



New South Wales

Consumer Credit (New South Wales) Special Provisions Regulation 2002

under the

Consumer Credit (New South Wales) Act 1995

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

JOHN AQUILINA, M.P.,

Minister for Fair Trading

Explanatory note

The object of this Regulation is to replace the *Consumer Credit (New South Wales) Special Provisions Regulation 1996*. The new Regulation:

- (a) confers jurisdiction on the Consumer, Trader and Tenancy Tribunal in relation to certain matters under the *Consumer Credit (New South Wales) Code*, and
- (b) provides for the transfer of proceedings under that Code, and
- (c) prescribes the maximum annual percentage rates for a credit contract to which the Code applies and for certain short term credit contracts, and
- (d) provides for short term credit contracts to be subject to requirements relating to disclosure of maximum annual percentage rates and the cost of credit, and
- (e) makes a transitional provision.

This Regulation is made under the *Consumer Credit (New South Wales) Act 1995* and in particular under section 8 (Conferral of judicial functions), section 10B (Disclosure of cost of credit as annual percentage rate), section 11 (Maximum annual percentage rate), section 14 (Special savings and transitional regulations for New South Wales) and section 15 (the general regulation-making power).

This Regulation comprises matters arising under legislation that is substantially uniform or complementary with legislation of other States.

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Consumer Credit (New South Wales) Special Provisions Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Consumer Credit (New South Wales) Special Provisions Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Definition

In this Regulation:

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

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

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Clause 5 Consumer Credit (New South Wales) Special Provisions Regulation 2002

Part 2 Judicial functions

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5 Conferral of judicial functions

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.

Note. The Consumer, Trader and Tenancy Tribunal has concurrent jurisdiction with ordinary courts of competent jurisdiction for matters not within the exclusive jurisdiction of the Tribunal referred to in this clause—see section 8 (1) (b) of the Act.

6 Transfer of proceedings

- (1) If all the parties so agree, or the Tribunal of its own motion or on the application of a party so directs, proceedings instituted in or before the 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 Tribunal has jurisdiction must be transferred to the Tribunal in accordance with the rules of the Tribunal and are to continue before the Tribunal as if they had been instituted there.
- (3) Proceedings in relation to a matter instituted in or before the Tribunal under section 119, 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 Consumer, Trader and Tenancy Tribunal.
- (4) In this clause:

Tribunal means the Consumer, Trader and Tenancy 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.

8 Maximum annual percentage rate for certain short term credit contracts

- (1) For the purposes of section 11 (1A) of the Act, interest charges and all credit fees and charges under a short term credit contract are to be included for the purpose of calculating the maximum annual percentage rate under a short term credit contract. For that purpose, the maximum annual percentage rate under a short term credit contract is to be calculated in accordance with subclauses (2)–(7).
- (2) The maximum annual percentage rate must be calculated as a nominal rate per annum, together with the compounding frequency, in accordance with this clause.
- (3) The maximum annual percentage rate is given by the following formula:

$$i = n r 100\%$$

where:

n is the number of repayments per annum to be made under the credit contract annualised, except that:

- (a) if repayments are to be made weekly or fortnightly—*n* is to be 52.18 or 26.09, respectively, and
- (b) if the contract does not provide for a constant interval between repayments—*n* is to be derived from the interval selected for the purposes of the definition of *j* mentioned below.

r is the solution of the following:

$$\sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

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Clause 8 Consumer Credit (New South Wales) Special Provisions Regulation 2002

Part 3 Maximum interest rate

where:

j is the time, measured as a multiple (not necessarily integral) of the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract, except that if the contract does not provide for a constant interval between repayments an interval of any kind is to be selected by the credit provider as the unit of time.

t is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected), that will elapse between the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract.

A_j is the amount of credit to be provided under the contract at time *j* (the value of *j* for the provision of the first amount of credit is taken to be zero).

R_j is the repayment to be made at time *j*.

C_j is the fee or charge (if any) payable by the debtor at time *j* (*j* is taken to be zero for any such fee or charge payable before the time of the first amount of credit provided) in addition to the repayments *R_j*, being a credit fee or charge that is ascertainable when the annual percentage rate is calculated.

- (4) The maximum annual percentage rate must be correct to at least the nearest one hundredth of 1% per annum.
- (5) In the application of the above formulae, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a calculation.
- (6) The tolerances and assumptions under sections 158–160 of the Code apply to the calculation of the maximum annual percentage rate.
- (7) For the purposes of the maximum annual percentage rate:
 - (a) the amount of credit is to be the amount (or the maximum amount) required by the debtor, and
 - (b) the term for which credit is provided is to be the term (or the maximum term) required by the debtor.
- (8) In this clause:

short term credit contract has the same meaning as it has in section 11 of the Act.

9 Short term credit

For the purposes of section 11 of the Act, a contract for the provision of credit limited to a total period that does not exceed 62 days and that is not exempted from the Code under clause 7 (1) of the Code is a short term credit contract.

10 Disclosure of cost of credit as annual percentage rate

For the purposes of section 10B (1) of the Act, a contract for the provision of credit limited to a total period that does not exceed 62 days and that is not exempted from the Code under clause 7 (1) of the Code is a contract of a prescribed kind.

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Clause 11 Consumer Credit (New South Wales) Special Provisions Regulation 2002

Part 4 Transitional provision

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11 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 section 2A of the *Credit (Home Finance Contracts) Act 1984*.

BY AUTHORITY
