

Credit Reforms (Responsible Lending) Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to amend provisions in the Credit Contract and Consumer Finance Act 2003 and the Credit (Repossession) Act 1997 to require lenders to act responsibly when lending to unwary consumers and to prevent excessive rates of interest from being charged.

A number of financial institutions appear to be entering into finance arrangements which the debtor is hopelessly unable to meet from the outset. It appears that for these institutions the long term benefit of lending to all consumers outweighs the costs of investigation into the means of individual debtors. Therefore, it appears that they are content to carry a relatively small (from the institution's perspective) number of defaults. For the debtors who find themselves in default, the consequences can be catastrophic and enforcement actions traumatic.

Key provisions of the Bill are changes to the Credit Contract and Consumer Finance Act 2003 and to the Credit (Repossession) Act 1997. The amendments to the Credit Contract and Consumer Finance Act 2003 will require lenders to seriously consider the actual means of a prospective borrower and their ability to service the debt and will allow for the prescription of maximum annual percentage rates of interest payable in respect of consumer credit contracts. Rules applying caps to annual interest rates now apply in many overseas countries including the United States, Canada and Australia.

The amendment to the Credit (Repossession) Act 1997 will change the provision from one which currently freezes interest at the time of sale, to one which limits the rights of the creditor to the value of the goods sold.

The bill also amends the Secondhand Dealers and Pawnbrokers Act 2004 to allow pawn brokers registered under that Act to charge administration fees, thereby removing any need for high interest rates in order to compensate for not being able to charge fees in addition to interest.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill is to come into force on the day after the date on which it receives the Royal Assent.

Clause 3 states the purpose of the Bill which is to enact provisions that will result in lenders engaging in more responsible conduct toward borrowers and to prevent the charging of excessive rates of interest.

Part 1

Amendments to the Credit Contracts and Consumer Finance Act 2003

Clause 4 provides that this Part amends the Credit Contracts and Consumer Finance Act 2003.

Clause 5 amends section 39 to provide for a maximum annual percentage rate for interest charged under a consumer credit contract.

Clause 6 amends section 118 to extend the term oppressive to include where there is no reasonable held belief on the part of a creditor that a debtor is able to repay the amounts which will fall due under the terms of the credit contract.

Clause 7 amends section 138 to provide that regulations may be made prescribing a maximum annual percentage rate for interest charged under a consumer credit contract.

Part 2

Amendment to the Credit (Repossession) Act 1997

Clause 8 provides that this Part amends the Credit (Repossession) Act 1997.

Clause 9 substitutes a new section 35 which limits the amount a creditor can recover from a debtor.

Part 3

Amendment to the Secondhand Dealers and Pawnbrokers Act 2004

Clause 10 provides that this Part amends the Secondhand Dealers and Pawnbrokers Act 2004.

Clause 11 repeals section 57(2) thereby removing the prohibition on charging of fees by pawn brokers.

Charles Chauvel

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Credit Reforms (Responsible Lending) Act **2009**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to enact provisions that will result in lenders engaging in more responsible conduct toward borrowers and to prevent the charging of excessive rates of interest.

Part 1

Amendments to the Credit Contracts and Consumer Finance Act 2003

4 Principal Act Amended

This Part amends the Credit Contracts and Consumer Finance Act 2003.

5 Limit on interest rate

- (1) The heading to section 39 is amended by inserting after the words "**Limit on interest**" the words:
"**rate and**"
- (2) Section 39 is amended by inserting the following subsection after subsection (2):
“(2A) No consumer credit contract may charge a higher maximum annual percentage rate than that prescribed under regulations, if regulations have prescribed a maximum annual percentage rate.”

6 Meaning of oppressive

Section 118 is amended by inserting after the words “of commercial practice” the words:

“including extending credit to a debtor without a reasonably held belief on the part of the creditor that the debtor is able to repay the amounts which will fall due under the terms of the credit contract”.

7 Regulations

Section 138 is amended by inserting after subsection 38(1)(f):

“(fa) prescribing, for the purpose of section 39(2A), a maximum annual percentage rate which can be charged under a consumer credit contract.”

Part 2

Amendment to the Credit (Repossession) Act 1997

8 Principal Act Amended

This Part amends the Credit (Repossession) Act 1997.

9 New section 35 substituted

Section 35 is repealed and the following section is substituted:

“35 Limit on creditor’s right to recover from debtor

Where goods are sold subject to a security agreement, or where an agreement to enable the sale of the goods is entered at the time of the sale of the goods, the creditor’s right to recover any amount from the debtor in relation to the sale of those goods is limited to the value of the goods at the time of enforcement, or the net proceeds of sale of those goods.”

Part 3

Amendment to the Secondhand Dealers and Pawnbrokers Act 2004

10 Principal Act Amended

This Part amends the Secondhand Dealers and Pawnbrokers Act 2004.

11 Prohibition on charging of fees by pawn brokers repealed

Section 57(2) is repealed.
