



National Consumer Credit Protection Amendment Act 2010

No. 9, 2010

***An Act to amend the *National Consumer Credit
Protection Act 2009*, and for related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 9, 2010

An Act to amend the *National Consumer Credit Protection Act 2009*, and for related purposes

[Assented to 3 March 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Consumer Credit Protection
Amendment Act 2010*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

National Consumer Credit Protection Act 2009

1 Subsection 5(1) (definition of *initial National Credit Act*)

Repeal the definition.

2 Subsection 5(1) (definition of *initial Transitional Act*)

Repeal the definition.

3 Paragraph 18(1)(b)

Omit “in relation to matters to which this Act relates because those matters are referred to it”, substitute “because of a reference or an adoption”.

4 Subsection 18(1) (note)

Repeal the note.

5 Paragraph 18(4)(b)

Omit “in relation to matters to which this Act relates because those matters are referred to it”, substitute “because of a reference or an adoption”.

6 Subsections 19(1) and (2)

Repeal the subsections, substitute:

Meaning of referring State

- (1) A State is a *referring State* if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:
- (a) has referred the matters covered by subsections (3) and (4) to the Commonwealth Parliament; or
 - (b) has:
 - (i) adopted the relevant version of this Act and the relevant version of the Transitional Act; and
 - (ii) referred the matter covered by subsection (4) to the Commonwealth Parliament.

- (2) A State is a *referring State* even if the State's referral law provides that:
- (a) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (4) is to terminate in particular circumstances; or
 - (b) the adoption of the relevant version of this Act or the relevant version of the Transitional Act is to terminate in particular circumstances; or
 - (c) the reference to the Commonwealth Parliament of the matter covered by subsection (4) does not include:
 - (i) the matter of making provision with respect to the imposition or payment of State taxes, duties, charges or other imposts, however described; or
 - (ii) the matter of making provision with respect to the general system for the recording of estates or interests in land and related information; or
 - (iii) the matter of providing for the priority of interests in real property; or
 - (iv) the matter of making a law that excludes or limits the operation of a State law, to the extent that the State law makes provision with respect to the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right; or
 - (d) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (4) has effect only:
 - (i) if and to the extent that the matter is not included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under section 51(xxxvii) of the Constitution); or
 - (ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

7 Subsection 19(3)

Omit "initial National Credit Act and the initial Transitional Act", substitute "relevant version of this Act and the relevant version of the Transitional Act".

Note: The heading to subsection 19(3) is replaced by the heading "*Reference covering the relevant versions of this Act and the Transitional Act*".

8 Subsection 19(4)

Omit “the referred credit matters (see section 20) to the extent of the making of laws with respect to those matters”, substitute “a referred credit matter (see section 20) to the extent of the making of laws with respect to that matter”.

9 Subsection 19(5)

Repeal the subsection, substitute:

Effect of terminating reference or adoption of relevant versions

- (5) A State ceases to be a *referring State* if:
- (a) in the case where the Parliament of the State has referred to the Commonwealth Parliament the matters covered by subsection (3)—that reference terminates; or
 - (b) in the case where the Parliament of the State has adopted the relevant version of this Act and the relevant version of the Transitional Act—the adoption of the relevant version of this Act or the relevant version of the Transitional Act terminates.

Note: The following heading to subsection 19(6) is inserted “*Effect of terminating amendment reference*”.

10 Subsection 19(8)

Insert:

forfeiture means confiscation, seizure, extinguishment, cancellation, suspension or any other forfeiture.

11 Subsection 19(8) (definition of *amendment reference*)

Omit “matters”, substitute “matter”.

12 Subsection 19(8) (definition of *initial reference*)

Repeal the definition.

13 Subsection 19(8)

Insert:

referral law, of a State, means the Act of the State that refers the matter covered by subsection (4) to the Commonwealth Parliament.

14 Subsection 19(8) (paragraphs (a) and (b) of the definition of referred provisions)

Repeal the paragraphs, substitute:

- (a) the relevant version of this Act; and
- (b) the relevant version of the Transitional Act;

15 Subsection 19(8)

Insert:

relevant version of the Transitional Act means the Transitional Act as originally enacted.

16 Subsection 19(8)

Insert:

relevant version of this Act means:

- (a) if, at the time the State's referral law was enacted, this Act had not been enacted—this Act as originally enacted; or
- (b) otherwise—this Act as originally enacted, and as later amended by the *National Consumer Credit Protection Amendment Act 2010*.

17 Subsection 19(8)

Insert:

State law means:

- (a) any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time; or
- (b) the general law, being the principles and rules of common law and equity to the extent that they have effect in the State from time to time.

18 Subsection 19(8)

Insert:

State statutory right means a right, entitlement or authority that is granted by or under any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from

time to time, other than a right, entitlement or authority that relates to:

- (a) credit covered by paragraph (a) of the definition of *referred credit matter*; or
- (b) a consumer lease covered by paragraph (b) of that definition.

19 Subsection 20(2)

Omit “initial National Credit Act”, substitute “relevant version of this Act (within the meaning of subsection 19(8))”.

*[Minister’s second reading speech made in—
House of Representatives on 10 February 2010
Senate on 24 February 2010]*

(25/10)
