



Your Ref:

Quote in reply: 21000334/1 Banking & Finance

21 September 2007

The Project Officer  
Fringe Credit Project  
Fair Trading Policy Branch, Policy Division  
Department of Tourism, Fair Trading and Wine Industry Development  
GPO Box 3111  
BRISBANE QLD 4001

**By Email: [consumercredit@dtfwid.qld.gov.au](mailto:consumercredit@dtfwid.qld.gov.au)**

Dear Sir/Madam

**SUBMISSION ON THE CONSUMER CREDIT CODE AMENDMENT BILL 2007 AND CONSUMER CREDIT AMENDMENT REGULATION 2007**

**Attached** is a submission from the Queensland Law Society in respect of the above.

If you have any queries or wish to discuss this submission further, please contact Mr Matt Dunn, Queensland Law Society Banking & Financial Services Law Committee on (07) 3842 5889.

Yours faithfully

Megan Mahon  
**President**



# Submission

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## Consumer Credit Code Amendment Bill 2007 and Consumer Credit Amendment Regulation 2007

by the

*Queensland Law Society's  
Banking & Finances Committee ("The Society")*

## INTRODUCTION

This response to your request for public comment on the above proposed amendments has been prepared by the Society's Banking and Finance Sub-Committee.

Members of the Sub-Committee are drawn from the legal profession in Queensland and include senior lawyers experienced in banking and finance who act for lenders and for consumers, academics with expertise in consumer credit and consumer case-workers.

Unfortunately, due to the tight time frame imposed for the making of Submissions, the Society has not had the opportunity to canvas its members for their views and as such this Submission must be read accordingly. The Society will however seek members input on these important proposals and will provide same to you upon their receipt. It is unfortunate that such a short submission period was provided given the period of time that has elapsed since the issuing of the discussion paper in 2003.

## GENERAL COMMENTS

The Sub-Committee in general terms endorses the thrust of the majority of the proposed amendments but raises a number of technical matters for your consideration.

However, the Society is concerned with the wholesale impact on all credit providers (not just "fringe" lenders) on the proposed amendments for credit fees and charges. The Society submits that the transitional provisions are wholly inadequate and inappropriate should the proposed amendments to credit fees and charges proceed.

The Society notes that there is little definitive independent research on fringe lending in the current context and the effectiveness of existing and proposed regulation. We encourage the Department to consider undertaking further research in this area, perhaps utilising Griffith University's Centre for Credit and Consumer Law.

## SPECIFIC COMMENTS

The Society makes the following specific comments:

### 1. Business Declarations

The Society is concerned that the amendments proposed may actually make it easier for an inappropriate use of flawed business purpose declarations. The Society's concern is that the information relating to the purpose of the loan under the proposed amendment clause 11(2)(b) may be provided by a finance broker or other intermediary on behalf of the debtor who, for their own purposes, may misrepresent the true situation.

Accordingly, we would suggest that perhaps it would be preferable to leave the provisions as they currently stand but remove the word "conclusively" where used in s11(2). We would therefore also suggest similar amendments be made to the s 150 amendments.

## **2. Proposed Section 15(2) - Charges that are in the nature of interest charges**

The Society appreciates that these provisions are inserted with a view to mirror the provisions of the New South Wales Act.

Nevertheless, we query whether this is helpful given the absence of any definition of "the nature of interest charges". The Credit Code appeared to have a clear distinction between credit fees and charges and interest and this distinction appears to have been upheld in the Australian Financial Direct case (*Australian Financial Direct Limited vs Director of Consumer Affairs Victoria [2006] VSCA 245*).

This amendment appears to blur this distinction and to raise queries surrounding certain credit fees and charges that could potentially be considered candidates for inclusion as "charges under the Contract that are in the nature of interest charges". As an example, the characterization of account keeping fees becomes potentially problematic. We suggest that this matter be left to the common law or a definition be inserted for the purposes of clarification.

## **3. Prohibited Securities**

The Society notes the lack of certainty regarding the meaning of the expression "antique". Specifically, we query what is the substantial part of market value? We would suggest that it would be prudent to include a specific definition of substantial or clarify that it is the majority.

## **4. Unfair charges**

The Society is concerned that the amendments to s 72 will require a wholesale review by credit providers of their current fees and charges models. We do not see how the impact of this amendment is limited to "fringe" lenders. As we see it, it will be necessary for mainstream lenders to undertake a this review and to, if necessary, restructure their existing products. We query whether this is appropriate or intended.

No doubt the relevant industry bodies will be making their own significant submissions addressing these points.

However, assuming that this is an intended outcome, we would be concerned that the amendments would have an anti-competitive effect such as to benefit larger credit providers. In order to ensure that this is not the case we would suggest that s 72(7) should include a reference to actual costs incurred or losses incurred by the credit provider and reasonable standards of commercial practice then being utilized by credit providers of a similar size or class. We would be happy to provide alternate drafting for these provisions to pick up these concepts if you thought it appropriate.

## **5. Transitional provisions**

The Society strongly submits that the transitional provisions are inadequate.

Given the significant impact that the credit fees and charges amendments are likely to have upon credit providers products, it is wholly inappropriate from the position of the fair administration of justice for there not to be an adequate period of time to allow credit providers to review and if necessary adjust their existing fees and charges and pricing models.

Accordingly, the Society recommends that relevant industry associations such as the Australian Bank Association and the Australian Finance Conference be consulted with a view to determine the appropriate timing of transitional provisions should these amendments be proceeding. This time would be necessary to allow credit providers to review the quantum of their fees and charges having regard to the new requirements. No doubt many will also wish to obtain external accounting validation in this regard.

The Society would have thought that a period of between 9 months to 1 year would be required for credit providers to review their credit fees and charges prior to the implementation of the new venue regime.

## **CONCLUSION**

We thank you for the opportunity of making submissions on this important topic and would be keen to develop these concepts further with you as required.