



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

- (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.

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

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New South Wales

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

No. , 2001

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## **A Bill for**

An Act to amend the *Consumer Credit (New South Wales) Act 1995* with respect to the provision of short term credit; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Act 2001</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Consumer Credit (New South Wales) Act 1995 No 7</b>	8
The <i>Consumer Credit (New South Wales) Act 1995</i> is amended as set out in Schedule 1.	9 10

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## Schedule 1 Amendments

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(Section 3)

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### [1] Sections 10A and 10B

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Insert after section 10:

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

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(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:

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(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:

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(a) the provision of credit is limited to a total period that does not exceed 62 days, and

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(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

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(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.

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(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

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	account becomes overdrawn but there is no expressly agreed overdraft facility or when a savings account falls into debit.	1 2 3
(2)	This section applies despite section 5 and a reference in this Act to the <i>Consumer Credit (New South Wales) Code</i> includes a reference to the Code referred to in subsection (1) as modified by this section.	4 5 6 7
(3)	This section does not apply to the provision of credit if the contract is entered into before the commencement of this section.	8 9 10
(4)	The provisions of this section are repealed on a day or days to be appointed by proclamation.	11 12
<b>10B</b>	<b>Disclosure of cost of credit as annual percentage rate</b>	13
(1)	This section applies to a credit contract to which the <i>Consumer Credit (New South Wales) Code</i> applies because of section 10A of this Act or any other contract of a kind prescribed by the regulations.	14 15 16 17
(2)	For the purposes of the application of section 15 (C) of the <i>Consumer Credit (New South Wales) Code</i> , 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).	18 19 20 21 22 23
(3)	For the purposes of section 15 (E) of the <i>Consumer Credit (New South Wales) Code</i> , 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).	24 25 26 27
(4)	For the purposes of section 14 of the <i>Consumer Credit (New South Wales) Code</i> , the pre-contractual statement must also set out the matters referred to in subsections (2) and (3).	28 29 30
(5)	The requirements of this section are in addition to any other requirements of section 14 or 15 of the <i>Consumer Credit (New South Wales) Code</i> .	31 32 33
(6)	The provisions of this section are repealed on a day or days to be appointed by proclamation.	34 35



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<b>[2] Section 11 Maximum annual percentage rate</b>	1
Insert after section 11 (1):	2
(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).	3 4 5 6 7
<b>[3] Section 11 (4)</b>	8
Insert at the end of section 11:	9
(4) In this section:	10
<i>short term credit contract</i> means a contract:	11
(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	12 13 14
(b) a contract of a kind prescribed by the regulations.	15
<b>[4] Section 14 Special savings and transitional regulations for New South Wales</b>	16 17
Insert “, the <i>Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Act 2001</i> ” after “this Act” in section 14 (1).	18 19