

New South Wales

Fair Trading Amendment (Responsible Credit) Bill 2005

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 *Fair Trading Act 1987* (the **Principal Act**) to impose obligations on credit providers (additional to those obligations under the *Consumer Credit (New South Wales) Code*) with respect to credit card contracts and increases in credit card limits.

The Bill provides for the following (in relation to credit cards only):

- (a) a requirement that a credit provider must not enter into any credit contract or increase the credit limit or amount of credit under an existing credit contract if the credit provider knows or ought, after reasonable enquiry, to have known that the debtor does not have the capacity to pay the amounts required under the contract or would incur substantial hardship in paying such amounts,
- (b) a requirement that a statement of account which includes a minimum repayment also include details of the time period required to repay the total amount by making the minimum repayments and the total amount of interest that will be paid during this time,

- (c) a requirement that a statement of account clearly show any “interest free” amount or period and details of any fees or charges that relate to that “interest free” amount or period,
- (d) the prohibition of the provision of credit in excess of the amount of credit or credit limit specified in the credit contract (except with the written consent of the debtor or if the excess credit does not exceed 10% of the amount of credit or credit limit).

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Fair Trading Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Consumer Credit (New South Wales) Act 1995* set out in Schedule 2.

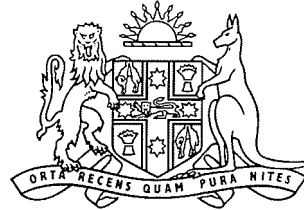
Schedule 1 Amendment of Fair Trading Act 1987

Schedule 1 [1] inserts proposed Part 5E into the Principal Act, giving effect to the modifications to the *Consumer Credit (New South Wales) Code* that are made by proposed Schedule 4B and providing for transitional matters.

Schedule 1 [2] sets out the provisions to be inserted into the *Consumer Credit (New South Wales) Code*, which have the effect described in the above overview.

Schedule 2 Amendment of Consumer Credit (New South Wales) Act 1995

Schedule 2 makes a consequential amendment.



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New South Wales

Fair Trading Amendment (Responsible Credit) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Fair Trading Act 1987* with respect to credit card contracts and increases in credit card limits.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fair Trading Amendment (Responsible Credit) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Fair Trading Act 1987 No 68	7
The <i>Fair Trading Act 1987</i> is amended as set out in Schedule 1.	8
4 Amendment of Consumer Credit (New South Wales) Act 1995 No 7	9
The <i>Consumer Credit (New South Wales) Act 1995</i> is amended as set out in Schedule 2.	10 11

Schedule 1	Amendment of Fair Trading Act 1987	1
	(Section 3)	2
[1] Part 5E		3
	Insert after Part 5D:	4
	Part 5E Responsible credit for credit cards	5
60V	Definitions	6
	In this Part:	7
	<i>Consumer Credit (New South Wales) Code</i> or <i>Code</i> means the	8
	<i>Consumer Credit (New South Wales) Code</i> within the meaning of	9
	the <i>Consumer Credit (New South Wales) Act 1995</i> .	10
	<i>credit card</i> has the same meaning as in section 57 (4).	11
60W	Modifications to Code relating to responsible credit for credit cards	12
		13
	(1) The <i>Consumer Credit (New South Wales) Code</i> as it applies as a	14
	law of New South Wales under the <i>Consumer Credit (New South</i>	15
	<i>Wales) Act 1995</i> is modified as set out in Schedule 4B in relation	16
	to any credit contract involving the provision of a credit card.	17
	(2) The modifications to the <i>Consumer Credit (New South Wales)</i>	18
	<i>Code</i> made by Schedule 4B:	19
	(a) apply to the provision of credit on or after the	20
	commencement of this section (if it is a provision of credit	21
	to which that Code applies), and	22
	(b) extend to any credit contract to which that Code applies	23
	that was entered into before the commencement of this	24
	section and that is in force on the commencement of this	25
	section.	26

[2] Schedule 4B	1
Insert after Schedule 4A:	2
Schedule 4B Modifications to Code relating to responsible credit for credit cards	3
	4
(Section 60W)	5
[1] Section 14A	6
Insert after section 14:	7
14A Assessment of ability to pay	8
(1) A credit provider must not enter into any credit contract or increase the credit limit or amount of credit under any existing credit contract if the credit provider knows or ought, after reasonable enquiry, to have known that the debtor does not have the capacity to pay the amounts required under the contract or would incur substantial hardship in paying such amounts.	9 10 11 12 13 14 15
(2) For the purposes of subsection (1), <i>substantial hardship</i> includes, but is not limited to, circumstances where the debtor is unable to repay the whole of the amount of the credit limit or the amount of credit within 5 years.	16 17 18 19
(3) A credit contract is unenforceable by the credit provider to the extent that it imposes a monetary liability on the debtor in respect of credit provided in contravention of this section.	20 21 22 23
[2] Sections 32A and 32B	24
Insert after section 32:	25
32A Disclosure of minimum payment information on statements of account	26 27
If a credit provider is required to include the minimum amount payable by the debtor under a continuing credit contract in a statement of account in accordance with this Division, the credit provider must also include the following particulars in the statement of account:	28 29 30 31 32
(a) the estimated time period required to repay the total amount owed by the debtor (as at the end of the statement period) if the current minimum repayment	33 34 35

is made by the due date specified in each subsequent statement of account,	1
(b) the total amount of interest that will be paid during that estimated time period (calculated using the interest rates applicable as at the date of the account statement).	2
	3
	4
	5
	6
32B Disclosure of “interest free” credit on statements of account	7
If credit provided under a credit contract includes a time period or an amount that is free of interest and the credit provider is required to give to the debtor a statement of account under this Division, the credit provider must also include the following particulars in the statement of account:	8
	9
	10
	11
	12
	13
(a) the amount or period which is free of interest and the amount or period in respect of which interest charges have been debited to the debtor’s account during the statement period,	14
	15
	16
	17
(b) details of any fees and charges debited to the debtor’s account during the statement period that relate to the amount or period which is free of interest (clearly distinguishing those from fees and charges that relate to the amount or period in respect of which interest charges have been debited).	18
	19
	20
	21
	22
	23
[3] Section 62A	24
Insert after section 62:	25
62A Unilateral increase in credit	26
(1) A credit provider must not, except at the request of or with the written consent of the debtor, provide credit in excess of the credit amount or credit limit specified in the credit contract.	27
	28
	29
	30
(2) This section does not apply if the credit provided in excess of the credit amount or credit limit specified in the credit contract is 10% of that amount or limit or less.	31
	32
	33
Maximum penalty: 100 penalty units.	34

Schedule 2	Amendment of Consumer Credit (New South Wales) Act 1995	1
		2
	(Section 4)	3
	Section 5 Application in New South Wales of the Consumer Credit Code	4
	Insert “, subject to the application of Part 5E of the <i>Fair Trading Act 1987</i> ”	5
	after “New South Wales” in section 5 (a).	6