Speech by

Ray Stevens

MEMBER FOR MERMAID BEACH

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CREDIT (COMMONWEALTH POWERS) BILL

Mr STEVENS (Mermaid Beach—LNP) (2.42 pm): I rise to speak to the Credit (Commonwealth Powers) Bill 2009. This is yet another bill that will transfer Queensland powers to the Commonwealth of Australia. The Credit (Commonwealth Powers) Bill 2009 seeks to repeal the Credit Act 1987, the Consumer Credit (Queensland) Act 1994, the Consumer Credit Code, the Consumer Credit (Queensland) Special Provisions Regulation 2008 and the Consumer Credit Regulation 1995. As this takeover by the Commonwealth is divided into two phases, Queensland will continue to look after the Credit (Rural Finance) Act 1996. The Credit (Commonwealth Powers) Bill 2009 will have consequential amendments to the following: the Bills of Sale and Other Instruments Act 1955, the Credit (Rural Finance Act) 1997, the Forestry Act 1959, the Legal Aid Queensland Act 1997, the Mineral Resources Act 1989, the Police Powers and Responsibilities Act 2000 and the Property Agents and Motor Dealers Act 2000—the PAMDA.

I now turn to the background of credit and credit laws in Australia and the significant change that has happened since their inception. As we know, credit is the providing of resources, such as a loan, by one party, usually a bank or a financial institution or a credit card provider. This loan or debt is generated and arrangements are made to repay or return resources at a later date. The creditor or lender of the resource, or money, enters into a business relationship with the borrower with credit transferred from one party to the other. In turn, credit is dependent on the reputation or creditworthiness of the entity that takes responsibility for the funds.

Credit need not necessarily be based on formal monetary systems. The credit concept can be applied in barter economies based on the direct exchange of goods and services. Some would go so far as to suggest that the true nature of money is best described as a representation of the credit-debt relationship that exists in society. There are a variety of forms of credit. However, the most familiar is consumer credit. Consumer credit is defined as money, goods or services provided to an individual in lieu of payment for the goods or service. Consumer credit can include motor vehicle finance, personal loans, retail loans and open-ended credit mechanisms such as credit cards. In relation to mortgages and the size of the mortgage market, some financial definitions exclude mortgages but, for the purpose of this bill, the mortgage market will be included.

We have unique arrangements with our financial system in Australia and, because of that and the accumulated surplus that was left by the Howard government, we are currently weathering the global financial crisis much better than are other countries across the world. The global financial crisis has seen a significant change in direction on the availability of credit across the globe. As we know, that change in direction has led to many major businesses finding it very difficult to obtain credit for developments—and I particularly mention developments in the Gold Coast area—and the continuation of their businesses. Owing to Australia's four pillars policy, this situation exists throughout our banking industry. With Lehman Brothers being the first of many major financial firms in the US to go down the tube because of the subprime mortgage collapse, with financial institution after financial institution following, we will never, ever be able to obtain credit so easily ever again—and one would hope that that would be the case. That has changed the way in which the global financial system operates, with many reforms challenging the way in which credit is available.

In Queensland we have not been immune from the effects of the global financial crisis. Because successive Queensland Labor governments have been unable to manage the state's finances and prepare for unforeseen economic circumstances, this state has found itself with absolutely no money left in the kitty. Therefore, Queensland will end up, like America, depending on China for credit in the form of debt which, at this point, is supposedly at $85.5 billion to the Queensland public. Queensland's economic outlook looks bleak and the figures speak for themselves. That is why it will be time for a change—time for the Liberal National Party to govern in Queensland at the next election with astute financial planning and the implementation of strategic financial—

Mr DEPUTY SPEAKER (Mr Hoolihan): Order! Perhaps the member for Mermaid Beach could indicate to me what part of the bill refers to the future government of Queensland.

Mr STEVENS: I am talking about credit provision. I will move on.

Mr DEPUTY SPEAKER: Perhaps you could come back to the bill and the reference to the Commonwealth.

Mr STEVENS: I will move on. The history of credit laws in Australia gave way to reforms that came out of the Molomby committee in 1972-73, which proposed the establishment of a uniform approach to the regulation of credit in Australia. At the time, the Standing Committee of Attorneys-General established a credit laws committee, comprised of state and Commonwealth representatives and three members of the original Molomby committee. That committee was tasked with the development of consumer credit legislation for all states and territories.

The implementation of consumer credit legislation across the states and the territories was haphazard. It took a 10-year period—from the beginning of the 1980s—for all the states and the territories to implement credit legislation. New South Wales and Victoria started and by the end of the decade the Australian Capital Territory, Western Australia and Queensland had followed. The problems that were associated with this initial set-up of credit legislation were the lack of consistency in general; the lack of uniformity in essential areas; the lack of consistency between the various pieces of state and territory legislation, which became an increasing problem; the limited scope of the legislation, meaning that not all credit providers were covered; that it did not cover building societies; that it did not cover credit unions; and that it did not cover a range of products, including housing finance.

As a result of this sporadic approach there was a major need for all states and territories to agree on the direction of credit legislation. An agreement was made called the Australian Uniform Credit Laws Agreement 1993. This agreement was made on 30 July 1993 between all the states and the territories and stated particularly—

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.

Bear in mind that this was the mission statement back in 1993. This bill that we adopt today will head exactly in that same direction. At this point it was Queensland that led the way for significant reform by introducing the Consumer Credit (Queensland) Bill 1994 that contains the Consumer Credit Code, which was adopted by other states and territories and became known as the uniform Consumer Credit Code, which is applicable right across Australia. The uniform Consumer Credit Code sets guidelines for the provision of credit transactions, limits wage garnishment and protects consumers from predatory lenders. The UCCC requires lenders to disclose loan terms to borrowers and oversees some debt collectors. It establishes the maximum amount that borrowers may be charged for credit and makes it unlawful for lenders to discriminate on any basis that is covered by the anti-discrimination laws when extending credit.

In some states there emerged dissimilar credit licensing schemes which were poles apart and affected consistency across the nation. As stated in the explanatory notes in March 2008, the Council of Australian Governments committed to a comprehensive micro-economic reform program, including a regulatory reform agenda, to help deliver significant improvements in Australia's competition, productivity and international competitiveness. This decision started the current legislative arrangements and development and implementation of a national consumer credit protection system and code.

The transfer of the powers from the states and territories to the Commonwealth has resulted in the development of the major federal bill called the National Consumer Credit Protection Bill 2009, commonly called the credit bill, and two other bills that together directly relate and have consequential amendments called the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009, the transitional bill, and the National Consumer Credit Protection (Fees) Bill 2009, the fees bill.

These pieces of proposed legislation were referred to as the consumer credit protection package. This package will be introduced in two phases. Along with the implementation of a national consumer credit protection scheme, there are four main components to the legislative reforms in phase 1. Firstly, an Australian credit licence regime is to be administered by the Australian Securities and Investments Commission, ASIC, for those engaging in credit activities. As we know, ASIC is Australia's corporate,

markets and financial services regulator. Secondly, there will be industry-wide responsible lending conduct requirements for licensees as set out in that national legislation, and there will be improved sanctions and enhanced enforcement powers for the regulator, ASIC, giving it more power, and enhanced dispute resolution mechanisms, court arrangements and remedies for consumer protection and an expanded scope for the National Credit Code to include credit provided to purchase, renovate, improve or refinance a residential investment property.

Phase 2, which will not commence until 1 July 2011, will deal with 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. It will also include 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, and examination of remaining existing state and territory reform packages.

Particularly focusing on the Australian credit licensing scheme, which will be a requirement under this proposed legislation to be implemented in the form of a national licensing regime to regulate the credit industry, this new licensing regime is completely separate from the financial regulations already in place under the Federal Corporations Act 2001. The main points in the new licensing regime are that the regime requires all persons engaged in credit business activities to be registered with ASIC and to hold an Australian credit licence. It requires that a refusal of licence can be made by ASIC if persons do not meet the minimum standards required under that licence. It also outlines that there is an ongoing requirement to persons or businesses to continue to meet these entry standards and that power is given to ASIC to cancel or suspend a licence if deemed necessary.

A person has a defence or exemption from holding a licence if the person's conduct is within the authority of the licence, the person themselves is either an employee or a director of the licence or related body corporate of the licence or a credit representative of the licensee.

What has not been identified in the proposed new national regime is the cost associated to providers in procuring these new licences. Perhaps the minister can advise the envisaged cost to credit providers in the initial instance and if there is a limitation as to how high the federal government can go as it tries to recoup operating costs over the years ahead with these licensing fees. Whatever increased costs are placed on the industry will be passed through to the consumer. The little Queensland battler will be shafted again, perhaps, under a different Labor Party taxing regime.

I think it is also relevant to note that any lodgement fee structure that imposes an unsustainable burden on those who can least afford it will result in a section of the Queensland population being denied access to credit provision. It is obvious that those who can least afford it will provide a greater credit risk and therefore will be the subject of higher interest rates than the normal borrower would expect to pay.

In explaining that portion of the question that I am asking the minister, it is very similar to the current state of Queensland's finances, where Queensland is now paying a higher interest rate because of its downgraded credit rating. Of course, we can only thank the gross mismanagement of Labor governments for this unfortunate predicament we find ourselves in. We cannot blame the global financial crisis as other states are paying less in interest payments because their credit rating is higher than Queensland's.

The next major initiative in the National Consumer Protection Bill 2009 relates to responsible lending conduct which proposes an expected standard of behaviour for people who hold an Australian credit licence. This is to ensure that when licensees enter into consumer credit contracts or leases that they are acting appropriately and in the best interests of both parties and do not enter into a contract that is not appropriate for the consumer. Breaches of responsible lending conduct can include criminal penalties with up to two years imprisonment and civil penalties of up to 2,000 penalty units.

Another question the minister can answer relates to the definition under this new national regime of 'substantial hardship' for consumers who cannot afford to service their loan responsibilities. 'Substantial' is such an indeterminate word and may refer to someone not being able to service their loan because each day they enjoy six beers, two packets of ciggies and a few losing bets at the TAB. Can the minister please explain what 'substantial hardship' means for these purposes?

The third major initiative will give more power to ASIC in the form of sanctions, enforcement powers and consumer protection. ASIC will be able to seek a court declaration of contravention for a civil penalty and to seek a pecuniary penalty. ASIC will also be given power to issue permit infringement notices. There will be civil penalties for any breach or subsequent loss to the consumer. From the briefing notes I note that the rush to protect consumers is, in part, driven by the rise in the number of consumer complaints about unscrupulous lenders and brokers. For the benefit of the House, I ask the minister to quantify this rise in either a quantity figure or a percentage rate increase. I also note that one unscrupulous practice was to sidestep the Consumer Protection Code by declaring the loan was for business purposes. Could the minister provide the House with direction as to how the new Commonwealth legislation addresses that

particular scam? In raising these pertinent issues, I add that this side of the House unquestionably supports the upgrading of enforcement powers to ASIC to eradicate, as much as possible, the bad elements that this industry unfortunately seems to attract. I am sure quality industry participants would also deem that to be positively desirable.

Another focus is dispute resolution, where consumers will have access to a three-tiered dispute resolution process with location, procedural simplicity and lower costs a priority. Licensees or credit card providers are also required to be a member of an ASIC approved external dispute resolution scheme, or an EDR scheme. Could the minister explain to the House the amount of savings to the Queensland government envisaged under section 4 of the NCCP through the enforcement of sanctions and remedies by ASIC that will relieve the Office of Fair Trading of a substantial amount of legal work and corresponding costs?

The National Credit Code will be expanded to include the provision of credit for investment properties, and will replicate and expand the uniform Consumer Credit Code that was originally implemented by the states and territories. The latest Reserve Bank of Australia data indicates that, as at the end of September 2009, Australia has $45.139 billion of credit card debt, with owner-occupied housing mortgage debt of $740.1 billion and investment housing mortgage debt of $316.7 billion, with other personal debt of $135.7 billion and business debt of $721.9 billion. Consumer debt is one of the leading indicators of growth in the economy and the growth of the Australian economy is steady.

As I have stated before in my speech, Queensland was the first state to implement a uniform consumer credit code, which was adopted by other states and territories. To implement this COAG decision the federal government has provided $70.2 million over a four-year period. The funding will be primarily for the establishment of the national licensing regime for providers of credit and credit facilities. ASIC will be the sole national regulator.

Industry consultation tells me that some are unhappy about the state regulations and laws staying in force until 2011, which is the start of the second part of the phase-in of this new federal legislation. This delay will cause confusion and inconsistency until the national scheme comes into force.

I move to some concerns that have been raised by the Scrutiny of Legislation Committee. The first area that was raised by the committee was whether the bill had sufficient regard to the rights and liberties of individuals. It stated—

Clause 25 which may affect rights of individuals to information privacy

This is a concern whereby the transfer of information and documents to the Australian Securities and Investments Commission will be one of the provisions of this legislation and this may impinge on the rights of an individual or a business. This transfer of information provision may impact on requirements under the Legislative Standards Act 1992, which states that legislation shall have sufficient regards to the rights and liberties of individual privacy. The committee also expressed concern with clause 29, which contains an offence provision, whether there are sufficient regards to the rights and liberties of individuals. By entering into a new credit card contract exceeding the maximum annual percentage rate, the maximum penalty is 100 penalty units. Clause 26 looks at the issue that ASIC would be conferred with administrative power that may not be sufficiently defined or subject to appropriate review. There is a concern, as there needs to be an avenue for appropriate review of the power of ASIC and whether there needs to be changes in the future. The Scrutiny of Legislation Committee goes on to say that these powers are not stated to be confined.

I bring further reservations to the minister's attention. First of all, I ask the minister how much is in the state consumer credit fund? I note that this will be transferred to the Commonwealth as part of the transition of the legislation. The fund will be transferred to a general fund to allow payments to be made for purposes specified in clause 16 as approved by the chief executive. The money will also be used for engaging with consumers, policy research and legal fees incurred by the chief executive. However, I am told that these fees will continue until the whole reserve or the fund is used up. Depending on how much the minister advises is in that fund, if there are amounts left over at the end of all of those issues being resolved and it finally becomes the province of the Commonwealth government, what will happen to the residual of the funds?

I raise the issue of the 48 per cent interest rate cap. I would like to ensure that it will not be extended and made harsher, as it is usually lower income earners who utilise high percentage forms of credit and those consumers need to be protected. As the interest rate cap issue will not be addressed until phase 2 of the implementation plan, can the minister ensure that there will be no changes to it that will be to the detriment of consumers? I note that New South Wales is retaining its 48 per cent cap until 1 July 2011. Will that be the intention of this state government as well?

One of the most important areas I would focus on is the issue of access to credit of low-income earners. Low-income earners must still have access to available credit and we must ensure that this legislation does not disadvantage this sector of the credit market. Low-income earners need to have

access to short-term financial products. Mostly, those people require short-term financial credit assistance more than other Queensland taxpayers. While we recognise the need to regulate the credit industry to protect consumers from dodgy and unscrupulous financial credit providers, we are determined to ensure that the providers of the credit are not inhibited by bureaucratic and demonstratively overburdening legislation that denies credit access to Queensland battlers who need it most.

I now move to the reservations that the federal shadow minister for financial services, superannuation and corporate law, the Hon. Chris Pearce, raised in his speech on 20 August 2009. He raised the following issues which are of importance. The legislation must ensure that the 'licensing arrangements are not prohibitive for business, as these requirements are significant in the volume and the impact that they will have on the national marketplace'. He also raised the fact that the 'government exempt companies which provide director loans in the same manner that they have exempted employees receiving loans from their employers'. And he had reservations about 'responsible lending' and the workability of this package with regard to the credit reporting structure.

The member for Aston highlighted that the Australian Law Reform Commission reviewed the credit reporting system in its report *For your information: Australian privacy law and practice* and recommended that there should be expansion of the categories of personal information that can be included in credit reporting information held by credit reporting agencies. These suggestions were: the type of each current credit card opened—for example, mortgage, credit card or personal loan; the date on which each current credit account was opened; the credit limit; and the date on which each current account was closed.

Before the National Consumer Credit Protection Amendment Bill 2010, reintroduced and passed on 25 February 2010, there were a number of amendments moved to enhance the original bill. These were introduced and referred to in all bills in the package and included: deferred commencement of the reform package; certain definitions; provisions that bind the Crown; provisions to incorporate the revised implementation timetable; exemptions and defences available for registration and licensing; the reviewability of Australian Securities and Investments Commission decisions by the Administrative Appeals Tribunal; adjustments to exemptions to licensing, responsible lending conduct obligations and the National Credit Code; the removal of the statutory ability of credit providers to rely on preliminary assessments; clarification of the operation of certain remedy provisions; allowing regulations to be made in relation to interest for credit provided for investment and residential property; the requirement for credit providers to give reasons when not agreeing to hardship variations and stays of enforcements; and the correction of minor technical and grammatical errors.

I understand, from the amendments that are coming forward that the minister made me aware of very recently, that we are changing from the current referral practice to an adoption practice for this bill which does not materially affect the outcome of the legislation we are introducing here today but, under the federal Constitution, affects the manner in which these powers are passed to the Commonwealth. We are supportive of this adoption process, although it is quite convoluted for a layman—as opposed to the brilliant legal mind of the minister—to understand and to get my head around the capacities to adopt this legislation in this new form. We are supportive. We do support what they call the 'carve-out' amendments that are included in the amendments that the minister will be moving. I understand there are some numbering matters that will also be included in the amendments to come in consideration of the clauses.

From our point of view, this legislation is effective in going across to the Commonwealth for implementation. We believe there are advantages to the consumer to have a Commonwealth adopted defence mechanism for consumer credit. We also support the fact that there is an expectation from this side of the House and also from all of those involved in the industry that having ASIC involved as a watchdog, if you like, will give increased powers to a better consumer credit protection regime, and that is what we are hoping to achieve by the passing of this legislation today.

In conclusion, I would like to reinforce the position of the opposition and say that a national consumer credit code system will have a beneficial influence on the credit and financial industries and will help protect consumers but also allow for regulations but not to the detriment of credit provider services. We commend the bill to the House.