



New South Wales

Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005 No 86

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Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005 No 86

Act No 86, 2005

An Act to amend the *Consumer Credit (New South Wales) Act 1995* and the *Consumer Credit (New South Wales) Special Provisions Regulation 2002* with respect to the inclusion of fees and charges in the calculation of maximum annual percentage rates for credit contracts; and for other purposes. [Assented to 17 November 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Consumer Credit (New South Wales) Act 1995 No 7

The *Consumer Credit (New South Wales) Act 1995* is amended as set out in Schedule 1.

4 Amendment of Consumer Credit (New South Wales) Special Provisions Regulation 2002

The *Consumer Credit (New South Wales) Special Provisions Regulation 2002* is amended as set out in Schedule 2.

Schedule 1 Amendment of Consumer Credit (New South Wales) Act 1995

(Section 3)

[1] Section 10B Disclosure of cost of credit as annual percentage rate

Omit section 10B (1).

[2] Section 11

Omit the section. Insert instead:

11 Maximum annual percentage rate

- (1) The regulations may prescribe a maximum annual percentage rate for a credit contract or class of credit contracts to which the *Consumer Credit (New South Wales) Code* applies.
- (2) The regulations may require interest charges and all credit fees and charges under a credit contract or class of credit contracts to be included for the purpose of calculating the maximum annual percentage rate under the credit contract for the purposes of subsection (1).
- (3) Division 2 of Part 2 of the *Consumer Credit (New South Wales) Code* applies in relation to such a maximum annual percentage rate as if that rate had been prescribed by that Code.
Note. The effect of subsection (3) is that a contract is void to the extent it imposes a monetary liability prohibited under subsection (1) and that any amount paid under the contract may be recovered. In addition the credit provider is guilty of an offence for entering into such a contract.
- (4) Nothing in this section affects the powers of the Court under Division 3 of Part 4 of the *Consumer Credit (New South Wales) Code* in relation to a contract that is not, by reason of this section, void.
Note. Division 3 of Part 4 of the Code allows (among other things) the Court to re-open unjust transactions.

[3] Section 14 Special savings and transitional regulations for New South Wales

Insert “, the *Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005*” after “the *Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Act 2001*” in section 14 (1).

Schedule 2 Amendment of Consumer Credit (New South Wales) Special Provisions Regulation 2002

(Section 4)

[1] Clause 7 Maximum annual percentage rate

Insert at the end of the clause (before the note):

- (2) For the purposes of section 11 (2) of the Act, interest charges and all credit fees and charges under a credit contract are to be included for the purpose of calculating the maximum annual percentage rate under any credit contract to which the *Consumer Credit (New South Wales) Code* applies.
- (3) The maximum annual percentage rate is to be calculated in accordance with clause 8.
- (4) Despite subclause (2), any credit fees or charges arising from the establishment or maintenance of a temporary credit facility are not required to be included for the purposes of calculating the maximum annual percentage rate if:
 - (a) the credit provider is an authorised deposit-taking institution, and
 - (b) the debtor has or had an existing credit contract or debit account with the authorised deposit-taking institution at the time the temporary credit facility is or was established, and
 - (c) the temporary credit facility is related to the existing credit contract or debit account.
- (5) In this clause, a *temporary credit facility* includes, but is not limited to, an overdraft facility and a short term extension of the total amount of credit available under an existing credit contract.

[2] Clause 8 Maximum annual percentage rate for certain credit contracts

Omit clause 8 (1) and (8).

[3] Clause 8 (2)

Omit the subclause. Insert instead:

- (2) For the purposes of calculating the maximum annual percentage rate under a credit contract, the rate must be calculated as a nominal rate per annum, together with the compounding frequency, in accordance with this clause.

[4] Clause 8 (5)

Insert “precise” before “calculation”.

[5] Clause 8 (6A)

Insert after clause 8 (6):

(6A) If the credit contract is a continuing credit contract (within the meaning of the *Consumer Credit (New South Wales) Code*), the following assumptions also apply to the calculation of the maximum annual percentage rate:

- (a) that the debtor has drawn down the maximum amount of credit that the credit provider has agreed to provide under the contract,
- (b) that the debtor will pay the minimum repayments specified in the contract,
- (c) if credit is provided in respect of payment by the credit provider to a third person in relation to goods or services or cash supplied by that third person to the debtor from time to time—that the debtor will not be supplied with any further goods or services or cash,
- (d) if credit is provided in respect of cash supplied by the credit provider to the debtor from time to time—that the debtor will not be supplied with any further cash.

[6] Clause 9 Short term credit

Omit the clause.

[7] Clause 10 Disclosure of cost of credit as annual percentage rate

Omit the clause.

[8] Part 4, heading

Omit the heading. Insert instead:

Part 4 Transitional provisions

[9] Clause 12

Insert after clause 11:

12 Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005

- (1) An amendment made by the *Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005* applies to a credit contract whether the credit contract was established before or after the commencement of the amendment.
- (2) This clause does not affect anything duly done in connection with such a contract before the commencement of any such amendment.
- (3) Despite subclause (1), the *Consumer Credit (New South Wales) Special Provisions Regulation 2002* (as in force immediately before the commencement of Schedule 2 [1] to the *Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005*) continues to apply in respect of a credit contract if the credit contract was established before that commencement.
- (4) However, subclause (3) ceases to have effect in respect of a credit contract and the method prescribed for calculating the maximum annual percentage rate in clauses 7 and 8 applies if, after that commencement:
 - (a) the interest charges or credit fees or charges under the contract are increased, or a new fee or charge is imposed (whether or not such an increase is made, or a new fee or charge is imposed, pursuant to the provisions of the contract), or
 - (b) the period of the credit contract is extended (whether or not pursuant to the provisions of the contract), other than under section 66 of the *Consumer Credit (New South Wales) Code*.

[Second reading speech made in—
Legislative Assembly on 19 October 2005
Legislative Council on 9 November 2005]

BY AUTHORITY