

BANKING SERVICES ALERT

NEW SOUTH WALES EXTENDS INTEREST CAP PROVISIONS

With all the changes going on in Consumer Credit Law at present some changes appear to have “flown under the radar”.

A case in point is the extension to the interest rate cap legislation in New South Wales which was buried in the Credit (Commonwealth Powers) Bill 2010 (NSW). In an alert issued by an industry association the expression “bombshell” has been used to describe this change.

Many States traditionally have had maximum interest rates that may be charged under loan contracts, normally 48% per annum.

Some States, including NSW and QLD, factor credit fees and charges into the equation for the purpose of determining whether the interest rate cap of 48% per annum is exceeded.

The Credit (Commonwealth Powers) Bill 2010 (NSW) was passed by Parliament on Wednesday 17 March 2010.

The problematic provision in the New South Wales legislation is buried away in the third schedule, clause 5, sub-section 5. Set out below are sub-sections 4, 5 and 6:

- (4) *Interest charges and all credit fees and charges imposed or provided for under a credit contract are to be included in calculating the maximum annual percentage rate under the contract.*
- (5) *For the purposes of subclause (4), credit fees and charges imposed or provided for under a credit contract are taken to include the following, whether or not payable under the contract:*
- (a) *a fee or charge payable by the debtor to any person for an introduction to the credit provider,*
 - (b) *a fee or charge payable by the debtor to any person for any service if the person has been introduced to the debtor by the credit provider, credit (Commonwealth Powers) Bill 2010*
 - (c) *a fee or other charge payable by the debtor to the credit provider for any service relating to the provision of credit, other than a service referred to in paragraph (b).*
- (6) *For the purposes of subclause (5) (a) and (b), it does not matter whether or not there is an association between the person and the credit provider.*

What this means is that if a finance broker refers a borrower to a lender, the lender, when calculating the maximum rate of interest that may be charged, has to take into account not only the interest rate, but it's fees and charges and also any fee paid to the independent third party broker by the borrower.

This amendment to the New South Wales legislation is likely to have a major impact on the micro lending industry and probably a significant impact on other forms of personal lending.

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It is understood that urgent representations are being made by various industry sectors to the New South Wales and other Governments concerning these changes.

Our clear understanding of the matter is that under the agreements made between the Commonwealth and the States, it was accepted that the status quo on interest rate caps would prevail until such time as the Commonwealth Government and ASIC could review matters and report. It seems New South Wales has thrown "a spanner in the works"!

In the press releases announcing the new Commonwealth Government Scheme, it was clearly stated that the issue of "interest rate caps" would be addressed in Stage 2 of the new National Consumer Credit Protection legislation, planned for some 18 months hence.

All clients operating in the finance field need to consider carefully how this proposed amendment will affect their operations.



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