CREDIT (COMMONWEALTH POWERS) AMENDMENT (MAXIMUM ANNUAL PERCENTAGE RATE) BILL 2011

27 May 2011 Page: 26

Bill introduced on motion by Mr Anthony Roberts.

Agreement in Principle

Mr ANTHONY ROBERTS (Lane Cove—Minister for Fair Trading) [12.41 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011. It is a very short bill, but one that preserves an important consumer protection measure that was first introduced by the Fahey Government in 1994. Last year this Parliament passed legislation to transfer regulatory responsibility for consumer credit from New South Wales to the Commonwealth. This was the first phase of national credit reforms agreed to by the Council of Australian Governments. It corrected an anomaly by which the Commonwealth had power to regulate all financial products and services except consumer credit and finance broking. The credit marketplace is very much a national marketplace and all parties welcomed the introduction of consistent national laws.

New South Wales has always been a leader in consumer protection for borrowers. I pay tribute to one of my predecessors in this portfolio, Kerry Chikarovski, who played a leading role in the development of the Consumer Credit Code. The code was uniform legislation that operated successfully for 14 years in the States and Territories. When power to regulate credit was transferred to the Commonwealth, the code was also transferred, largely unchanged except for some modernising amendments, and it is now known as the National Credit Code. Despite the undoubted advantages of national legislation, a Federal system of government can benefit from innovation in different jurisdictions to find solutions to problems, leading to better public policy and service delivery. Regulatory innovation can also benefit the community.

Kerry Chikarovski was responsible for such innovation when she proposed an amendment to the Credit Act 1984 to provide for a maximum annual percentage rate, which took effect on 1 July 1994. This measure was not adopted by all States, and when the Consumer Credit Code commenced in 1996 interest rate caps were among the regulatory arrangements that fell outside the Uniform Credit Laws Agreement. New South Wales decided to keep its cap and introduced a maximum rate of 48 per cent. The consumer credit market has changed over the past decade, and the interest rate cap has changed with it. The most recent adjustment was made on 1 July 2010, when New South Wales introduced a cap of 48 per cent, inclusive of fees and charges and fees paid to third parties such as brokers.

Phase one of the national credit reforms also commenced on 1 July 2010. This involved the transfer of regulatory powers and the introduction of a national licensing system for credit providers and finance brokers, and new requirements for responsible lending. Although the Consumer Credit Code was transferred to the Commonwealth, non-uniform provisions were

not. This meant that those jurisdictions with interest rate caps were free to retain them while the phase two reforms were developed. Victoria, Queensland and the Australian Capital Territory have all retained their interest rate caps. None has a cap that is as comprehensive as that operating in New South Wales, although Queensland and the Australian Capital Territory include fees and charges in the calculation of the maximum rate. The comprehensive interest rate cap in New South Wales is particularly targeted at the short-term small amount lending industry, also known as the payday, fringe and predatory lending industry.

It was understood that phase two would, among other things, include an examination of the approach to be taken to short-term small amount lending, with any further legislation required to be in place within 12 months. For this reason, the Credit (Commonwealth Powers) Act 2010 provided for the maximum annual percentage rate in New South Wales to expire 12 months after 1 July 2010. It is now clear that phase two reforms will not be in place until December 2011 at the earliest. The O'Farrell Government is not prepared to leave vulnerable and disadvantaged consumers at risk of exploitation by these lenders. We are talking about loans from $100 to $5,000 with repayment periods ranging from a week to two years. Payday lending, a particular category, generally refers to a loan of less than $1,000 for a duration of less than three months.

Low-income consumers make up a significant proportion of the borrowers. Research shows that between 50 to 74 per cent of borrowers have an annual income of less than $36,000 and that up to 25 per cent fall beneath the Henderson Poverty Line. Approximately 70 per cent of loans are used to meet recurrent or basic living expenses, including utility bills, food, rent, and car repairs and registration. Such lending is targeted at people who have difficulty accessing funds in an emergency or who struggle to meet regular household payments and expenses. These loans are high-cost loans. Annualised interest rates can be as high as 1,000 per cent; late payment fees can be up to $75 per day; and establishment fees may be 50 per cent of the amount borrowed. Very few consumers choose these loans on the basis of cost. The advertising focuses on features such as speed, accessibility and lack of credit checks.

In the absence of a competitive market, the New South Wales interest rate cap is designed to protect disadvantaged and vulnerable consumers from excessive costs. Some micro lenders operate lawfully in the market and comply with the cap. Without charging excessive costs they are assisting people who do not have ready access to mainstream financial services, and who find it difficult to manage large bills and sudden emergencies. Those borrowers appreciate the accessibility, convenience and customer service they receive. The Government proposes to extend the operation of the maximum annual percentage rate beyond 12 months in order to maintain consumer protection and certainty in New South Wales until assured that the Commonwealth's regulatory and enforcement measures in respect of short-term small amount lending are appropriate and adequate.

I turn now to the provisions of the bill. Schedule 1 amends schedule 3 to the Credit (Commonwealth Powers) Act 2010 to provide for the repeal of the maximum annual percentage rate provisions by proclamation rather than repeal 12 months after 1 July 2010, as

is currently the case. Schedule 1 provides for the repeal of clause 9 of schedule 3 by proclamation rather than repeal 12 months after 1 July 2010, as is currently the case. Clause 9 is a savings provision that applies the maximum annual percentage rate applicable prior to 1 July 2010 to credit contracts entered into prior to 1 July 2010. As these contracts may still be on foot, the relevant provisions are continued. Schedule 1 also amends schedule 3 to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act. This bill gives New South Wales the discretion to decide when and whether its 48 per cent interest rate cap is no longer needed. I commend the bill to the House.