

House of Assembly—No 74

As laid on the table and read a first time, 15 November 2006

South Australia

Consumer Credit (South Australia) (Maximum Annual Percentage Rate) Amendment Bill 2006

A BILL FOR

An Act to amend the *Consumer Credit (South Australia) Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Consumer Credit (South Australia) (Maximum Annual Percentage Rate) Act 2006*.

5 2—Commencement

This Act will come into operation 12 weeks after the day on which this Act is assented to by the Governor.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Consumer Credit (South Australia) Act 1995*

4—Substitution of section 12

Section 12—delete the section and substitute:

15 12—Disclosure of cost of credit as annual percentage rate

- 20 (1) For the purposes of the application of section 15(C) of the *Consumer Credit (South Australia) Code*, the 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).

(2) For the purposes of section 15(E) of the *Consumer Credit (South Australia) 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).

5 (3) For the purposes of section 14 of the *Consumer Credit (South Australia) Code*, the pre-contractual statement must also set out the matters referred to in subsections (1) and (2).

10 (4) The requirements of this section are in addition to any other requirements of section 14 or 15 of the *Consumer Credit (South Australia) Code*.

13—Maximum annual percentage rate

(1) The maximum annual percentage rate for a credit contract to which the *Consumer Credit (South Australia) Code* applies is 48%.

15 (2) All interest charges and all credit fees and charges under a credit contract are to be included for the purposes of calculating the maximum annual percentage rate under a credit contract to which the *Consumer Credit (South Australia) Code* applies.

(3) The maximum annual percentage rate is to be calculated in accordance with section 14.

20 (4) Division 2 of Part 2 of the *Consumer Credit (South Australia) Code* (which limits the debtor's monetary obligations) applies in relation to the maximum annual percentage rate as if the rate had been prescribed by the Code.

25 (5) Nothing in this section affects the powers of the Court under Division 3 of Part 4 of the *Consumer Credit (South Australia) Code* in relation to a contract that is not, by reason of this section, void.

14—Calculation of maximum annual percentage rate

30 (1) For the purposes of calculating the maximum annual percentage rate under a credit contract, the rate must be calculated as a nominal rate per annum, together with the compounding frequency, in accordance with this section.

(2) The maximum annual percentage rate is given by the following formula:

$$i = n \times r \times 100\%$$

35 where:

n is the number of repayments per annum to be made under the credit contract annualised, except that—

- (a) if repayments are to be made weekly or fortnightly—*n* is to be 52.18 or 26.09, respectively; and

- (b) if the contract does not provide for a constant interval between repayments— n is to be derived from the interval selected for the purposes of the definition of j mentioned below

r is the solution of the following:

$$\sum_{j=0}^t \frac{A_j}{(1+r)^j} = \sum_{j=0}^t \frac{R_j + C_j}{(1+r)^j}$$

where:

j is the time, measured as a multiple (not necessarily integral) of the interval between contractual repayments that will have elapsed since the first amount of credit is provided under the credit contract, except that if the contract does not provide for a constant interval between repayments an interval of any kind is to be selected by the credit provider as the unit of time

t is the time, measured as a multiple of the interval between contractual repayments (or other interval so selected), that will elapse between the time when the first amount of credit is provided and the time when the last repayment is to be made under the contract

A_j is the amount of credit to be provided under the contract at time j (the value of j for the provision of the first amount of credit is taken to be zero)

R_j is the repayment to be made at time j

C_j is the fee or charge (if any) payable by the debtor at time j (j is taken to be zero for any such fee or charge payable before the time of the first amount of credit provided) in addition to the repayments R_j , being a credit fee or charge that is ascertainable when the annual percentage rate is calculated.

- (3) The maximum annual percentage rate must be correct to at least the nearest one hundredth of 1% per annum.
- (4) In the application of the above formulae, reasonable approximations may be made if it would be impractical or unreasonably onerous to make a precise calculation.
- (5) The tolerances and assumptions under sections 158 to 160 of the *Consumer Credit (South Australia) Code* apply to the calculation of the maximum annual percentage rate.
- (6) If the credit contract is a continuing credit contract (within the meaning of the *Consumer Credit (South Australia) Code*), the following assumptions also apply to the calculation of the maximum annual percentage rate:
- (a) that the debtor has drawn down the maximum amount of credit that the credit provider has agreed to provide under the contract;

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- (b) that the debtor will pay the minimum repayments specified in the contract;
- (c) if credit is provided in respect of payment by the credit provider to a third person in relation to goods or services or cash supplied by that third person to the debtor from time to time—that the debtor will not be supplied with any further goods or services or cash;
- 10 (d) if credit is provided in respect of cash supplied by the credit provider to the debtor from time to time—that the debtor will not be supplied with any further cash.
- (7) For the purposes of the maximum annual percentage rate—
- (a) the amount of credit is to be the amount (or the maximum amount) required by the debtor; and
- 15 (b) the term for which credit is provided is to be the term (or the maximum term) required by the debtor.

Schedule 1—Transitional provisions

1—Transitional provisions

20 The amendments effected by this Act do not apply to the provision of credit under a credit contract to which the *Consumer Credit (South Australia) Code* applies that was entered into before the commencement of this Act.