



New South Wales

# Consumer Credit (New South Wales) Special Provisions Regulation 2007

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*.

LINDA BURNEY, M.P.,  
Minister for Fair Trading

## Explanatory note

This Regulation remakes, without any major change in substance, the *Consumer Credit (New South Wales) Special Provisions Regulation 2002*. That Regulation will be repealed on 1 September 2007 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The object of this Regulation is to provide for the following matters:

- (a) to confer jurisdiction on the Consumer, Trader and Tenancy Tribunal in relation to certain matters under the *Consumer Credit (New South Wales) Code*,
- (b) to provide for the transfer of proceedings under that Code,
- (c) to prescribe the maximum annual percentage rate for credit contracts to which the Code applies,
- (d) to make transitional provisions.

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.

This Regulation comprises or relates to matters of a machinery nature.

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## Consumer Credit (New South Wales) Special Provisions Regulation 2007

under the

Consumer Credit (New South Wales) Act 1995

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Consumer Credit (New South Wales) Special Provisions Regulation 2007*.

#### 2 Commencement

This Regulation commences on 1 September 2007.

**Note.** This Regulation replaces the *Consumer Credit (New South Wales) Special Provisions Regulation 2002*, which is repealed on 1 September 2007 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definition

(1) In this Regulation:

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

(2) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Consumer Credit (New South Wales) Special Provisions Regulation 2007

Part 2 Judicial functions

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### Part 2 Judicial functions

#### 4 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.

#### 5 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.

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## Part 3 Maximum interest rate

### 6 Maximum annual percentage rate

- (1) The maximum annual percentage rate for a credit contract to which the Code applies is 48 per cent.
- (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 7.
- (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.

**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.

### 7 Maximum annual percentage rate for certain credit contracts

- (1) 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.

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Part 3 Maximum interest rate

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- (2) The maximum annual percentage rate is given by the following formula:

$$i = nr100\%$$

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:

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

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.

- (3) The maximum annual percentage rate must be correct to at least the nearest one hundredth of 1% per annum.

- (4) In the application of the above formulae, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.
- (5) The tolerances and assumptions under sections 158–160 of the Code apply to the calculation of the maximum annual percentage rate.
- (6) 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.
- (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.

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Clause 8 Consumer Credit (New South Wales) Special Provisions Regulation 2007

Part 4 Transitional provisions

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### Part 4 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*.

#### 9 Consumer Credit (New South Wales) Special Provisions Regulation 2002 continues to apply to certain credit contracts

- (1) The *Consumer Credit (New South Wales) Special Provisions Regulation 2002* (as in force immediately before 1 March 2006) continues to apply in respect of a credit contract if the credit contract was established before that date.
- (2) However, subclause (1) 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 date:
  - (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*.

BY AUTHORITY

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