

Consumer Credit (New South Wales) Act 1995

No 7

[1995-7]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2002](#)

Authorisation

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Consumer Credit (New South Wales) Act 1995 No 7



New South Wales

An Act to regulate the provision of consumer credit.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Consumer Credit (Queensland) Act means the *Consumer Credit (Queensland) Act 1994* of Queensland.

Consumer Credit (New South Wales) Code means the provisions applying because of section 5 of this Act.

Consumer Credit (New South Wales) Regulations means the provisions applying because of section 6 of this Act.

(2) Words and expressions used in this Act and also in the *Consumer Credit (New South Wales) Code* have the same meanings in this Act as they have in that Code.

4 Notes in text

Notes included in this Act are explanatory notes and do not form part of this Act.

Part 2 Consumer Credit (New South Wales) Code and Regulations

5 Application in New South Wales of the Consumer Credit Code

The Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland)

Act, as in force for the time being:

- (a) applies as a law of New South Wales, and
- (b) as so applying may be referred to as the *Consumer Credit (New South Wales) Code*.

6 Application of uniform regulations under the Consumer Credit Code

- (1) The regulations in force for the time being under Part 4 of the Consumer Credit (Queensland) Act:
 - (a) apply as regulations in force for the purposes of the *Consumer Credit (New South Wales) Code*, and
 - (b) as so applying may be referred to as the *Consumer Credit (New South Wales) Regulations*.
- (2) Schedule 2 to the *Consumer Credit (New South Wales) Code* applies in relation to any such regulation.
- (3) To the extent to which a provision of any such regulation of a savings or transitional nature takes effect from a day earlier than the day of the regulation's notification in the Government Gazette of Queensland, the provision does not operate in this State to the disadvantage of a person (other than the State or a State authority) by:
 - (a) decreasing the person's rights, or
 - (b) imposing liabilities on the person.

7 Interpretation of expressions in the Consumer Credit (New South Wales) Code and the Consumer Credit (New South Wales) Regulations

- (1) In the *Consumer Credit (New South Wales) Code* and the *Consumer Credit (New South Wales) Regulations*:

Legislature of this jurisdiction means the Legislature of New South Wales.

the Code or **this Code** means the *Consumer Credit (New South Wales) Code*.

the jurisdiction or **this jurisdiction** means New South Wales.

- (2) The *Acts Interpretation Act 1954*, and other Acts, of Queensland do not apply to:
 - (a) the Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland) Act in its application as a law of New South Wales, or
 - (b) the regulations in force for the time being under Part 4 of the Consumer Credit (Queensland) Act in their application as regulations in force for the purposes of the *Consumer Credit (New South Wales) Code*.

Part 3 Conferral of judicial and administrative functions

8 Conferral of judicial functions

- (1) The jurisdiction that is expressed to be exercisable by “the Court” under the *Consumer Credit (New South Wales) Code* and the *Consumer Credit (New South Wales) Regulations* is exercisable by the following:
 - (a) in the case of any jurisdiction prescribed by the regulations for the purposes of this paragraph—only the Fair Trading Tribunal,
 - (b) except in the case referred to in paragraph (a)—either the Fair Trading Tribunal or any court.
 - (c) (Repealed)
- (2) The jurisdiction conferred on a court by this section (other than the Fair Trading Tribunal) is subject to the court’s general jurisdictional limits (so far as they relate to the amounts, or the value of property, with which the court may deal), but is not subject to the court’s other jurisdictional limits.
- (3) The regulations may make provision for or with respect to the transfer of proceedings between the Fair Trading Tribunal and other courts or between other courts.
- (4) (Repealed)

9 Conferral of administrative functions

The Director-General of the Department of Fair Trading has the functions of the Government Consumer Agency under the *Consumer Credit (New South Wales) Code* and the *Consumer Credit (New South Wales) Regulations*.

Part 4 Miscellaneous

10 Civil penalties payable to financial counselling trust fund

The financial counselling trust fund established in accordance with the regulations under the [Credit Act 1984](#) is the fund into which are to be paid amounts of civil penalty payable under section 106 of the *Consumer Credit (New South Wales) Code*.

10A Consumer credit exemptions relating to short term loans and credit without prior agreement

- (1) The Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland) Act, as applied by section 5 of this Act, applies as if section 7 (Provision of credit to which this Code does not apply) of that Code were amended by omitting section 7 (1) and (2) and by inserting instead the following provisions:

- (1) **Short term credit** This Code does not apply to the provision of credit by an authorised deposit-taking institution limited by the contract to a total period that does not exceed 62 days. This Code does not apply to the provision of credit by any other person if, under the contract:
- (a) the provision of credit is limited to a total period that does not exceed 62 days, and
 - (b) the maximum amount of credit fees and charges that may be imposed or provided for does not exceed 5% of the amount of credit, and
 - (c) the maximum amount of interest charges that may be imposed or provided for does not exceed an amount (calculated as if the Code applied to the contract) equal to the amount payable if the annual percentage rate were 24% per annum.
- (2) **Credit without express prior agreement** This Code does not apply to the provision of credit if, before the credit was provided, there was no express agreement between the credit provider and the debtor for the provision of credit. For example, when a cheque account becomes overdrawn but there is no expressly agreed overdraft facility or when a savings account falls into debit.

(2) This section applies despite section 5 and a reference in this Act to the *Consumer Credit (New South Wales) Code* includes a reference to the Code referred to in subsection (1) as modified by this section.

(3) This section does not apply to the provision of credit if the contract is entered into before the commencement of this section.

(4) The provisions of this section are repealed on a day or days to be appointed by proclamation.

10B Disclosure of cost of credit as annual percentage rate

- (1) This section applies to a credit contract to which the *Consumer Credit (New South Wales) Code* applies because of section 10A of this Act or any other contract of a kind prescribed by the regulations.
- (2) For the purposes of the application of section 15 (C) of the *Consumer Credit (New South Wales) Code*, and for the avoidance of doubt, the credit contract document must state an annual percentage rate calculated on the basis of charges under the contract that are in the nature of interest charges (whether or not they are expressed to be interest charges).
- (3) For the purposes of section 15 (E) of the *Consumer Credit (New South Wales) Code*, the total amount of interest charges includes any amount that is in the nature of an interest charge (whether or not it is expressed to be an interest charge).

- (4) For the purposes of section 14 of the *Consumer Credit (New South Wales) Code*, the pre-contractual statement must also set out the matters referred to in subsections (2) and (3).
- (5) The requirements of this section are in addition to any other requirements of section 14 or 15 of the *Consumer Credit (New South Wales) Code*.
- (6) The provisions of this section are repealed on a day or days to be appointed by proclamation.

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.
- (1A) In the case of a short term credit contract, the regulations may require interest charges and all credit fees and charges under the contract to be included for the purpose of calculating the maximum annual percentage rate under the contract for the purposes of subsection (1).
- (2) Division 2 of Part 2 of that 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 (2) 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.

- (3) 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.

- (4) In this section:

short term credit contract means a contract:

- (a) for the provision of credit limited to a total period that does not exceed 62 days that is not exempted from the Code under the provisions applied by section 10A, or
- (b) a contract of a kind prescribed by the regulations.

11A Persons who may take proceedings

- (1) Proceedings for an offence against the *Consumer Credit (New South Wales) Code* or the *Consumer Credit (New South Wales) Regulations* may be taken and prosecuted

only by a person acting with the authority of:

(a) the Minister, or

(b) a prescribed officer.

(2) An authority to prosecute purporting to have been signed by the Minister or a prescribed officer is evidence of that authority without proof of the signature of the Minister or the prescribed officer.

(3) In proceedings for an offence against the *Consumer Credit (New South Wales) Code* or the *Consumer Credit (New South Wales) Regulations*, the informant may conduct his or her case personally, or by a legal practitioner, or by an agent authorised by the informant in writing.

12 Proceedings for offences against the Code or regulations

Proceedings for offences against the *Consumer Credit (New South Wales) Code* or the *Consumer Credit (New South Wales) Regulations* (that are punishable summarily) are to be dealt with by a Local Court constituted by a Magistrate sitting alone.

13 Crown to be bound

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

14 Special savings and transitional regulations for New South Wales

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, the [Consumer Credit \(New South Wales\) Amendment \(Pay Day Lenders\) Act 2001](#) or of an Act of Queensland amending the Consumer Credit Code set out in the Appendix to the Consumer Credit (Queensland) Act.

(2) If such a regulation so provides, it has effect despite any provision of this Act, including the *Consumer Credit (New South Wales) Code*.

(3) A provision of a regulation made under this section may, if the regulation so provides, take effect from the date of assent to the Act concerned or from a later date.

(4) To the extent to which a provision takes effect from a date earlier than the date of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person (other than the State or a State authority) by:

(a) decreasing the person's rights, or

(b) imposing liabilities on the person.

15 Regulations generally

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

16 Consequential amendments to [Credit Act 1984](#) and other Acts

Schedule 1 has effect.

17 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 (Repealed)