



New South Wales

Consumer Credit (New South Wales) Special Provisions Regulation 1996

under the

Consumer Credit (New South Wales) Act 1995

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Consumer Credit (New South Wales) Act 1995*.

FAYE LO PO' MP

Minister for Fair Trading

Explanatory note

The object of this Regulation is:

- (a) to prescribe the jurisdiction of the Commercial Tribunal, courts and Consumer Claims Tribunals under the *Consumer Credit (New South Wales) Code*, and
- (b) to set a maximum annual percentage rate for credit contracts to which that Code applies, and
- (c) to make a transitional provision relating to the application of the *Credit (Home Finance Contracts) Act 1984*.

This Regulation comprises or relates to matters of a machinery nature and to matters arising under legislation that is substantially uniform or complementary with legislation of other States.

This Regulation is made under the *Consumer Credit (New South Wales) Act 1995*, including section 15 (the general regulation-making power) and sections 8 and 11.

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Consumer Credit (New South Wales) Special Provisions Regulation 1996

Part 1 Preliminary

1 Name of Regulation

This Regulation is the Consumer Credit (New South Wales) Special Provisions Regulation 1996.

2 Commencement

This Regulation commences on 1 November 1996.

3 Definitions

In this Regulation:

the Act means the Consumer Credit (New South Wales) Act 1995.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Judicial functions

5 Conferral of judicial functions

(1) Exclusive jurisdiction of the Commercial Tribunal

The jurisdiction prescribed for the purposes of section 8(1)(a) of the Act is:

- (a) any jurisdiction under section 69, 83 (1), 89, 100–114 or 162 of the Code, and
- (b) any jurisdiction under section 36 (6) of the Code in relation to an application made by a credit provider.

(2) **Jurisdiction of consumer claims tribunals**

The jurisdiction prescribed for the purposes of section 8 (1) (c) of the Act is:

- (a) any jurisdiction under section 34 (5), 35, 36 (7), 47 (3), 68, 72, 77, 88, 155 (but only in relation to the application of section 68), 157 or 174 of the Code, and
- (b) any jurisdiction under section 36 (6), 44 (4), 79 or 98 of the Code in relation to an application made by a debtor, mortgagor or guarantor.

Note. The Commercial Tribunal has concurrent jurisdiction with ordinary courts of competent jurisdiction for matters not within the exclusive jurisdiction of the Commercial Tribunal referred to in subclause (1) — see section 8 (1) (b) of the Act.

6 Transfer of proceedings

- (1) If all the parties so agree or the Commercial Tribunal of its own motion or on the application of a party so directs, proceedings instituted in or before the Commercial Tribunal must be transferred to a court that has jurisdiction in the matter in accordance with the rules of that court and are to continue before that court as if they had been instituted there.
- (2) If all the parties so agree or a court of its own motion or on the application of a party so directs, proceedings instituted in or before the court for a matter for which the Commercial Tribunal has jurisdiction must be transferred to the Commercial Tribunal in accordance with the rules of the Commercial Tribunal and are to continue before the Commercial Tribunal as if they had been instituted there.
- (3) If all the parties so agree or a consumer claims tribunal of its own motion or on the application of a party so directs, proceedings instituted in or before the consumer claims tribunal for a matter for which the Commercial Tribunal has jurisdiction must be transferred to the Commercial Tribunal in accordance with the rules of the Commercial Tribunal and are to continue before the Commercial Tribunal as if they had been instituted there.
- (4) If all the parties so agree or the Commercial Tribunal of its own motion or on the application of a party so directs, proceedings instituted in or before the Commercial Tribunal for a matter for

which a consumer claims tribunal has jurisdiction must be transferred to a consumer claims tribunal in accordance with the regulations made under the *Consumer Claims Tribunals Act 1987* and are to continue before the consumer claims tribunal as if they had been instituted there.

- (5) Proceedings in relation to a matter instituted in or before the Commercial Tribunal under section 19, 120, 121 or 122 of the Code must be transferred to an appropriate court having jurisdiction in the matter unless the proceedings relate to other proceedings instituted in or before the Commercial Tribunal.

Part 3 Maximum interest rate

7 Maximum annual percentage rate

The maximum annual percentage rate for a credit contract to which the Code applies is 48 per cent

Note. This clause is made pursuant to section 11 of the Act. The effect of a contravention of this clause is set out in that section. The maximum interest rate is not part of the uniform provisions of the Code in Australia.

Part 4 Savings and transitional provisions

8 Credit (Home Finance Contracts) Act 1984

- (1) The *Credit (Home Finance Contracts) Act 1984* ceases to apply to a home finance contract (within the meaning of that Act), or to a mortgage or guarantee that relates to any such contract, on and from the date on which the home finance contract becomes a credit contract to which the Code applies.
- (2) This clause does not affect anything duly done in connection with such a contract before that date under the *Credit (Home Finance Contracts) Act 1984*.
- (3) Pursuant to section 14 (2) of the Act, this clause has effect despite the amendments made to the *Credit (Home Finance Contracts) Act 1984* by Schedule 1.3 to the Act.