform with the Initial Legislation or is such that an act or thing which would be lawful under the Initial Legislation would also be lawful under the legislation of that State or Territory

and shall in either case take such steps as are appropriate to secure the passing thereof.

- (4) Each State and Territory (except the State of Queensland) will as soon as practicable after the passing of the legislation referred to in clause 9(3)(a) or (b) and the making of the regulations referred to in clause 9(2) ("the Queensland Regulations") submit to its respective Executive Council for making by it regulations:
- (a) in the case of clause 9(3)(a) - uniform with the Queensland Regulations; and
  - (b) in the case of clause 9(3)(b) - either uniform with the Queensland Regulations or such that an act or thing which would be lawful under the Queensland Regulations would also be lawful under the regulations of that State or Territory.

However, in either case, those regulations may, if necessary, differ from the Queensland Regulations in respect of any of the matters referred to in clause 9(5).

- (5) Application of Laws Legislation of any State or Territory shall not amend, alter or modify the Initial Legislation in its application to that State or Territory except as follows:
- (a) the alteration of a provision that refers to another law, so as to reflect differences in the jurisdiction in the law so referred to, or the omission of such a provision if the law referred to is not relevant in the jurisdiction;
  - (b) amendments as to the manner or referring to provisions of the Initial Legislation and changes to the set out of provisions, their numbering and headings;
  - (c) the alteration of "State" or "Territory" where appropriate, and alterations necessarily consequential on such an alteration;
  - (d) amendments necessary because of the different procedures within a jurisdiction for the commencement of the Initial Legislation and the making of Regulations;

- (e) amendment of the manner of expressing a monetary penalty for an offence against the Initial Legislation (but not so as to alter the actual amount of the penalty);
- (f) such other amendments as are approved by a unanimous resolution of the Ministerial Council.

## **Part V - Amending Legislation to Initial Legislation and Alternative Consistent Legislation**

10.

- (1) The purpose of this clause is to make provision in regard to amendments to the Credit Legislation.
- (2) Any Amending Legislation must not be introduced by a State or Territory unless there has been a resolution of the Ministerial Council, passed by a majority comprising at least two thirds of the members who are present and vote, approving the Amending Legislation in the form in which it is introduced or made.
- (3) Notwithstanding sub-clause (2) any regulations amending the regulations originally made under the Initial Legislation require a unanimous resolution of the Ministerial Council if such a resolution is made before the proclamation date of the Initial Legislation.
- (4) Notwithstanding sub-clause (2) the approval of the Ministerial Council to such Amending Legislation may be given so as to permit the making of alterations of a drafting nature or alterations of other kinds or for other purposes as specified in the approval, without the need for further approval.
- (5) The State of Queensland will as soon as practicable after resolution of the Ministerial Council passed by a majority comprising at least two thirds of the members who are present and vote –
  - (a) submit to its Parliament any Amending Legislation; or
  - (b) in the case of Amending Legislation in the form of a regulation, submit to its Executive Council for making such regulation

and shall take such steps as are appropriate to secure the passing, commencement and making thereof.

11. Nothing in this Agreement requires a State or Territory which has passed Alternative Consistent Legislation to obtain the approval of the Ministerial Council to amendments to such legislation.

## **Part VI - Non -Uniform Matters**

12. Notwithstanding any other provision in this Agreement a State or Territory may secure the passage of legislation to provide for -

- (a) the fixing of maximum interest rates payable under consumer credit contracts;
- (b) the establishment of trust funds with designated purposes into which forfeited interest charges may be paid;
- (c) the establishment of a scheme for the licensing or registration of credit providers;
- (d) the vesting in a Tribunal of jurisdiction which under the Initial Legislation is vested in a Court;
- (e) such other matters as are approved by unanimous resolution of the Ministerial Council.

### **Part VII - Conflicting Legislation**

13.

- (1) A State or Territory will not submit legislation to its Parliament nor take action for the making of regulations which will, upon coming into force, conflict with or negate the operation of the Credit Legislation.
- (2) Either the Credit Legislation or the Alternative Consistent Legislation will apply in place of existing legislation in relation to the provision of consumer credit in each jurisdiction. Subject to the provisions of any Transitional Legislation, the Initial Legislation or the Alternative Consistent Legislation will apply only to acts, matters or things occurring on or after the commencement of the Initial Legislation or the Alternative Consistent Legislation (as the case may be).

14. Any additional legislative or other action required within a Party's jurisdiction to implement the Initial Legislation shall not modify the effect of the Initial Legislation except in such a way as may be approved by unanimous resolution of the Ministerial Council or as otherwise permitted by this Agreement.

### **Part VIII - Ministerial Council**

15. A Council of Ministers is established by this Agreement, to be known as the Ministerial Council for Uniform Credit Laws which shall operate under the auspices of MCCA.

16.

- (1) The Council shall consist of the members appointed to it by the Parties.
- (2) Each Party shall appoint one member to the Council.
- (3) Subject to clause 17, the member appointed by each Party shall be that Party's Minister of the Crown for the time being administering consumer credit laws.

- (4) A member of the Council remains a member only while the Party appointing that member remains a Party to this Agreement.

17.

- (1) A Minister who is acting for a Minister who is a member of the Council may act as a member of the Council in place of the member.
- (2) A member of the Council may appoint a delegate to act as a member of the Council in place of the member. Such an appointment may be limited to a particular meeting or meetings or to a particular period or particular periods, and may be revoked at any time.
- (3) In this Agreement -
  - (a) "acting member" means a person who under either sub-clause 1 or sub-clause 2 acts in the place of a member;
  - (b) a reference to a member includes an acting member.
- (4) Without limitation, an acting member may in that capacity:
  - (a) attend and participate in meetings of the Ministerial Council in place of the member concerned (including meetings referred to in clause 20(3)); and
  - (b) exercise the voting rights of the member concerned (including voting Rights under clause 24).

18.

- (1) The Council may, by unanimous resolution, and on such terms as it thinks fit, confer non-voting observer status on a representative of a government that is not a party to this Agreement.
- (2) The representative's observer status ceases when a member of the Council notifies the Chairperson or Secretary of the Council that the member does not support continuation of that status.

19.

- (1) The Council has the functions conferred on it by this Agreement and by the Credit Legislation.
- (2) Without limiting the generality of (1) the functions of the Council shall include -
  - (a) consideration and review of the Credit Legislation and its administration;
  - (b) the approval of the Initial Legislation by unanimous resolution;

- (c) the approval until the proclamation date of the Initial Legislation of regulations under the Initial Legislation by unanimous resolution and thereafter by a majority vote comprising at least two thirds of the members who are present and vote;
- (d) the approval of Amending Legislation passed by a majority vote comprising at least two thirds of the members who are present and vote.

20.

- (1) Meetings of the Council shall be held at such times and at such places as are from time to time decided by the Council and at least one meeting shall be held in each financial year.
- (2) A meeting of the Council may be convened by at least one third of the members by notice of fourteen (14) days or of such other period as may be accepted by all members for the purpose of the meeting.
- (3) A meeting of the Council may be held wholly or partly if all members so agree, by means of telephone, television or some other mode of communication (electronic or otherwise) approved for the purposes of this sub-clause by the Council.
- (4) Members of the Council who take part in a meeting specified in sub-clause (3) are taken to have been present at the meeting although they were not all present at the same place at the time when the meeting was so held.
- (5) Clause 17 extends to meeting referred to in sub-clause (3) of this clause and references in clause 17 to attending a meeting of the Council extend to joining in the meeting in whatever way the meeting is held.
- (6) To the extent that this Agreement does not prescribe with respect to the following matters the Council may determine -
  - (a) the notice of meeting to be given its members and the manner of giving notice; and
  - (b) the procedure at its meetings; and
  - (c) the manner in which and by whom its decisions are recorded and the procedure for confirmation of the correctness of the record.

21.

- (1) The quorum for a meeting of the Council shall be two thirds of the members.
- (2) A unanimous resolution of the Council shall not be taken to have been passed unless all members of the Council were present and voted in favour of the resolution.

22. The Chairperson of a meeting of the Council shall be decided by the Council prior to or, if not previously decided, at the meeting.

23.

- (1) Each member of the Ministerial Council shall have one vote.
- (2) The Chairperson shall not have a casting vote.

24.

- (1) A member may cast a vote in respect of a matter referred to all members of the Council even though the Council is not then in session and whether or not the resolution has been considered at a meeting of the Council.
- (2) For the purposes of sub-clause (1), a vote may be cast by communicating by facsimile transmission or teleprinter, or by any other mode of communication approved by the Ministerial Council, to the Secretary of the Council or other recipient approved by the Council.
- (3) Clause 17 extends to voting referred to in this clause, and references in clause 17 to attending a meeting of the Council extend to joining in the business of the Council in whatever way it is conducted.

25.

- (1) The secretariat functions for the Council will be carried out by such person or persons as the Council may from time to time determine.
- (2) The Secretary of the Council will be the person for the time being designated as such by the Council.

#### **Part IX - Administration**

26.

- (1) Each Party which enacts either the Initial Legislation or Application of Laws Legislation shall use its best endeavours to ensure that as far as is reasonably possible the administration of the Credit Legislation is uniform.
- (2) Each Party which enacts Alternative Consistent Legislation shall use its best endeavours to ensure that the administration of such legislation remains reasonably consistent with the administration of the Initial Legislation.

#### **Part X - Withdrawal**

27.

- (1) A Party may at any time by notice in writing to the Ministerial Council withdraw from this Agreement and shall cease to be a Party when the notice of withdrawal takes effect.

- (2) A notice of withdrawal under this clause shall take effect on a date to be specified in the notice which is not less than one year from the date on which the notice is given.

## **Part XI - Option to Repeal Alternative Legislation and Pass Initial Legislation**

28.

- (1) The Parliament of any State or Territory which in the first instance has not passed the Credit Legislation but which has passed Alternative Consistent Legislation may repeal its existing Alternative Consistent Legislation at any time by submitting to its Parliament Application of Laws Legislation which has been unanimously approved by a resolution of the Ministerial Council repealing the Alternative Consistent Legislation and complementing adopting or applying the Initial Legislation (as amended) in its respective State or Territory.
- (2) The clauses relating to the Parties to the Agreement which have passed the Credit Legislation will thereafter apply to a State or Territory referred to in clause 28(1).

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the parties hereto respectively as the date and year first above written.

SIGNED for and on behalf of the  
STATE OF NEW SOUTH WALES  
by The Hon Wendy Machin MP  
Minister for Consumer Affairs

SIGNED for and on behalf of the  
STATE OF VICTORIA  
by The Hon Jan Wade MP  
Minister for Fair Trading

SIGNED for and on behalf of the  
STATE OF QUEENSLAND  
by The Hon Glen Milliner MLA  
Minister for Corrective Services  
and Consumer Affairs

SIGNED for and on behalf of the  
STATE OF SOUTH AUSTRALIA  
by The Hon Anne Levy MLC  
Minister for Consumer Affairs

SIGNED for and on behalf of the  
STATE OF WESTERN AUSTRALIA  
by The Hon Peter Foss MLC  
Minister for Consumer Affairs

SIGNED for and on behalf of the  
STATE OF TASMANIA  
by The Hon Frank Madill MHA  
Minister for Consumer Affairs

SIGNED for and on behalf of THE  
NORTHERN TERRITORY OF AUSTRALIA  
by The Hon Rick Setter MLA, authorised  
delegate of The Hon Daryl Manzie MLA  
Attorney General

SIGNED for and on behalf of the  
AUSTRALIAN CAPITAL TERRITORY  
by The Hon Terry Connolly MLA  
Attorney General