FACT SHEET

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

The Credit Contracts and Consumer Finance Act

Consumer credit contracts overview

This fact sheet provides an overview of what consumer credit contracts (including mobile trader credit sales) are and explains the rules and consumer protections that apply to these types of contract.

The Credit Contracts and Consumer Finance Act (CCCF Act) covers a range of transactions where people are given credit for personal use, such as through a mortgage, credit card, arranged overdraft, personal or cash loan, or pawn broking pledge.

What is credit?

A person has been given credit if they have been given the right to:

- put off paying an existing debt
- incur a debt and put off paying it, or
- purchase goods or services and put off paying for them – this is typically known as a credit sale as the borrower usually gets the goods or services before paying for them in full and pays them off over time.

Under the CCCF Act, any borrower who is given credit has entered into a credit contract and has specific rights and obligations.

What is a consumer credit contract?

A consumer credit contract is a type of credit contract where the borrower:

- is a private individual (in other words, they are not a company or incorporated society), and
- intends to use the credit wholly or predominantly for personal, domestic or household purposes (as opposed to for business or investment purposes), and
- may have to pay interest or a credit fee, or provide a security interest.

In addition, the lender must either:

- be in the business of providing credit (such as a finance company or bank) – although lending does not have to be their only business or main business
- be in the practice of providing credit as part of their business (such as a car dealer)
- make a practice of entering into credit contracts on behalf of someone else, or
- have been introduced to the borrower through a paid advisor or broker.

Note that the Minister may now deem certain products to be consumer credit contracts and are required to comply with the CCCF Act.[1]

Exclusions

Some credit contracts aren't consumer credit contracts, even if these conditions are met. A contract is not a consumer credit contract where:

- it is a credit sale and the borrower has to pay in full for the goods or services within two months (except where the trader is a mobile trader).
- someone has overdrawn their bank account without having an agreed overdraft facility on the account.
- the borrower is acting as trustee for a family trust.
- It is a student loan (provided under the Student Loan Scheme Act 2011).

However, these transactions are still credit contracts and they can still be re-opened by the courts if they are oppressive. You can read more in our fact sheet *Oppressive contracts – protections for borrowers* at www.comcom.govt.nz/oppressive-contracts

1. **See sections 137A to 137C of the CCCF Act.**

What rules apply to consumer credit contracts under the CCCF Act?

There are specific rules that apply to lenders under consumer credit contracts.

Lender responsibility principles: apply to all lenders' dealing with borrowers and impose obligations on lenders when advertising, before entering into a loan, and during all subsequent dealings with borrowers and guarantors.

Disclosure: Lenders must give borrowers key information about the terms of the contract, and this must be accurate and understandable.

Interest charges: While lenders have the right to charge interest, there are rules around how they do so.

Payments: Lenders must apply repayments according to the rules set out in the CCCF Act, and must tell borrowers if they will accept extra part repayments. Borrowers have the right to fully repay a contract earlier than stated in the contract.

Fees: There are rules about the fees that lenders can charge. In particular, credit and default fees must be reasonable, relate to actual costs and losses, and meet reasonable standards of commercial practice.

Credit-related insurance, extended warranties and repayment waivers: Lenders can't unreasonably require borrowers to buy any of these services in connection with a consumer credit contract.

Cancellation: Borrowers have a "cooling off" period after entering into a consumer credit contract when they can change their mind.

Hardship: Borrowers can ask their lender for temporary relief or relaxation in the terms of their contract if they suffer an unexpected hardship and are up-to-date with their repayments.

High-cost loans: Additional rules apply where the consumer credit contract is a high-cost consumer credit contract (as defined by the CCCF Act), including restrictions on interest rates and maximum recovery of costs of borrowing.

Oppression: Borrowers and guarantors are protected from oppressive contracts and from oppressive behaviour by lenders.

Repossession: There are rules lenders or repossession agents must follow when repossessing goods.

These rules, including protections for borrowers, are detailed in our series of fact sheets available at **www.comcom.govt.nz/consumer-credit**

Need to know more about consumer credit contracts?

You can read more about consumer credit contracts in our other fact sheets available at **www.comcom.govt.nz/consumer-credit** including:

- Disclosure
- Initial disclosure under a consumer credit contract
- Continuing disclosure under a consumer credit contract
- Guarantee disclosure under a consumer credit contract
- Request disclosure under a consumer credit contract
- Variation disclosure under a consumer credit contract
- Interest charges under a consumer credit contract
- Payments under a consumer credit contract
- Fees under a consumer credit contract
- Credit-related insurance, extended warranties and repayment waivers
- Consumer rights under a consumer credit contract – cancellation
- Consumer rights under a consumer credit contract – hardship
- Consumer rights under a consumer credit contract – high cost loans
- Oppressive contracts – protections for borrowers
- Repossession guidelines
- Mobile trader guidelines

What if a borrower enters a credit contract for business purposes?

If a borrower claims a contract is a consumer credit contract, it is presumed that it is, unless the lender can prove otherwise.

Because of this, lenders sometimes require borrowers to make written declarations before they enter a contract saying that the credit is being used wholly or predominantly for business or investment. If a borrower makes a declaration like this, the contract will be a credit contract rather than a consumer credit contract. This means the CCCF Act won't apply except if the credit contract is oppressive. Borrowers who sign business purpose declarations will lose all of the other consumer protections under the CCCF Act.

But, a business purposes declaration will only be effective if:

- the declaration is made before the borrower enters into the contract
- the declaration is contained in a separate written document, and
- the borrower has confirmed they have read and understood the declaration.

If a borrower signs a statement saying that the credit is for business purposes, and it isn't, and the lender (or whoever took the declaration) knows this, then the declaration is ineffective. The contract will be a consumer credit contract.

Lenders and borrowers

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the transaction:

- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets we use the terms **lender** and **borrower** to talk generally about credit transactions, but use the specific terms for consumer leases and buy-back transactions where it makes things clearer.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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