



New South Wales

## **EXPOSURE DRAFT BILL**

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

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**April 2005**



New South Wales

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

## Explanatory note

### 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.

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 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 those credit contracts (with the exception of certain temporary credit facilities provided by authorised deposit-taking institutions).

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

Explanatory note

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## 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 apply the disclosure requirements contained in section 10B of the Principal Act (relating to interest charges and the annual percentage rate) to all credit contracts covered by the Code (as outlined in the overview).

**Schedule 1 [2]** substitutes section 11 of the Principal Act, with the effect described above in paragraph (a) of the overview.

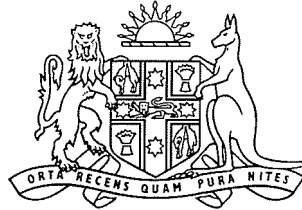
**Schedule 1 [3]** amends section 14 of the Principal Act to enable the making of regulations of a transitional and savings nature consequent on the enactment of the proposed Act.

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

**Schedule 2 [1]** inserts clause 7 (2)–(4) in the Principal Regulation, with the effect described above in paragraph (b) of the overview.

**Schedule 2 [2]–[5]** contain consequential amendments.

**Schedule 2 [6]** applies the amendments to existing credit contracts.



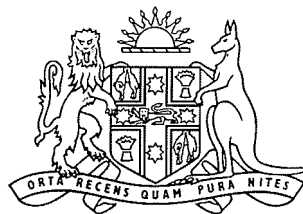
New South Wales

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

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New South Wales

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

No. , 2005

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## **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 maximum annual percentage rates for credit contracts; and for other purposes.

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Clause 1                    Consumer Credit (New South Wales) Amendment (Maximum Annual  
Percentage Rate) Bill 2005

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**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.

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

Amendment of Consumer Credit (New South Wales) Act 1995

Schedule 1

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## 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 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).

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

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

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## **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 (but before the note):

- (2) Pursuant to 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 all credit contracts 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 that authorised deposit-taking institution at the time that the temporary credit facility is or was established, and
  - (c) the temporary credit facility is related to the existing credit contract or debit account.

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

Omit clause 8 (1) and (8).

### **[3]      Clause 9 Short term credit**

Omit the clause.

### **[4]      Clause 10 Disclosure of cost of credit as annual percentage rate**

Omit the clause.



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

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

Schedule 2

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**[5] Part 4**

Omit the heading. Insert instead:

## **Part 4 Transitional provisions**

**[6] 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.