NSW Legislative Assembly Hansard

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

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 19 October 2005.

Second Reading

Ms DIANE BEAMER (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [12.12 p.m.]: I move:

That this bill be now read a second time.

I have great pleasure in introducing the Consumer Credit (New South Wales) Amendment (Maximum Annual Percentage Rate) Bill 2005. The bill amends the Consumer Credit (New South Wales) Act 1995 and further demonstrates the New South Wales Government's commitment to protecting consumers from unscrupulous lenders. The bill provides further protection for payday lending customers. Payday lenders offer short-term loans that are often promoted as a means of obtaining easy cash for people who may be financially strapped until their next payday. The people who take out payday loans are usually those who can least afford the excessive fees charged and may take out new loans with the same lender to cover existing debts. In addition to the high cost of this type of credit, payday lenders may also engage in undesirable practices such as open-ended debits from bank accounts and unreasonable security over property, including household goods.

As honourable members will be aware, the Government brought the payday lending industry within the auspices of the Consumer Credit Code in 2001 to ensure protection for consumers accessing loans through payday lenders. The Consumer Credit Code is the nationally uniform State-based legislation that governs all personal, domestic and household credit transactions in Australia. In addition to the code protections, New South Wales consumers are protected by a mandatory maximum annual percentage rate, which includes fees and charges on short-term loans of less than 62 days. The code requires pre-contractual disclosure of all costs and terms and conditions of the loan, the provision of a copy of the contract and restrictions on repossession and enforcement.

There is recent evidence that the fringe lending market—a term used to describe credit providers who offer relatively small high-cost loans—has reinvented itself from "payday lending" by increasing the term of loan products to a period greater than 62 days. This has allowed fringe lenders to continue to impose fees and charges far in excess of reasonable costs. In one case presented by Lifeline Macarthur a person approached a fringe lender for a loan of $2,000. The annual interest rate for the loan was 28 per cent per annum, with fees and charges totalling $750. That $750 was made up of the following: a $600 establishment fee, $45 in legal fees, $60 in direct debit fees—$5 per direct debit—and a $45 account-keeping fee at $15 per month. The term of the loan was three months. The actual cost of credit for borrowing $2,000, including interest and fees and charges, was a staggering 288 per cent as an annualised percentage rate.

I am outraged that, despite existing consumer protections, some fringe lenders persist in exploiting the most financially vulnerable members of our community. This bill will address those predatory lending practices by closing a loophole and requiring all consumer credit loans regulated by the Consumer Credit Code, with the exception of certain products offered by authorised deposit-taking institutions, to include fees and charges in the calculation of the maximum annual percentage rate, regardless of the term of the loan.

I will discuss the provisions of the bill in detail. Schedule 1[1] extends the current requirement in section 10B to disclose charges that are in the nature of interest charges—whether or not they are expressed as interest charges—as an annual percentage rate from loans under 62 days to all consumer credit contracts captured by the Consumer Credit Code. The extension of this requirement should have no impact on mainstream lenders as they currently disclose an interest rate. This provision will impact only on payday lenders, who have a history of attempting to subvert the policy intention of the disclosure provisions by charging no interest but imposing inflated fees and charges. The extension of this clause merely seeks to clarify beyond doubt the intention of the code.

Schedule 1[2] inserts a new section 11, which extends the requirement to include fees and charges in the calculation of the maximum annual percentage rate to all consumer credit contracts captured by the Consumer Credit Code. This provision closes a loophole in the Act and ensures that credit providers will no longer be able to avoid the intention of the legislation. Schedule 1[3] amends section 14 to provide that credit contracts that existed before the amendments were introduced are not in breach regardless of whether the inclusion of fees and charges to the calculation of the maximum annual percentage rate would breach the maximum rate of 48 per cent if calculated after the amendments commence. However, if a credit provider wishes to introduce a new fee or charge in relation to those contracts, a calculation must be made to ensure that the contract would not exceed the maximum rate.

Schedule 2[1] amends clause 7 of the Consumer Credit (New South Wales) Special Provisions Regulation 2002 to provide an exemption to the requirement to include fees and charges in the calculation of the maximum annual percentage rate for some products offered by authorised deposit-taking institutions. This will apply when a debtor already has an existing credit contract or debit account with the authorised deposit-taking institution and a temporary extension of that facility is entered into that may attract a fee. This exception will permit authorised deposit-taking institutions, such as banks and credit unions, to agree to extend credit for very limited periods without the risk that the additional fees will breach the maximum interest rate cap.

The circumstances to which the exemption will apply include temporary overdraft facilities and the overdrawing of a line of credit. This type of credit product or service is not one that is offered by fringe lenders. These products are valued by existing customers of mainstream lenders who appreciate the convenience of such facilities. Items [2], [3] and [4] of schedule 2 make minor changes to clause 8 of the Consumer Credit (New South Wales) Special Provisions Regulation 2002 for the purpose of clarification with respect to the calculation of the maximum annual percentage rate. Schedule 2[5] inserts clause 8(6A), which sets out assumptions to be used when calculating the maximum annual percentage rate for continuing credit contracts. These assumptions relate to the term of the contract, the amount of credit or use of the contract, and the amount of repayments.

I know some in the financial services sector have been concerned about the inclusion of continuing credit contracts in these amendments, but to exempt credit cards would leave a loophole in the legislation that would allow fringe lenders to restructure their credit products to fit the criteria for a continuing credit contract, and thereby ensure they did not have to include fees and charges in the calculation of the maximum annual percentage rate. The New South Wales Government will not allow fringe lenders to circumvent this legislation, so fees and charges will be included in the calculation of the maximum annual percentage rate of continuing credit contracts.

I am also aware that some in the banking community are concerned that the provisions may hinder new product development. In the unlikely event that this is the case, I can assure honourable members that the legislation already contains adequate exemption powers. I am sure that the amendments to the credit legislation proposed in the bill will catch credit providers who have been avoiding the intention of the consumer credit laws and ensure that the consumers of New South Wales will be protected against unscrupulous lenders. I commend the bill to the House.