

[Act 2001 No 28]



New South Wales

Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Consumer Credit (New South Wales) Act 1995*:

- (a) to apply the provisions of the *Consumer Credit (New South Wales) Code* (the *Code*) to certain providers of short term credit (known as “pay day lenders”), who are currently unregulated, by restricting current exemptions from the Code to short term lenders whose charges are below a stipulated amount, and
 - (b) to make it clear that the provision of credit without express prior agreement is exempt from the Code, and
 - (c) to require providers of credit who are regulated to disclose the cost of credit provided by them in terms of an annual percentage rate of interest, being a rate that is calculated by reference to charges in the nature of interest (whether or not described as such in the contract), and
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- (d) to enable regulations to be made to provide that the maximum annual percentage rate of interest that may be charged by a regulated pay day lender is to be calculated on the basis of interest charges and all credit fees and charges under the credit contract, and
- (e) to make other consequential and savings and transitional amendments.

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 giving effect to the amendments to the *Consumer Credit (New South Wales) Act 1995* set out in Schedule 1.

Application of Consumer Credit Code to short term credit providers

The uniform Consumer Credit Code (enacted by Queensland legislation) is applied as a law of this State by the *Consumer Credit (New South Wales) Act 1995*. The law, as so applied, is the *Consumer Credit (New South Wales) Code* and the uniform regulations, also applied, are the *Consumer Credit (New South Wales) Regulations*. Currently, the provision of credit limited for a total period not exceeding 62 days is exempted from the Code.

Schedule 1 [1] inserts proposed section 10A, which replaces the provisions of the uniform Code containing the exemptions from the Code for short term credit providers. Currently the providers of credit for a period not exceeding 62 days are exempted. The proposed section changes the exemption so that it operates if the cost of the maximum amount of credit fees and charges that may be imposed or provided for under the relevant contract does not exceed 5% of the amount of credit and the interest charges imposed or provided for do not exceed an annual percentage rate of 24% per annum. The previous exemption for the provision of credit for a total period not exceeding 62 days will now apply only to banks and other authorised deposit-taking institutions. The new section will not apply to the provision of credit under contracts that commence before the section. The provisions of the new section may be repealed by proclamation. Such a repeal will be required when, or if, the modifications are covered by direct amendment to that Code.

Schedule 1 [2] enables regulations to be made requiring the maximum annual percentage rate of interest that may be imposed under a short term credit contract to be calculated by including interest charges and all other credit fees and charges under the contract.

Schedule 1 [3] defines *short term credit contract*.

Application of Code to credit without express prior agreement

Under the Code, the provision of credit without prior agreement is exempt from its operation.

Schedule 1 [1] inserts proposed section 10A, which replaces the provisions of the uniform Code containing the exemptions from the Code for providing credit without prior agreement. The new exemption makes it clear that the exemption relates to the situation where there has been no express prior agreement between the credit provider and the debtor before the credit was provided.

Disclosure of annual percentage rate

Currently, the annual percentage rate of interest is required to be set out in a credit contract under the Code and in pre-contractual disclosure documents.

Schedule 1 [1] inserts proposed section 10B, which makes it clear that the annual percentage rate that must be included in a short term credit contract regulated by the Code and in pre-contractual disclosure must be calculated on the basis of charges under the contract that are in the nature of interest charges, whether or not they are expressly stated to be interest charges. The proposed section also requires all such charges to be included in the statement of total interest charges in the contract and in pre-contractual disclosures. The provisions of the new section may be repealed by proclamation. Such a repeal will be required when, or if, the provisions of the section are covered by direct amendment to that Code.

Savings and transitional provisions

Schedule 1 [4] enables savings and transitional regulations to be made.