



New South Wales

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

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Section 11 of the *Consumer Credit (New South Wales) Act 1995* (the **Principal Act**) enables a maximum annual percentage rate to be prescribed for credit contracts covered by the *Consumer Credit (New South Wales) Code* (the **Code**). The Principal Act together with the *Consumer Credit (New South Wales) Special Provisions Regulation 2002* (the **Principal Regulation**) currently set that maximum rate at 48% and provide that the calculation for determining the maximum annual percentage rate is to include interest charges and all credit fees and charges in the case of credit contracts that do not exceed 62 days. Section 10B of the Principal Act also provides that in disclosing the annual percentage rate for contracts of that duration all charges in the nature of interest charges are to be included whether or not they are described as interest charges.

The objects of this Bill are:

- (a) to amend the Principal Act to enable the making of regulations that require the calculation for determining the maximum annual percentage rate to include interest charges and all credit fees and charges for all credit contracts covered by the Code, and

- (b) to amend the Principal Act to extend the disclosure requirements in section 10B of the Act to all credit contracts covered by the Code (these disclosure requirements currently apply only to a contract for the provision of credit limited to a total period that does not exceed 62 days), and
- (c) to amend the Principal Regulation to provide that interest charges and all credit fees and charges are to be included for the purposes of calculating the maximum annual percentage rate for all credit contracts covered by the Code (with the exception of certain temporary credit facilities provided by authorised deposit-taking institutions), and
- (d) to amend the Principal Regulation to provide for additional assumptions that are to apply when calculating the maximum annual percentage rate for continuing credit contracts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Principal Regulation set out in Schedule 2.

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

Schedule 1 [1] amends section 10B of the Principal Act, to extend the disclosure requirements in that section to all credit contracts covered by the Code. The current disclosure requirements apply only to a contract for the provision of credit limited to a total period that does not exceed 62 days.

Schedule 1 [2] substitutes section 11 of the Principal Act, to enable the making of regulations that require the calculation for determining the maximum annual percentage rate to include interest charges and all credit fees and charges for all credit contracts covered by the Code.

Schedule 1 [3] amends section 14 of the Principal Act to enable the making of regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

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

Schedule 2 [1] inserts proposed clause 7 (2)–(5) into the Principal Regulation, to provide that interest charges and all credit fees and charges are to be included for the purposes of calculating the maximum annual percentage rate for all credit contracts covered by the Code (with the exception of certain temporary credit facilities provided by authorised deposit-taking institutions).

Schedule 2 [2]–[4] and [6]–[8] contain consequential amendments.

Schedule 2 [5] inserts proposed clause 8 (6A) into the Principal Regulation, to provide for additional assumptions that are to apply when calculating the maximum annual percentage rate for continuing credit contracts.

Schedule 2 [9] applies the amendments to existing credit contracts.

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No. , 2005

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Consumer Credit (New South Wales) Act 1995 No 7	7
The <i>Consumer Credit (New South Wales) Act 1995</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Consumer Credit (New South Wales) Special Provisions Regulation 2002	10 11
The <i>Consumer Credit (New South Wales) Special Provisions Regulation 2002</i> is amended as set out in Schedule 2.	12 13

Schedule 1	Amendment of Consumer Credit (New South Wales) Act 1995	1
		2
	(Section 3)	3
[1]	Section 10B Disclosure of cost of credit as annual percentage rate	4
	Omit section 10B (1).	5
[2]	Section 11	6
	Omit the section. Insert instead:	7
	11 Maximum annual percentage rate	8
	(1) The regulations may prescribe a maximum annual percentage rate for a credit contract or class of credit contracts to which the <i>Consumer Credit (New South Wales) Code</i> applies.	9 10 11
	(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).	12 13 14 15 16
	(3) Division 2 of Part 2 of the <i>Consumer Credit (New South Wales) Code</i> applies in relation to such a maximum annual percentage rate as if that rate had been prescribed by that Code.	17 18 19
	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.	20 21 22 23
	(4) Nothing in this section affects the powers of the Court under Division 3 of Part 4 of the <i>Consumer Credit (New South Wales) Code</i> in relation to a contract that is not, by reason of this section, void.	24 25 26 27
	Note. Division 3 of Part 4 of the Code allows (among other things) the Court to re-open unjust transactions.	28 29
[3]	Section 14 Special savings and transitional regulations for New South Wales	30 31
	Insert “, the <i>Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005</i> ” after “the <i>Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Act 2001</i> ” in section 14 (1).	32 33 34

Schedule 2	Amendment of Consumer Credit (New South Wales) Special Provisions Regulation 2002	1
		2
		3
	(Section 4)	4
[1]	Clause 7 Maximum annual percentage rate	5
	Insert at the end of the clause (before the note):	6
	(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 <i>Consumer Credit (New South Wales) Code</i> applies.	7 8 9 10 11
	(3) The maximum annual percentage rate is to be calculated in accordance with clause 8.	12 13
	(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:	14 15 16 17
	(a) the credit provider is an authorised deposit-taking institution, and	18 19
	(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	20 21 22 23
	(c) the temporary credit facility is related to the existing credit contract or debit account.	24 25
	(5) In this clause, a <i>temporary credit facility</i> 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.	26 27 28
[2]	Clause 8 Maximum annual percentage rate for certain credit contracts	29
	Omit clause 8 (1) and (8).	30
[3]	Clause 8 (2)	31
	Omit the subclause. Insert instead:	32
	(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.	33 34 35 36

[4] Clause 8 (5)	1
Insert “precise” before “calculation”.	2
[5] Clause 8 (6A)	3
Insert after clause 8 (6):	4
(6A) If the credit contract is a continuing credit contract (within the meaning of the <i>Consumer Credit (New South Wales) Code</i>), the following assumptions also apply to the calculation of the maximum annual percentage rate:	5
(a) that the debtor has drawn down the maximum amount of credit that the credit provider has agreed to provide under the contract,	6
(b) that the debtor will pay the minimum repayments specified in the contract,	7
(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,	8
(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.	9
[6] Clause 9 Short term credit	10
Omit the clause.	11
[7] Clause 10 Disclosure of cost of credit as annual percentage rate	12
Omit the clause.	13
[8] Part 4, heading	14
Omit the heading. Insert instead:	15
 Part 4 Transitional provisions	16

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

[9] Clause 12	1
Insert after clause 11:	2
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	4
(1) An amendment made by the <i>Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Act 2005</i> applies to a credit contract whether the credit contract was established before or after the commencement of the amendment.	5
	6
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	8
(2) This clause does not affect anything duly done in connection with such a contract before the commencement of any such amendment.	9
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