

Credit Contracts and Consumer Finance Act

A general guide for the credit industry



COMMERCE COMMISSION

NEW ZEALAND

FOREWORD

The Credit Contracts and Consumer Finance Act 2003 represents a substantial revision of the former Credit Contracts Act 1981 and Hire Purchase Act 1971. It refocuses credit law in New Zealand to better reflect the needs of both credit consumers and providers in the current economic environment. In so doing, it aims to promote consumer protection while allowing credit products to be flexible and innovative. It also brings the legislation into line with international trends, particularly credit law across the Tasman.

More particularly, the Act:

- deregulates credit contracts between businesses;
- provides minimum standards for consumer credit contracts particularly in relation to disclosure and contract terms allowing consumers to make better informed choices about using credit and promoting healthy competition amongst credit providers;
- maintains consumers' rights to cancel contracts and provides relief against oppressive credit contracts; and
- introduces a safety net for consumers, granting all consumers the right to repay credit contracts early, prohibiting unreasonable credit fees and establishing a mechanism to vary consumer credit contracts where consumers struggle to meet their obligations because of unforeseen hardship.

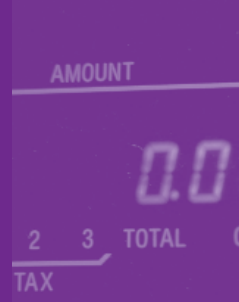
The Act, for the first time in New Zealand, allows these standards to be enforced by a regulatory body. The Commerce Commission has been given this role. It involves monitoring the industry, providing information to promote compliance, and taking enforcement action, including prosecutions and civil proceedings, in accordance with the Commission's enforcement criteria.

The Act introduces a new range of damages and penalties. The consequences of breaching the Act can be significant both financially and in terms of damage to a creditors' reputation – and repeat offenders can be banned from providing credit.

This guide is intended to assist businesses in understanding what their obligations are, the Commission's role and the consequences of non-compliance. While we trust that the guide will aid greater understanding, we recognise that the law in this area will develop and we will continue to update information about the Act as this occurs.



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ABOUT THIS GUIDE

The Credit Contracts and Consumer Finance Act 2003 (referred to throughout this guide as the CCCF Act or the Act) changes the landscape of New Zealand credit law. It repeals the Credit Contracts Act 1981 and the Hire Purchase Act 1971, and sets up a new legislative framework for credit contracts, consumer leases and buy-back transactions of land.

As the organisation that enforces the new Act, the Commerce Commission has a range of powers that include:

- powers to prosecute creditors, lessors and buy-back operators for non-compliance with the Act;
- powers to bring civil proceedings on behalf of consumers;
- the right to appear and be heard in any proceedings brought by any party under the Act;
- powers of search and seizure;
- powers to require information or documents; and
- powers to require and take evidence.

The Act introduces criminal penalties and also incorporates a framework of statutory damages for breaches of the Act.

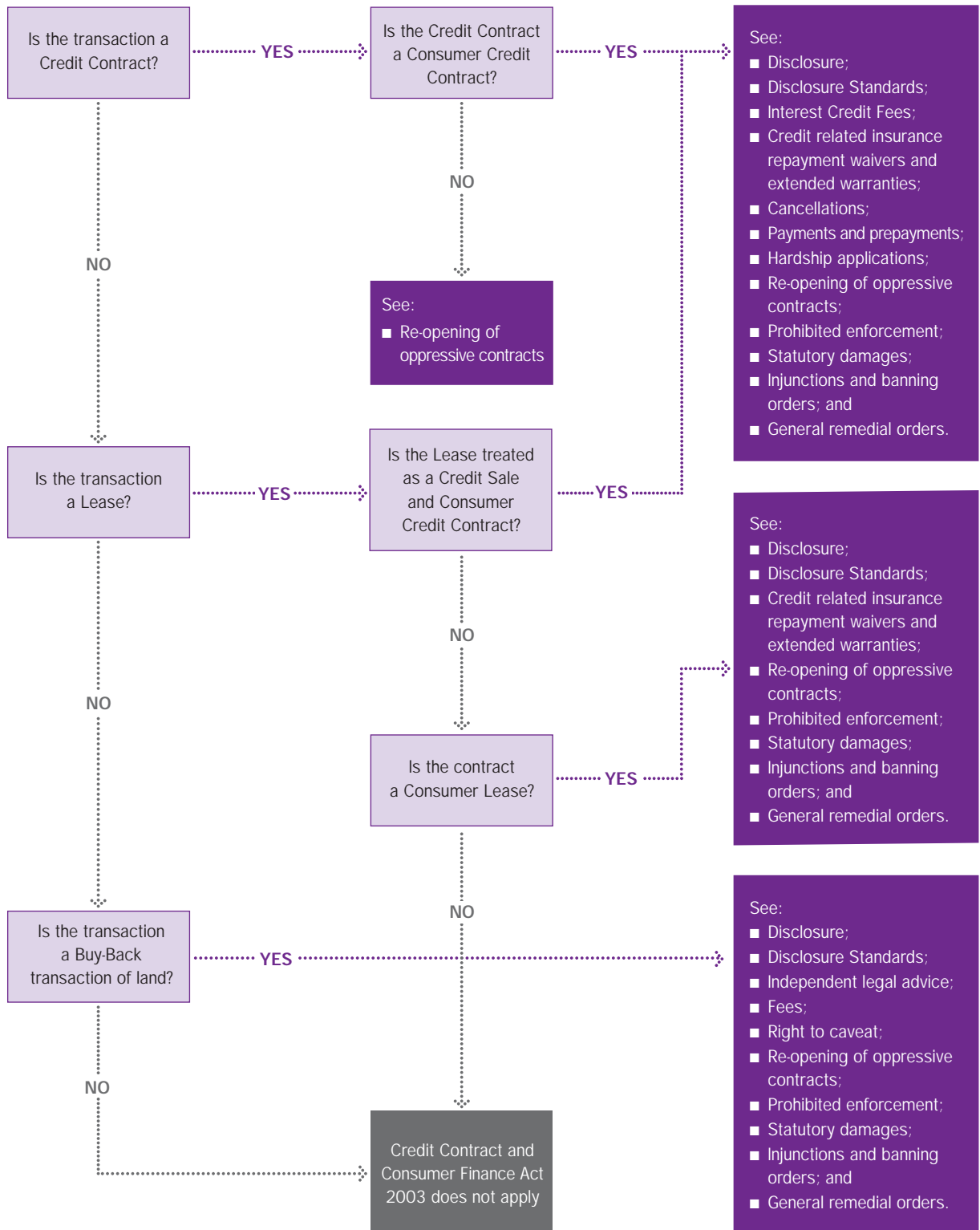
The purpose of this publication is to promote understanding of the CCCF Act, how it applies to business practices and the role of the Commerce Commission in enforcing it. It is a plain-English guide for those in business who want to better understand the Act and what it requires. It is not a substitute for legal advice. If you have any questions about how the Act applies to you or how you should comply with it, please consult your own legal advisors.

The guide deals with three general topics:

1. the transactions covered by the Act;
2. the obligations on a creditor, lessor or buy-back promoter in relation to each kind of transaction;
3. the consequences of breaching the Act.

The diagram right summarises the obligations that arise for each type of transaction:

The Commission's interpretation of the Act will evolve alongside legal developments, which will include reported judgments and enforcement experience.



INTRODUCTION

The Commerce Commission

The Commerce Commission is an independent Crown entity responsible for enforcing the general and specific regulations of the Commerce Act 1986, Fair Trading Act 1986, Electricity Industry Reform Act 1998, Dairy Industry Restructuring Act 2001, Telecommunications Act 2001 and Credit Contracts and Consumer Finance Act 2003.

The Credit Contracts and Consumer Finance Act 2003

The CCCF Act was passed on 13 October 2003. The part of the Act dealing with buy-back transactions of land came into force immediately. The rest of the Act, relating to credit contracts, consumer credit contracts and consumer leases comes into force on 1 April 2005. Regulations under the CCCF Act were made in August and October 2004.

The role of the Commission is to promote compliance with the Act.

The Commission's functions under the Act are to:

- monitor trade practices in credit markets, consumer lease markets, and buy-back transaction markets;
- take prosecutions in relation to breaches of the Act;
- take civil proceedings under the Act; and
- make available appropriate information for the guidance of consumers, creditors, lessors, transferees, and other interested persons in relation to promoting compliance with the Act.

The Commission has no duty or obligation to take action in respect of any particular consumers. Consumers are able to take their own private proceedings for breaches of the Act.

DOES THE ACT APPLY TO YOU?

The Act applies to you if you enter into one of the kinds of transactions it covers. Even if you do not enter into a credit transaction the Act may still apply to you if you are an assignee of a credit contract or if you are a paid advisor or broker. What your rights and responsibilities under the Act are depends on the type of transaction you enter into. There are serious penalties for breaching the Act, so if you are in any way involved in providing any kind of credit, lease of goods or buy-back it is important you know which category (if any) your arrangement falls into and what you need to do to comply with the Act.

The CCCF Act applies to:

- credit contracts;
- consumer credit contracts;
- consumer leases; and
- buy-back transactions of land.

This guide will help you work out whether a transaction you are party to is one of these. It will outline your obligations in each case.

You cannot contract out of the Act. Your contract, may, however, require you to comply with stricter obligations than those contained in the Act.

Is the transaction a credit contract?

If you have provided credit under a contract, you have entered into a credit contract.

Under the Act you have provided credit if you give someone the right to:

- defer payment of a debt; or
- incur a debt and defer its payment; or
- purchase goods, property or services and defer payment for these.

Q I've agreed to let someone put off paying back a debt but I'm not charging interest. Is this a credit contract?

A Yes. Whether or not you charge interest has nothing to do with whether you are giving credit, as the Act defines it. A contract may be a credit contract even if you charge no interest at all.

You cannot avoid the Act by claiming that a credit contract is something else. The Act will apply if your arrangement with a customer is a credit contract in substance or effect, even though none of the transaction's separate parts by themselves amount to a credit contract.

The courts can re-open a credit contract if it is oppressive.

EXAMPLE

You buy whiteware and kitchen appliances from Vanessa for \$1,500. You agree that you will hold the goods for six months and, after that period, Vanessa can buy the appliances back from you for \$2,000.

This arrangement on its face does not look like a credit arrangement because Vanessa does not incur a debt and defer payment: she is not deferring payment of a purchase since she must pay \$2,000 when she exercises her option to buy the appliances back.

However, this transaction is, in effect, a credit contract with a loan of \$1,500 secured against the whiteware. The \$500 difference between the sale and purchase prices is, in substance, a credit fee.

See: Re-opening provisions P60



Q I've entered into an arrangement that, according to the CCCF Act, doesn't provide credit. So does the Act apply to me?

A Most mortgages, revolving credit facilities, personal loans and credit sales (previously known as hire purchase agreements) will be caught by the new definition of credit contract. Lay-by sales of goods, however, are not generally included. While most leases do not involve the provision of credit, as the Act defines it, some leases may still be considered consumer credit contracts, in which case the Act will apply to the transaction. You should also consider whether the arrangement may be a consumer lease or buy-back transaction, as the Act will apply to both of these.

Is the transaction a consumer credit contract?

Generally, a transaction may be a consumer credit contract under the Act if:

- you have provided credit under a credit contract that also meets the definition of a consumer credit contract; or
- you have leased goods and the Act treats the lease as a consumer credit contract and credit sale.

A credit contract meets the definition of a consumer credit contract if:

- the person to whom the credit has been provided (the debtor) is a 'natural person' (see next page for an explanation of this term); and
- the debtor enters the contract primarily for personal, domestic or household purposes (see next page for an explanation of this term); and
 - interest is or may be payable, or
 - a credit fee is or may be payable, or
 - a security interest is or may be taken.

In addition, you must either:

- carry on a business of providing credit; or
- make a practice of providing credit in the course of your business; or
- make a practice of entering into credit contracts in your name but on behalf of or as nominee for any other person; or
- have been introduced to the debtor (or the debtor introduced to you) through a paid advisor or broker.

What is a natural person?

A natural person is a private individual and not an organisation such as an incorporated company or society. So if you sign a credit contract with an organisation you will not have entered into a consumer credit contract. However that credit contract will still be subject to the provisions of the Act relating to re-opening oppressive credit contracts.

A credit contract where the debtor is a trustee acting for a family trust will not be a consumer credit contract.

What are personal, domestic or household purposes?

For a credit contract to also be a consumer credit contract the debtor must have entered into the contract primarily for personal, domestic or household purposes. It does not matter if they enter into the contract partly for business reasons; so long as the primary purpose is personal, domestic or household use, the contract will fall within the definition of consumer credit contract.

EXAMPLE

John borrows \$1000 from Super Loans Limited. He intends spending \$800 on a wedding present for his son and the remaining \$200 on office equipment. Because the primary purpose of the loan is personal, the credit contract is also a consumer credit contract.

Investment by the debtor is not a personal, domestic or household purpose.

EXAMPLE

Matthew borrows \$10,000 to buy shares in an international IT company. His purpose is investment so the contract is not a consumer credit contract.

It is possible the debtor may change their mind and use the credit (or goods) for business purposes after the contract has been entered into; this does not matter. What counts is the debtor's purpose at the time they enter into the contract, even if their eventual use differs.

EXAMPLE

Mary gets a loan from Super Loans that is secured by a mortgage on a house she intends living in. After she has bought the house she changes her mind and rents it out to tenants.

The contract is likely to be a consumer credit contract because when Mary entered into the contract her purpose was domestic. The fact that she eventually used the credit for a different purpose does not change the status of the contract under the Act.

The Act presumes that a credit contract is also a consumer credit contract. This means that if, in any proceedings between you and the debtor, the debtor claims a contract is a consumer credit contract, it will be up to you to prove that it is not.



A credit contract is not a consumer credit contract if the debtor makes a written declaration that the credit will be used primarily for business or investment purposes (or both). Such a declaration allows you to overcome the presumption that the contract is a consumer credit contract. The declaration will only be effective if:

- it is made before the debtor enters into the contract; and
- it is contained in a separate written document; and
- the debtor has confirmed they have read and understood the declaration; this confirmation should be set out in a separate paragraph of the declaration and initialled by the debtor.

The declaration will be ineffective if you or the person taking it knew or had reason to believe at the time it was made that it was incorrect. You should make reasonable enquiries into why the debtor is entering into the credit contract. You should also ensure that anyone else taking a declaration for you makes such enquiries.

Sarah goes to a broker for help in arranging a \$20,000 loan. She tells the broker she intends using the money to buy a family car. The broker arranges finance with Super Loans. Before it will lend the money, Super Loans asks the broker to take a declaration from Sarah that she will use the credit for business purposes, and the broker gets Sarah to sign the declaration.

The declaration will be ineffective because the broker knew Sarah intended to use the loan for personal, domestic or household purposes. The contract will be a consumer credit contract, and if Super Loans fails to fulfil its obligations under the CCCF Act it will be in breach of the Act and have committed offences. It may be liable for damages and will be unable to enforce the contract until the required statutory disclosure is made. Super Loans may also face orders banning it from acting as a creditor in future.

Super Loans and the broker will also have breached the Fair Trading Act 1986.

EXAMPLE

Any declaration a debtor makes must be made before they enter into the contract. But you should make sure it is taken as close as possible to the time the contract is entered into.

You should also be careful what you tell debtors – particularly those who have bought goods through a credit sale – about their rights under the Consumer Guarantees Act 1993. A declaration made for the CCCF Act that the debtor has entered into a contract for business purposes may not affect their rights under the Consumer Guarantees Act.

Interest

The Act defines an interest charge as a charge that accrues over time and is calculated by applying a rate to an amount owing under a credit contract.

You charge \$14 per week for each \$100 you lend. The total charge is worked out by applying a rate to the amount owing – 14% per week or 728% per annum – and is interest.

EXAMPLE

EXAMPLE

You sell goods to a debtor under a credit sale contract. The cash price of the goods is \$1,500 but the payments under the credit sale amount to \$1,750. The difference between the cash price and the contract price is \$250. This amount accrues over time but is not determined by applying a rate to the amount of credit. The \$250 charge is not "interest" under the CCCF Act.

In this case the charge is a credit fee and subject to the Act's credit fee provisions.

You risk breaching the Fair Trading Act 1986 if you tell the debtor in this situation that the credit sale is 'interest-free'. The Commerce Commission considers the terms 'interest-free' and 'free credit' mean the same thing to consumers, and the 'interest-free' or 'free credit' price should be the same as the cash price.

The Act regulates how interest may be calculated and charged. If you are charging interest under a consumer credit contract you must comply with the relevant provisions of the Act.

See: *Interest P34*

Credit fees

A credit fee is a charge the debtor must pay:

- under the contract; or
- to you, in connection with the credit contract; or
- for your benefit in connection with the credit contract.

Fees or charges paid to you or where you receive a direct financial benefit will be credit fees. Fees or charges payable by the debtor to you under related contracts such as mortgages or security arrangements will also be credit fees. It is the Commission's view that fees payable by the debtor to a third party in connection with the contract (but that are not specified as a term of the contract) and that provide you with an indirect benefit are not credit fees.

There is a specific exception to this in the Act where insurance premiums will be treated as credit fees if you have required the debtor to obtain insurance from a specified insurer.

A credit fee does not include:

- interest charges;
- charges for optional services;
- default fees or default interest charges; or
- government charges, duties, taxes or levies.

EXAMPLE

You draw up a consumer credit contract for selling a car that requires the debtor to pay you a \$150 'buyer's premium'.

The 'buyer's premium' does not accrue over time and is not worked out by applying a rate to the unpaid balance (ie the amount owing), so it is not interest. Neither is it a default fee or a government charge, duty or levy. The charge is not optional and it is payable under the terms of the contract. So it is a credit fee, subject to the provisions of the Act.



You supply a car to a debtor under a consumer credit contract. You ask them if they want to buy an extended warranty and they agree to do so.

Purchasing the extended warranty is an optional service so the charge for the warranty is not a credit fee. But the Act has separate provisions on extended warranties and you must make sure you comply with them.

EXAMPLE

The Act regulates credit fees and if you charge credit fees under a consumer credit contract you must comply with these rules. For instance, credit fees must be reasonable and must be disclosed.

See: *Credit fees P36*

Security interest

A security interest is an interest in property that ensures payment or performance of an obligation. It makes no difference for the purposes of the Act what form the security takes or who owns the property subject to the security.

You sell Jonathon a sofa for \$2,000 and agree he can pay you for the sofa over five months at \$400 a month. As a condition of the agreement, Jonathon agrees that you will continue owning the sofa until the last payment; after that, he will own it.

Your ownership of the sofa is a 'title-based' security – you own the sofa until Jonathon has completely paid you for it, so you may have the right to get it back and sell it if Jonathon does not make the payments. This is a security interest under the CCCF Act. The Personal Property Securities Act 1999 may apply to this type of security.

EXAMPLE

Exclusions

The Act excludes some credit contracts from the definition of consumer credit contract. A credit contract is not a consumer credit contract if:

- it is a contract for the sale of property or provision of services where the agreed price is to be paid within two months of the date of the contract, even if more money is owed in the event of default; or
- someone has overdrawn their bank account without an agreed overdraft facility; or
- the debtor is acting as trustee for a family trust.

Leases deemed to be consumer credit contracts and credit sales

A typical lease of goods does not involve the provision of credit within the meaning of the Act since a lessee does not incur a debt or defer payment of one. However, the Act treats a lease as a credit sale and a consumer credit contract – whether or not the lease meets the definition of a credit contract or the tests described above – where:

- the person leasing the goods from you (the lessee) is a natural person; and
- the lessee enters into the lease primarily for personal, domestic or household purposes; and
- you carry on the business of leasing goods or make a practice of leasing good in the course of your business;

and either:

- the amount payable under the lease is substantially equivalent to or more than the cash price of the goods, regardless of whether or not there is an option to purchase the goods. When you are working out the total amount payable under the lease, you are not required to take into account:
 - any charges for optional or incidental services;
 - any amount charged to exercise an option to purchase the goods; or
 - any amount that would cease to be payable if the lessee cancelled the contract at the earliest opportunity;

or:

- the lessee has an option to buy the goods at the end of the lease for no additional amount, a nominal amount, or an amount substantially less than a reasonable pre-estimate of the fair market value of the goods as at the end of the lease; it does not matter in this situation whether the rental paid under the lease is more or less than the cash price of the goods.

EXAMPLE

David hires a car from Financed Cars Limited. The contract requires him to pay an establishment fee of \$100 and monthly payments of \$400. The term of the lease is five years, and the cash price of the car is \$20,000.

The total amount payable on the lease is \$24,100 (total monthly payments plus establishment fee), which is more than the cash price of the goods. So the lease is a consumer credit contract for the purposes of the Act.

EXAMPLE

Joanne hires a car from Financed Cars Limited. The contract requires her to pay \$600 a month. The term of the lease is 36 months, and the cash price of the car is \$36,000. At the point Joanne enters into the agreement the fair market value of the car at the end of 36 months is estimated at \$23,000. The contract allows Joanne to buy the car after 36 months for \$20,000.

The total payable under the lease is \$21,600, which is less than the cash price of the car. But as Joanne has an option to buy the car for substantially less than the estimated fair market value of the car at the end of the lease, the lease is treated as a credit sale and a consumer credit contract for the purposes of the Act.



Henry hires a car from Financed Cars Limited. The contract requires him to pay \$500 a month. The term of the contract is 12 months and he does not have an option to purchase the vehicle. The car's cash price is \$20,000.

The total amount payable under the lease is \$6,000 – substantially less than the cash price of the car – and Henry has no option to purchase it. The lease is not treated as a credit sale and a consumer credit contract.

In this case the lease will, however, be a consumer lease; see Consumer Leases P49.

EXAMPLE

Fiona hires a car from Financed Cars Limited for 36 months. The contract requires her to pay \$340 a month. The cash price of the car is \$20,000. At the end of the term Fiona may buy the car for \$12,000, which, at the point she signs the contract, is a reasonable estimate of the fair market price of the car at the end of the lease.

The total payable under the lease is \$12,240, which is less than the original cash price of the car. This figure does not include the price of buying the car at the end of the lease. The amount Fiona would have to pay for the car under the option is slightly higher as the reasonable estimate of its fair market price. So the Act does not treat this as a credit sale and a consumer credit contract.

In this case the lease will, however, be a consumer lease. See Consumer Leases P49.

EXAMPLE

Q The rules cited above don't treat the lease I've granted as a credit sale and consumer credit contract. So do I have any obligations under the Act?

A You may do. Even if the lease is not treated as a credit sale and a consumer credit contract, it may fall within the definition of a consumer lease.

See: Consumer leases P49

If the transaction is a consumer credit contract you have extensive obligations under the Act.

See: Disclosure P49, Disclosure standards P51, Interest P34, Credit fees P36, Credit-related insurance, extended warranties and repayment waivers P37, Cancellation P38, Payments and prepayments P40, Hardship applications P48

The Act sets out a range of potential consequences for creditors who are party to these kinds of contracts who do not meet their obligations under the Act.

See: Re-opening provisions P60, Prohibited enforcement P62, Statutory damages P63, Injunctions and banning orders P65, Offences P66, General remedial orders P67



Is the transaction a consumer lease?

Under the CCCF Act a lease means a contract for the hire of goods.

The Act will apply to a lease where it meets the definition of a credit sale and consumer credit contract (see Leases deemed to be consumer credit contracts and credit sales P16) or where it meets the definition of a consumer lease.

A lease is a consumer lease if:

- it does not fall within the definition of a credit sale and consumer credit contract (see above); and
- the lessee is a natural person (see: What is a natural person? P12); and
- the lessee enters into the lease primarily for personal, domestic or household purposes (see: What are personal domestic or household purposes? P12); and
- you carry on the business of leasing goods or make a practice of leasing goods in the course of your business;

and either:

- the term of the lease is 12 months or more;

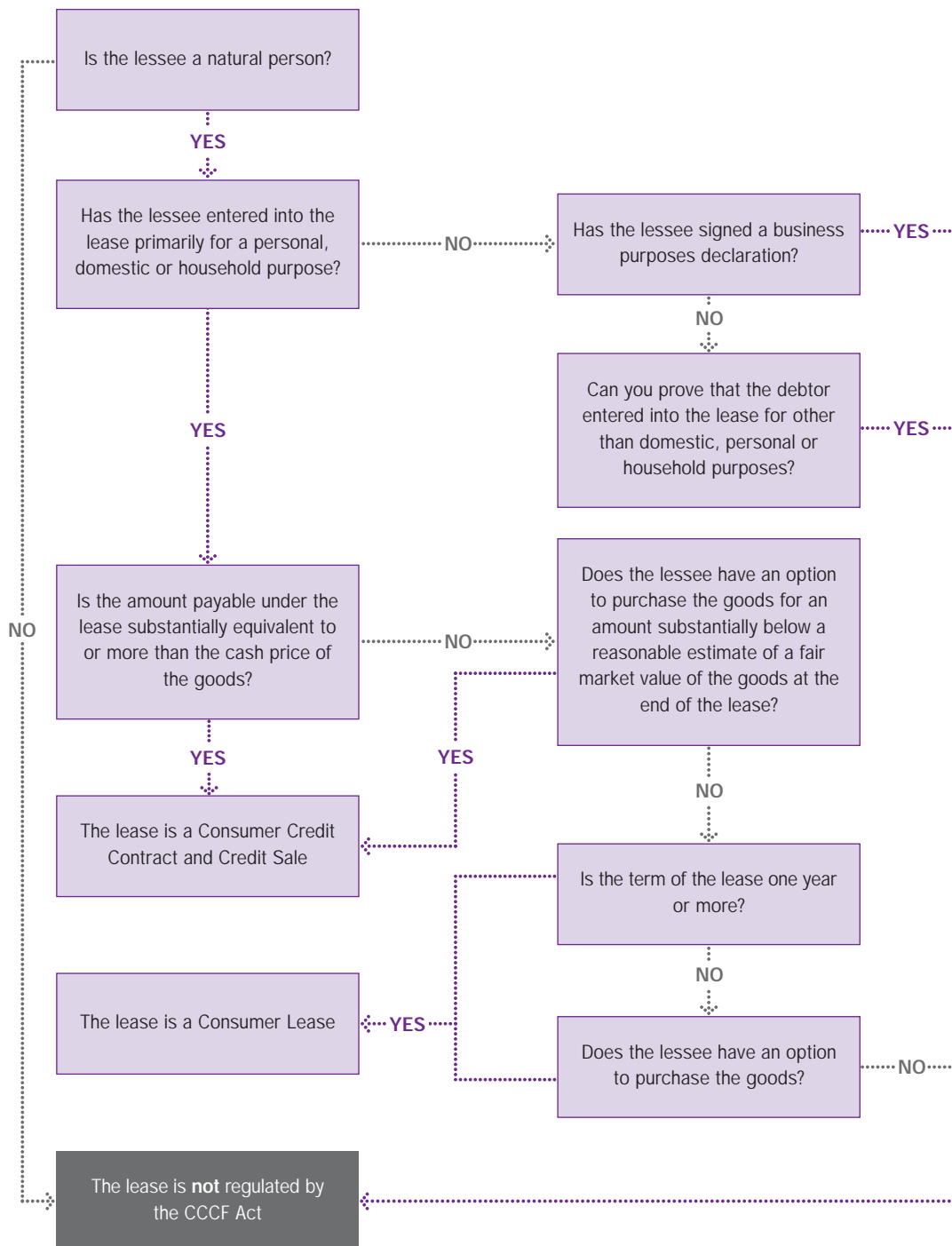
or

- the lessee has an option to purchase the goods.

The amount of rent or price paid for the goods under the lease is not relevant in determining whether or not a lease is a consumer lease.



Is the lease a consumer credit contract or a consumer lease?



EXAMPLE

Jack hires a car from Financed Cars Limited. The car's cash price is \$20,000 and the rental payments on the lease are \$340 per month. The term of the lease is 36 months. Financed Cars Limited reasonably estimates the car's fair market value in 36 months time as \$10,240. At that point Jack may buy the car for \$13,500.

The total amount payable under the lease is \$12,240 – less than the cash price of the car. Jack cannot buy the car for less than the fair market value of \$10,240. So the arrangement is not a consumer credit contract.

But because the term of the lease is more than 12 months, this is enough to bring the arrangement within the definition of a consumer lease. The existence of the option to purchase is also enough to bring the arrangement within the definition.

EXAMPLE

Samantha hires a television from Financed Appliances Limited. The cash price of the television is \$1,500. The rental payments under the lease are \$70 per month. Samantha may return the television and stop paying any time after the first month.

As the contract has no fixed term, the total amount Samantha has to pay under the contract is \$70, although she may in fact pay more than this. The contract is not a consumer credit contract or a consumer lease. It is likely to be unregulated by the Act.

Lessors under consumer leases have obligations under the Act that differ from those applying to consumer credit contracts.

See: Disclosure P22, Disclosure standards P32, Credit-related insurance, extended warranties and repayment waivers P37, Termination payments P53

The Act sets out a range of potential consequences for lessors who do not comply with its provisions.

See: Re-opening provisions P60, Prohibited enforcement P62, Statutory damages P63, Injunctions and banning orders P65, Offences P66, General remedial orders P67



Is the transaction a buy-back transaction of land?

Provisions relating to buy-back transactions have been in force since 14 October 2003.

Buy-back transactions operate in a similar way to a transaction that secures credit against a debtor's residential property. If you have lent someone money or paid off their debts and in return they transfer their principal place of residence to you on the understanding that they may later buy it back, you may have entered into a buy-back transaction.

The Act defines a buy-back transaction as one in which:

- a person (the occupier) transfers land to you;
- the land is the occupier's principal place of residence at the time of the transaction;
- after the transfer the occupier has the right to continue occupying the property;
- there is an agreement or understanding that the original occupier can re-purchase the property; and
- the occupier is a natural person who enters into the transaction primarily for investment or for personal, domestic or household purposes.

The Act will apply to any transaction that is in substance or effect a buy-back transaction of land, even though none of its separate parts amount to a buy-back transaction.

Buy-back transferees and promoters have specific obligations to do with how the transaction is set up, disclosure and fees.

See: Disclosure P22, Disclosure standards P32, Independent legal advice P59, Fees P59

The Act sets out a range of potential consequences for transferees and buy-back promoters who breach its provisions.

See: Re-opening provisions P60, Prohibited enforcement P62, Statutory damages P63, Injunctions and banning orders P65, Offences P66, General remedial orders P67



YOUR OBLIGATIONS UNDER A CONSUMER CREDIT CONTRACT

Disclosure

If you are a creditor in a consumer credit contract there are four situations in which you will be required to provide disclosure to the debtor:

- at the start of the contract (initial disclosure);
- during the life of the contract (continuing disclosure);
- any time the contract is varied (variation disclosure);
- if the debtor requests it (request disclosure).

You must also provide disclosure to anyone who has guaranteed the debtor's obligations under the contract (guarantee disclosure).

The Act spells out the information you must provide, and how and when to provide it.

See: Disclosure standards P32

Initial disclosure

You must provide the debtor with initial disclosure of key information and a copy of every other contract term before the contract is made or within **five working days** of when the contract was made. The law of contracts governs when a contract is "made". If you are in any doubt consult your lawyer.

Schedule 1 of the Act sets out the key information that must be provided to the debtor. The CCCF Act's regulations set out several assumptions that apply to this key information, and if the information can be ascertained on the basis of these assumptions, you must disclose it.

See: Assumptions P32



Schedule 1 of the Act requires you to disclose the following key information to the extent that the information is applicable to the credit contract:

■ **Your full name and address**

■ **The initial unpaid balance**

The initial unpaid balance is the amount the debtor owes at the date the statement gives as its effective date. It must describe and account for every payment the debtor has made before that date. It must include the amount and a description of each advance, charge or payment debited at or before that date. Advances include the cash price of any property or services bought from the creditor, as well as any money provided to the debtor. It also includes any additional charges for optional extras, such as insurance or extended warranties.

Any trade-in by the debtor constitutes a payment by them and must be disclosed as part of the initial unpaid balance.

■ **Subsequent advances**

You must, if you can ascertain them, disclose the amount, timing and description of each additional advance to be made after the date of the disclosure statement.

If the contract is a revolving credit contract, which means the debtor can draw down credit whenever they choose, you will not know the amount or timing of any advances and so do not need to disclose them.

■ **Total advances**

You must disclose the total, if you can ascertain it, of every advance made or to be made in connection with the credit contract. If it is a revolving credit contract, you will not know the total advances to be made and so do not need to disclose them.

■ **Credit limit**

You must disclose the credit limit of the contract.

■ **Annual interest rate**

You must disclose the annual interest rate or rates, expressed as a percentage. If there is more than one rate, you must state clearly how each rate applies.

If an annual interest rate is fixed for the term of the contract or any part of its term, you must disclose the duration for which the annual rate is fixed.

If the annual interest rate is calculated according to a base rate, you must describe how the base rate is determined, and state:

- the name of the base rate or a description of it;
- the margin or margins (if any) to be applied above or below the base rate to work out the annual interest rate;
- where and when the base rate is published, or if it is not published, how the debtor may ascertain the rate; and
- the current actual annual interest rate or rates payable under the contract.



■ **Method of charging interest**

You must disclose how you calculate interest charges and how often interest charges are debited under the contract.

■ **Total interest charges**

You must calculate and clearly describe the contract's total interest charges (unless the contract will not be paid out within seven years from the date of which credit is first provided). When calculating total interest charges, you may assume that:

- if there is one annual interest rate it will not vary over the term of the contract; and
- if there is a variable interest rate, the rate over the applicable period is the same as when the disclosure statement is prepared; and
- the debtor will pay the amounts the contract requires when it requires them.

■ **Interest-free period**

If the contract involves an interest-free period, you must state its length and the date from which interest will accrue. If interest starts accruing on the happening of an event rather than on a particular date you must describe the event that will trigger the accrual of interest.

■ **Credit fees and charges**

You must describe each credit fee and charge.

You do not need to include under this heading any fees and charges already described as part of the initial unpaid balance.

■ **Payments required**

If more than one payment is to be made, you must disclose:

- the amount of each payment or the method of calculating it;
- when the first payment is due (if ascertainable);
- the frequency of the payments;
- how many payments will be made(if ascertainable);
- the total amount of payments (if ascertainable). This is only required if the contract will be paid off within seven years of the date that the credit is first provided. When you calculate total payments, you may assume that:
 - if there is one annual interest rate it will not vary over the term of the contract; and
 - if there is a variable interest rate, the applicable rate over the period is the same as the rate specified in the disclosure statement; and
 - the debtor will pay the amounts the contract requires when it requires them.



■ **Full prepayment**

If the contract allows you to recover a fee representing a reasonable estimate of your loss on full prepayment, you must disclose how you calculate this fee.

You must disclose whether or not you are using the procedure prescribed in the Act's regulations to calculate this fee.

If you are using another formula you should set it out in full and also describe the calculation method in words.

■ **Security interest**

You must describe any security interest that is or may be taken in connection with the contract (including a description of any property that may be subject to a security interest).

You must describe the extent to which the debtor's obligations are secured.

■ **Default interest charges and default fees**

You must describe any default interest charge and each default fee that may become payable under the contract. The description must include how and when each of these interest charges and default fees would become payable.

■ **Continuing disclosure statements**

You must disclose how often you will provide continuing disclosure statements (unless the Act exempts you from providing them).

You are, for instance, exempt from providing a continuing disclosure statement

- where you cannot feasibly locate the debtor; or
- where neither interest charges nor credit fees are payable; or
- where the debtor has agreed to access continuing disclosure information on a website.

■ **Consent to electronic communications**

If you agree to accept notices or other communications from the debtor in electronic form, you must include a statement to that effect.

■ **Other items**

You must disclose any other information or warning required by the regulations.

■ **Debtor's right to cancel**

You must include the statement below about the debtor's right to cancel the contract (unless the transaction is a revolving credit contract). The Act specifies the exact wording of this statement which means that you must follow its wording (making the appropriate deletions as shown).



Statement of right to cancel

The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short period of time after the terms of this contract have been disclosed to you to cancel the contract.

How to cancel

If you want to cancel this contract you must give written notice to the creditor.

*You must also:

- a return to the creditor any advance and other property received by you under the contract (but you cannot do this if you have taken possession of any goods or if you bought any property at an auction or if the contract is for the sale of services that have been performed); or
- b pay the cash price of the property or services within 15 working days of the day you give notice.

* Delete if the credit contract does not involve a credit sale.

† You must also return to the creditor any advance and any other property received by you under the contract.

† Delete if the credit contract involves a credit sale.

Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within three working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, e-mail) you must give notice that you intend to cancel within five working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within seven working days after they were posted.

Saturdays, Sunday and national public holidays are not counted as working days.

What you may have to pay if you cancel

If you cancel the contract the creditor can charge you

- a The amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and
- *b Interest for the period from the day you received the property or services until the day you either pay the cash price for the property or services or return the property to the creditor.

* Delete if the credit contract does not involve a credit sale.

†b interest for the period from the day you received the advance until the day your repay the advance

† Delete if the credit contract involves a credit sale.

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is being unreasonable in any way, you should seek legal advice immediately.



Failure to make initial disclosure

If you fail to disclose any of the key information required for initial disclosure:

- the debtor can cancel the contract at any time;
- you will be unable to enforce the contract (and unable to recover the debt) before disclosure is made, and you will be unable to enforce any right to recover any property or security interest;
- you may be liable for statutory damages; and
- you will have committed an offence.

See: Cancellation P38, Prohibited enforcement P62, Statutory damages P63, Offences P66

Continuing disclosure

At least every **six months** you must provide the debtor in a consumer credit contract with continuing disclosure of specific information, unless it is a revolving credit contract, in which case you must provide continuing disclosure at least every **45 working days**.

There are, however, three situations in which you do not have to provide continuing disclosure:

- if the amount of each advance to be made under the contract is known at the date the contract is made and payments are to be made according to a specified non-adjustable schedule; or
- the debtor can at all reasonable times access any information you have to disclose on a website you maintain and they have consented to having information disclosed in this way (this consent should be in writing); or
- no interest charges or fees are payable under the consumer credit contract.

In addition you do not have to provide continuing disclosure to any debtor over a particular period:

- if you cannot reasonably locate the debtor; or
- if during the period otherwise covered by a disclosure statement:
 - there have been no debits or credits to the account and the unpaid balance is nil or has been written off; or
 - the debtor has breached the consumer credit contract and you have begun enforcement proceedings; or
 - the debtor has been declared bankrupt or has died (although you will have to provide continuing disclosure statements if the official assignee or the executor or trustee of the debtor's estate asks you to).

If you do not provide a disclosure statement during a particular period for one of these three reasons, you must ensure the next disclosure statement includes all the information that would have been disclosed for that period.



The information you must provide in each continuing disclosure statement is:

- the opening and closing dates of the period covered by the statement;
- the opening and closing unpaid balances;
- the date, amount and description of each advance during the statement period;
- the date and amount of each interest charge debited to the debtor's account during the statement period;
- the date and amount of each amount paid by or credited to the debtor during the statement period;
- the date, amount and description of each fee or charge debited to the debtor's account during the statement period;
- the date that the next payment is due;
- how much the next payment will be (if this information cannot be ascertained you should, as a matter of good practice, describe how the next payment will be calculated. At the very least you should ensure that the method of calculating payments is disclosed in the initial disclosure statement); and
- the annual interest rate or rates applying during the statement period expressed as a percentage.

Failure to make continuing disclosure

If you fail to make continuing disclosure you will have committed an offence under the Act and may be liable for statutory damages.

See: Statutory damages P63, Offences P66

Variation disclosure

The Act requires you in certain circumstances to disclose to the debtor variations to a consumer credit contract.

The circumstances in which you must provide a debtor with variation disclosure are:

- if you both agree to change the consumer credit contract; in this case, you must provide the debtor with full particulars of the change **before** it takes effect, unless:
 - the change is only the release of a security interest or a change in the place for payments to be made;
 - the change reduces the debtor's obligations or extends their repayment time, except if the change has been made on the grounds of unforeseen hardship, in which case you must provide full particulars of the change.



- If the contract gives you power to vary fees or charges, the amount or timing of payments, the interest rate or the way interest is calculated, and you decide to exercise that power, you must provide the debtor with full particulars of the change within **five working days** of the date it takes effect. This includes any changes following the exercise of a power on a default by the debtor. Disclosure is not required if the change only reduces the debtor's obligations under the contract, increases the time for payment or increases the credit limit.

The Act provides that if the change is only to an interest rate, or the amount of a fee or charge, you may, instead of disclosing this change directly to the debtor, disclose it by:

- displaying the information prominently at all your publicly accessible places of business; and
- advertising the information at least once in the daily newspapers in all the following areas in which you do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill; and
- posting the information on your website.

However, the Act does not allow you to use this method of disclosure if the change in any way affects the amount, frequency or time for payment to be made under the contract.

Failure to make variation disclosure

If you fail to make disclosure of agreed changes to the contract you will not be able to enforce the contract until disclosure is made. You will have committed an offence under the Act and may be liable to pay statutory damages.

See: Prohibited enforcement P62, Statutory damages P63, Offences P66

Request disclosure

A debtor or guarantor may write to you for information about their consumer credit contract.

Request disclosure may include any or all of the following information about a consumer credit contract:

- the effect of part prepayment on the debtor's obligations;
- full particulars of any changes to the contract since it was made;
- the amount of any fee payable on part prepayment and how the fee will be calculated;
- the amount required for full prepayment on a specified date and how the amount will be calculated;



- the unpaid balance, including any outstanding interest charge (calculated at the date the disclosure statement is prepared);
- the amount of payments made or to be made or the method of calculating the amount of those payments;
- the number of payments made or to be made (if ascertainable);
- how often payments are to be made;
- the total amount of payments to be made under the contract, if ascertainable; and
- a copy of any disclosure statement that was or should have been provided before the request was made.

You must provide request disclosure within **15 working days** of receiving the request or, if you charge a reasonable fee for disclosure, **15 working days** from receiving that fee. If you do not intend providing the information until the debtor or guarantor pays the fee you should let them know this in writing as soon as you receive the request.

You do not have to provide request disclosure if you have already given the information to the debtor or guarantor in the previous three months or if you receive the request more than a year after the contract has ended.

Failure to make request disclosure

If you fail to make request disclosure you will have committed an offence under the Act and may be liable to pay statutory damages.

See: Statutory damages P63, Offences P66

Guarantee disclosure

If you take a guarantee for the performance of the debtor's obligation under the contract you must give the person giving the guarantee (the guarantor) disclosure.

Either before the guarantee is given or within **15 working days** of that date you must provide the guarantor with:

- the same initial disclosure you gave the debtor and
- a copy of all the terms of the guarantee.

You will be required to make further disclosure to the guarantor during the term of the contract if:

- you and the debtor enter into another consumer credit contract to which the guarantee applies; in this case you must again give the guarantor the same initial disclosure you gave the debtor; or



- you and the debtor agree to change the consumer credit contract so that it increases the debtor's obligations or reduces the time for payment; in this case you must disclose full particulars of the change to the guarantor within **five working days** of you and the debtor agreeing to the change; or
- you exercise a power under the consumer credit contract that increases the debtor's obligations or reduces the time for payment; in this case you must give the guarantor full particulars of the change within **five working days** of when the change takes effect. This includes any changes following the exercise of a power on a default by the debtor.

Where you exercise a power to change a consumer credit contract and the change relates only to the interest rate, fees or amount of a charge, you may, instead of directly giving the guarantor disclosure of the change, provide it by:

- displaying the information prominently at your place of business; and
- advertising the information at least once in all the following areas in which you do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill; and
- posting the information on your website.

However, the Act does not allow you to use this method of disclosure if the change in any way affects the amount, frequency or time for payment to made under the contract.

You must also provide request disclosure to the guarantor if they ask you to.

See: Request disclosure P29

Failure to make guarantee disclosure

If you fail to make guarantee disclosure you will be unable to enforce the guarantee until you do provide it. You will have committed an offence under the Act and may be liable to pay statutory damages.

See: Prohibited enforcement P62, Statutory damages P63, Offences P66



Disclosure standards

The Act regulates the way in which disclosure must be provided.

You must ensure you give consumers a written disclosure statement containing all the required information.

You must ensure all information is expressed clearly and concisely and in a way likely to bring it to the debtor's attention. The way you make disclosure must not be likely to mislead or deceive the debtor.

If any of the information contained in any disclosure statement is false or inaccurate you will not have fulfilled your disclosure obligations and will be treated as not having made disclosure. You may have also breached the Fair Trading Act if the statement is false, deceptive or misleading.

Model disclosure statements

The Act's regulations provide model disclosure statements. These forms are in Appendix One of this guide at P75. You do not have to use the model forms, but if you do use them properly, you will be treated as having made disclosure clearly and concisely and in a way likely to bring it to the attention of a reasonable person. In addition your disclosure will be treated as being unlikely to mislead or deceive a reasonable person about a matter material to the contract. If you amend the forms in any way not expressly permitted, you will not be deemed to have met the disclosure standards, and whether or not you have actually done so will be assessed on a case by case basis.

Even if you use the model statements you must still ensure that they contain the information required by the Act.

Assumptions

The regulations set out the following assumptions to help you draw up information you must disclose. Information will be ascertainable and must be disclosed if you can establish it assuming that:

- if there is one annual interest rate, it will not vary over the term of the contract;
- if there is a variable interest rate, the rate applicable to any period is the rate specified when the disclosure statement is prepared;
- the debtor will make the payments due under the contract on time;
- every day is a business day;
- charges and fees will not change nor will new fees or charges be imposed; and
- if you do not know the date of an advance when the disclosure statement is prepared, you may assume the advance will be made on the most likely date.



How to make disclosure

Generally disclosure must be made by:

- handing the disclosure statement to the debtor or guarantor; or
- posting the statement to the debtor's or guarantor's last known address; or
- if the debtor or guarantor has consented to electronic disclosure, sending the statement to the information system the debtor or guarantor has specified.

If you are disclosing only changes made following the exercise of a contractual power that increase the debtor's obligations or increase the amount of an interest rate or the amount of any fee or charge payable under a consumer credit contract you may do so by:

- displaying the information prominently at your place of business; and
- advertising the information at least once in all the following areas in which you do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill; and
- posting the information on your website.

However, the Act does not allow you to use this method of disclosure if the change in any way affects the amount, frequency or time for payment to made under the contract.

Electronic disclosure

You can provide disclosure to a debtor or guarantor in electronic form (such as fax or e-mail) if:

- the information remains readily accessible so as to be useable for subsequent reference; and
- the person entitled to the information consents; you should make sure you get this consent in writing. Note, too, that a person may give their consent subject to conditions about the form of the information or the way it is processed, produced, sent, received, stored or delivered.

You must still ensure the information is expressed *clearly* and *concisely* and in a manner that is likely to bring the information to the attention of a reasonable person and that it is not likely to mislead or deceive.

Time of disclosure

If you do not make disclosure you will not be able to enforce the contract. In addition the debtor may cancel the contract at any time up until **three working days** after initial disclosure is made. For the purposes of establishing whether you are able to enforce the contract or whether the debtor may cancel the contract disclosure is treated as being made **four working days** after having been posted or **two working days** after having been sent by fax or e-mail. For all other purposes disclosure is treated as having been made on the day it was posted, faxed or e-mailed.



Interest

A consumer credit contract must specify an annual interest rate or rates. If necessary you can do this by setting out how the annual interest rate will be calculated.

You must not charge interest in advance. This means you cannot require interest to be paid or debit any interest charge before the end of the day to which it applies. Two very narrow exceptions to this rule are:

- you can require or debit the first payment of interest in advance, if the contract's payment schedule has a broken first period (one shorter than the normal period for which interest charges will be debited to the debtor's account); and
- you can debit interest on the last day of a multi-day period as long as, when you calculate the interest, the debited interest charge is not considered part of the unpaid balance on that day.

The Act specifies the maximum interest you can charge under a consumer credit contract. This can be calculated by:

- applying the daily interest rate (being the annual interest rate divided by 365) to the unpaid daily balances; if there is more than one interest rate, by multiplying each daily rate by the part of the unpaid balance it applies to; or
- multiplying a weekly, fortnightly, monthly, quarterly or half-yearly interest rate or rates (being the annual rate divided by 52, 26, 12, 4 or 2) by the average unpaid daily balance for that period; if you use this method you may assume all months, quarters or half-years are the same length, although you must calculate average daily balances according to the actual number of days in the period.

Advance	\$1000
Payment frequency	monthly
Annual interest rate	16%

Interest calculated using a monthly interest rate and the average unpaid monthly balance:

Number of days in January for which interest is payable	=	31
Unpaid daily balance (days 1–31)	=	\$1000
Average unpaid daily balance ($\$1000 \times 31 \div 31$)	=	\$1000
Monthly interest rate $16\% \div 12$	=	1.333%
Interest charges $1.33\% \times 1000$	=	\$13.33



Interest calculated using the daily interest rate multiplied by the unpaid daily balance:

1 January unpaid daily balance	=	\$1000
Daily interest rate 16% ÷ 365	=	00.00043%
Interest charges for 1 January	=	\$00.43
Interest charges for 1–31 January	=	\$13.33

Interest calculated on the average daily unpaid balance where there has been a part pre-payment on 16 January of \$250:

Number of days in January for which interest is payable	=	31
Unpaid daily balance days 1–15	=	\$1000.00
Unpaid daily balance days 16–31	=	\$750
Average unpaid daily balance	15 x \$1000	= \$15,000
	16 x \$750	= \$27,000
		\$42,000 ÷ 31
		= \$870.97
Monthly interest rate	16% ÷ 12	= 1.33%
Interest charges for January	\$870.97 x 1.33%	= \$11.58

The effect of these rules is that you may no longer charge flat-rate interest, charge the interest in advance (eg \$200 calculated using a flat rate of 20% on a \$1000 loan charged at the start of the contract and to be repaid at the end of 12 months) or if a debtor fully prepays the contract apportion interest over the term of the contract under the Rule of 78.¹

Under the Act flat-rate interest will meet the definition of a credit fee (rather than an interest charge) and will be subject to the restrictions relating to credit fees.

Default interest

A consumer credit contract may allow for a higher rate of interest in the event of a default in payment only while the default continues.

The higher rate of interest may not be imposed for any breach or default other than a default in payment.

The Act does not expressly prohibit charging default interest on the entire unpaid balance of a loan rather than the amount in default but it will depend on the circumstances whether such a charge is recoverable or is an unenforceable penalty.

¹ The Rule of 78 has been used in the past by some credit providers to calculate a rebate of a credit charge where it has been charged at the commencement of the loan and the debtor has repaid the loan early. It essentially apportions the credit charge over the term of the loan so that 12/78th is allocated to the first month of a loan with a 12 month term, 11/78ths to the second month, 10/78ths to the third month and so on. The Rule of 78 has been criticised as providing a benefit to the creditor because it only approximates the proportion of credit charges that relate to each period.



You may charge default interest if a debtor has exceeded a credit limit, but only for as long as it is exceeded.

All possible default interest charges must be fully disclosed in the initial disclosure statement.

If the consumer credit contract specifies interest charges that do not comply with the Act, you will have committed an offence and you may be liable to pay statutory damages.

See: Statutory damages P63, Offences P66

Credit fees

The Act introduces rules for charging fees under a consumer credit contract. Any credit or default fees you do charge must be reasonable. There are also specific rules for establishment or prepayment fees, and for any third party fees you pass on to the debtor. You must disclose all fees in your initial disclosure statement.

In deciding whether or not a fee (other than an establishment or prepayment fee – see below) is reasonable, the courts must consider:

- whether the fee compensates you for actual costs incurred; or
- whether the fee compensates you for a reasonable estimate of actual loss you incurred because of a debtor's actions or omissions; and
- reasonable standards of commercial practice.

If you charge a credit or default fee under a contract, you should ensure you are able to justify it having regard to the costs or losses that gave rise to the fee.

Establishment fees

Any establishment fees you charge should be equal to, or less than, either:

- your *actual* reasonable cost of setting up the consumer credit contract and advancing the credit; or
- your *average* reasonable costs for setting up and advancing credit for the relevant class of consumer credit contract.

The fee should reflect only costs you can directly attribute to processing, considering or documenting a consumer credit contract. Fees calculated as a percentage of the credit extended are inherently unlikely to reflect actual costs.

The court may reduce or cancel an unreasonable charge or fee.



Prepayment fees

The Act allows you to charge fees on the full or part prepayment of a consumer credit contract. Those fees are discussed in this document under the heading **Payments and prepayments P40**.

Third party fees

If a third party charges you a fee in relation to a consumer credit contract and you have the right to pass that fee on to the debtor you must only claim the actual amount paid by you. You must not charge any premium, commission or mark-up on the fee, and you must pass on any discounts or allowances you receive.

If you expect to get an account from a third party and charge the debtor accordingly, and the actual charge turns out to be less than you estimated, you must refund the debtor the difference.

Credit-related insurance, extended warranties and repayment waivers

Credit-related insurance is:

- insurance of secured property or leased goods; or
- gap insurance to cover any shortfall should secured property or leased goods get damaged and an existing insurance policy is not sufficient to cover the debtor's obligations under the contract; and
- consumer credit insurance; that is – insurance cover where the insurer will pay towards the credit contract in the event of the debtor's sickness, unemployment, disability or death.

The Act defines an extended warranty as an arrangement whereby for an extra payment, you agree to repair or replace defective goods outside the normal warranty period.

You sell Brian a second-hand car under a consumer credit contract. The car is covered only by the statutory warranties of the Consumer Guarantees Act 1993. You tell Brian that for an extra \$850 you will meet all costs for repair of the vehicle over the next 12 months. If this is more than you would be required to do under the Consumer Guarantees Act your offer to Brian will be an extended warranty.

EXAMPLE

A repayment waiver is where for extra payment you waive your right to an amount specified in the contract should the debtor become unemployed, sick or injured, or die.

You may not require a debtor to unreasonably take out credit-related insurance, an extended warranty or a repayment waiver. It will be unreasonable to require such cover if it is not necessary to protect your legitimate interests or not justifiable in light of the risks undertaken by the parties.



The court can annul any unreasonably required credit-related insurance, extended warranty or repayment waiver and you may have to reimburse the debtor for any premiums they paid.

If you do require the debtor to get credit-related insurance and you arrange it, you must ensure every insured person has a copy of the insurance terms within **15 working days** of when the insurance is arranged.

You will be considered to have 'arranged' insurance if:

- you or a related company are the insurer;
- you or a related company act as the insurer's agent;
- you or a related company receive a commission from the insurer; or
- you require the debtor to obtain the insurance from a particular insurer.

If you nominate the insurer or require the debtor to take out credit related insurance and provide it yourself then all premiums, fees or charges payable under the policy will be credit fees and must be disclosed as part of the initial disclosure statement and will be subject to the provisions of the Act relating to credit fees.

If you require the debtor to take a repayment waiver or extended warranty, you must ensure they have a copy of its terms within **15 working days** of when it is arranged.

Failure to disclose terms of credit-related insurance

If you fail to comply with the disclosure obligations for credit-related insurance, repayment waivers and extended warranties you may be liable for statutory damages.

See: Statutory damages P63

Cancellation

A debtor may cancel a consumer credit contract within **three working days** of the date initial disclosure is made. Disclosure is said to have been made **four working days** from the date you post an initial disclosure statement, or **two working days** from when you send it electronically.

A debtor may cancel a contract any time if you have not provided initial disclosure.

A debtor does not have the right to cancel a consumer credit contract:

- if credit is provided for a specified period less than **two months**, and the credit is not to your knowledge used to pay money owing to you or a related company under another credit contract; or
- on the grounds that disclosure has not been made to a guarantor.



A debtor or debtor's agent must give you written notice of cancellation. Specific wording is not required as long as the person expresses an intention to withdraw from the contract.

The written notice of cancellation may be handed to you or any of your agents or employees, or addressed to you, your business or that of any of your agents. If you have agreed to communicate electronically, the debtor can email or fax their notice of cancellation.

After giving notice to cancel, the debtor has **15 working days** to pay the cash price of the property or services if the consumer credit contract is a credit sale and:

- the debtor has taken possession of the goods and disclosure of the right to cancel has been provided; or
- the debtor wants to keep the goods or use the services that are the subject of the credit sale; or
- the goods have been bought at auction; or
- the credit sale is for services that have been performed.

Depending on the actual terms of your contract, the debtor is not entitled to return the goods to you and you are not obliged to refund their cash price. In this situation you are still obliged to provide the debtor with goods or services.

In any other case the debtor must return any property or advance to you within **three working days** of the date you provided initial disclosure if the contract is:

- a credit sale but the debtor has not taken possession of the goods; or
- any other form of consumer credit contract.

If you have not provided initial disclosure the debtor can return the property or advance to you at any time.

If the debtor cancels a consumer credit contract you may claim:

- interest charges on the unpaid balance for the period credit was provided; and
- unless the contract provides otherwise, any reasonable expenses you have necessarily incurred in connection with the contract and its cancellation, plus the cost of repairing any returned goods that were damaged while they were in the debtor's possession.

In return, you must:

- give back any property you received from the debtor or anyone else under the consumer credit contract;
- release any security interest taken in connection with the consumer credit contract, unless the interest secures other obligations on the part of the debtor or guarantor; and
- refund any fees charges or interest the debtor has already paid.

If you contravene the Act's cancellation provisions you will have committed an offence.

See: Offences P66



Payments and prepayments

You must credit any payment a debtor makes under a consumer credit contract as soon as is practicable after you have received it. However, the Act states that a credit or debit is made on the date assigned to it rather than on the date it is processed.

If you receive a payment on a non-business day and process it sometime later, you may credit it to the debtor's account on the day it was made. This allows you to effectively date transactions. The Act also allows you to adjust debits or credits to a debtor's account so as to accurately reflect the party's legal obligations.

If, however, a consumer credit contract specifies a schedule of payments, and expressly allows you to credit any payment in accordance with it, you can do so regardless of when payments are actually received. In this situation, if a debtor pays early or more often than they are required to, it may be advisable to let them know that payment will be credited according to the schedule and not as soon as practicable to avoid any misunderstanding about the effect of the part prepayment.

EXAMPLE

Your consumer credit contract sets out a schedule of payments and expressly allows you to credit payments according to it. You tell the debtor it would be in their interests to pay more often than the schedule requires but then credit the payments against the account only in accordance with the schedule.

This is a false or misleading representation and you will breach the Fair Trading Act 1986.

EXAMPLE

Your consumer credit contract sets out a schedule of monthly payments and expressly allows you to credit payments according to it. You draw up a direct debit authority for the debtor that takes a once-a-week repayment from their account but credit the payments against the account monthly.

This is a false or misleading representation and you will breach the Fair Trading Act 1986.

If you receive a payment from a debtor that you are not entitled to receive, you must return it as soon as practicable.

Part prepayments

You must accept any extra payments a debtor makes under a consumer credit contract unless it specifically allows you to decline them. If the contract allows you to decline an extra payment and you receive one, you can:

- accept it and credit it to the debtor's account as soon as practicable; or
- decline it and return it to the debtor as soon as practicable; or
- credit it according to the payment schedule specified in the contract.



If you receive a number of part prepayments that total the unpaid balance under the contract you must treat the contract as having been fully prepaid even if you would otherwise be entitled to credit the payments according to the schedule.

Your consumer credit contract may allow you to charge a reasonable fee for part prepayment. A fee will be unreasonable if it exceeds a reasonable estimate of your loss. Loss may include an average reasonable administration cost for accepting part prepayments for this type of contract. Further losses (other than administrative costs) will only arise if you are charging the debtor a fixed interest rate and rates have gone down since you entered into the contract. In this situation your contract may allow you to claim a reasonable estimate of your loss in re-lending the money at the new lower rate.

Any fee payable upon part prepayment must be included in initial disclosure.

Full prepayment

A debtor is entitled at any time to repay in full what they owe under a consumer credit contract. A consumer credit contract must not prohibit full prepayment.

You cannot require a debtor who is prepaying in full to pay more than:

- the unpaid balance at the time of prepayment; this includes only interest and charges that would ordinarily accrue or be payable under the contract at the time; and
- if the contract expressly authorises it, an extra charge to cover your administrative costs or the average administrative costs for an appropriate class of credit contract arising from full pre-payment; and
- if the contract expressly authorises it, you may be able to charge an extra fee not exceeding a reasonable estimate of your loss (you may use the formula below to work this out); less
- any rebate for consumer credit insurance that is financed as part of the agreement. The Act sets out rules for calculating this rebate.

See: Rebate of insurance premiums P47

The Act's regulations set out a 'safe harbour' formula which if used correctly will give you a reasonable estimate of your loss if a debtor fully prepays. You may use other methods to work out your loss, but will need to be able to show that your method also produces a reasonable estimate. The Commission may use the 'safe harbour' formula as a benchmark for evaluating reasonable loss in appropriate situations. If the formula can be applied to your consumer credit contract you should not charge more than the amount calculated under the formula unless you have clearly set out the procedure you intend to use in the initial disclosure statement and you can justify the result.

It is the Commission's view that in working out your loss it is not appropriate to take into account the length of time it may take to re-lend the amount prepaid.



Formula for calculating loss on full prepayment

The formula set out in the regulations calculates the difference between the present value of outstanding loan repayments discounted at the prevailing interest rate and the lump sum repayment of the unpaid balance at the time of full prepayment. If there is no difference or if the value of the lump sum payment is higher, you have not suffered a loss.

EXAMPLE

Deborah has borrowed \$2000 for two years at 16.95% interest, with monthly payments of \$98.84. She makes full prepayment of the contract after seven months, nine days. The unpaid balance at that time is \$1,490.66. Interest rates for similar contracts with a term of 18 months are now 14%.

The formula will calculate the difference between:

- the present value of the remaining scheduled payments discounted at 14%; and
- the unpaid balance of \$1,490.66.

If your credit contract fixes an interest rate for the entire term and requires equal payments at equal intervals, you may estimate your reasonable loss using the following formula:

$$\text{LRE} = \text{VFP} - \text{U}$$

where:

LRE = is the reasonable estimate of your loss arising from full prepayment

VFP = is the value of payments you will not be receiving, based on the formula below

U = is the unpaid balance at the time of full prepayment.

The value of forgone payments is calculated using the following formula:

$$\text{VFP} = P \times \left(\frac{1 - v^n}{\frac{i}{f}} \right) \times (1 + i)^{\frac{d}{365}}$$

where:

VFP = the value of forgone payments

P = the amount of each payment under the fixed rate contract

v = a variable calculated according to the formula below

n = the number of payments yet to be made

f = the number of payments per year under the fixed rate contract

i = the annual interest rate you usually charge on fixed rate contracts similar to the contract to be repaid and with the same term as the unexpired term of the contract

d = the number of days between the last payment date and the date of full prepayment.



The variable v in the above formula is calculated using the following formula:

$$v = \frac{1}{1 + \frac{i}{f}}$$

where:

- i = the annual interest rate you usually charge on fixed rate contracts similar to the one to be repaid and with the same term as the unexpired term of the contract
- f = the number of payments per year under the fixed rate contract.

Under Deborah's contract:

- P = \$98.84
- n = 17
- f = 12
- i = .14
- d = 9
- u = \$1,490.66
- v = 0.9884678748

The presence value of the remaining schedule payments discounted at 14% is:

$$VFP = 98.84 \times \left(\frac{1 - .9884678748^{17}}{\frac{.14}{12}} \right) (1 + .14)^{\frac{9}{365}} = \$1521.01$$

The reasonable estimate of loss is:

$$LRE = \$1521.01 - \$1,490.66 = \mathbf{\$30.35}$$

If Deborah wants to repay the contract after seven months, nine days, however, and you are now lending money under similar contracts for a term of 18 months at 17.5%, the formula will produce a negative figure – you will not have suffered any loss, in fact, you will have benefited.

- P = \$98.84
- n = 17
- f = 12
- i = .175
- d = 9
- u = \$1,490.66
- v = 0.9856262834

$$VFP = 98.84 \times \left(\frac{1 - .9856262834^{17}}{\frac{.175}{12}} \right) (1 + .175)^{\frac{9}{365}} = \$1484.55$$

$$LRE = \$1484.55 - \$1490.66 = \mathbf{-\$6.11}$$



Q How do I know what interest rate to use for the variable 'i' in the formula?

A You must use the interest rate that you offer on contracts of the same or similar type. You must use the rate that you offer on contracts that have the closest term to the unexpired part of the loan that is to be repaid. If you offer products that have two terms that are equally close you must choose the higher interest rate.

If you have a contract that is only fixed for a certain period and then becomes floating, the Act provides another formula allowing you to calculate a reasonable estimate of your loss. It anticipates that you will not suffer any loss if the contract is prepaid during a period where a floating interest rate applies. If the contract is prepaid during a fixed interest period the loss is:

$$\text{LRE} = \text{VFP} - u$$

where:

LRE = the reasonable estimate of your loss

VFP = the value of forgone payments calculated according to the formula below

u = the unpaid balance

In this situation the value of the forgone payments can be calculated using the following formula:

$$\text{VFP} = p \times \left(\frac{1 - v^n}{\frac{i}{f}} \right) \times (1 + i) \frac{d}{365} + v^n \times (1 + i) \frac{d}{365} \times \text{EB}$$

where:

VFP = the value of forgone payments

EB = the expected balance at the end of the fixed term (if it is known), calculated according to the formula right (or by reference to the repayment schedule)

p = the amount of each fixed interest payment under the fixed rate contract during the fixed interest period

v = a variable calculated according to the formula below

i = the annual interest rate you usually charge on fixed rate contracts that are of the same or similar type as the contract that is to be repaid and are of the same terms as the unexpired term of the fixed interest period

n = the number of fixed interest rate payments yet to be made for the fixed interest period

f = the number of payments per year for the fixed interest period

d = the number of days between the last payment date and the date of full prepayment.



Variable v is calculated as follows:

$$v = \frac{1}{1 + \frac{i}{f}}$$

where:

- i = the annual interest rate you usually charge on fixed rate contracts that are of the same or similar type as the contract that is to be repaid and are of the same terms as the unexpired term of the fixed interest period
- f = the number of payments to be made a year under the fixed rate contract the fixed interest period.

$$EB = u + IC - TP$$

where:

- EB = the expected balance at the end of the fixed interest period
- u = the unpaid balance at the time of full prepayment
- IC = the total interest that would have been paid from the date of full prepayment to the end of the fixed interest period
- TP = The total payments due to be made from the date of full prepayment until the end of the fixed interest period.



Deborah borrows \$20,000 from you under a consumer credit contract. The term of the contract is five years. The interest rate for the first 24 months is 15%; the remaining period is covered by a floating interest rate. Deborah is to pay \$475.80 per month until (and unless) the interest rate changes.

Deborah wants to repay the contract after 22 months and five days. At that time there is \$14,352.16 outstanding on the loan. If she continued paying the loan she would have \$13,725.49 outstanding at the end of the fixed term period. You are charging 10% on similar contracts with three month-terms (the closest term to the unexpired fixed interest period of the contract).

In order to calculate your reasonable estimate of your loss (LRE) – using the formula in the regulations you must calculate the value of the forgone payments (VFP).

The relevant values in Deborah's contract are:

$$\begin{aligned}P &= \$475.80 \\n &= 2 \\f &= 12 \\i &= 0.1 \\d &= 5 \\v &= 0.9917355372\end{aligned}$$

$$\begin{aligned}EB &= \$14,352.16 + (\$179.03 + \$175.32 - \$14,322.73 \times 15\% \times 5 \div 365) - \\&(\$475.80 \times 2) = \$13,725.49\end{aligned}$$

$$\begin{aligned}VFP &= 475.80 \times \left(\frac{1 - 0.9917355372^2}{\frac{1}{12}} \right) \times \left(1 + .1 \right)^{\frac{5}{365}} + 0.9917355372^2 \times \left(1 + .1 \right)^{\frac{5}{365}} \\&\times 13,725.49 = \$14,458.26\end{aligned}$$

So a reasonable estimate of your loss (LRE) is:

$$LRE = \$14,458.26 - \$14,352.16 = \mathbf{\$106.10}$$



Rebate of insurance premiums

If a consumer credit insurance contract is financed under the consumer credit contract you must provide the debtor a proportional rebate on the premium if and when they fully prepay the contract.

The Act sets out a formula, based on the Rule of 78, that you can use to calculate the rebate. This formula gives you the minimum rebate that you can give the debtor:

$$y = \frac{p \times s \times (s + 1)}{t \times (t + 1)}$$

where:

- y = the amount of rebate on the premium
- p = the amount of the premium paid
- s = the number of whole months in the unexpired portion of the period for which insurance was agreed to be provided
- t = the number of whole months the insurance was to be provided.

Katene enters into a consumer credit contract credit sale agreement to buy a television. The term of the agreement is 12 months, and the contract requires him to take out insurance which will meet his liability under the contract in the event of his disability. The premiums are \$50 for the year and this amount is financed under the contract. But Katene repays the consumer credit contract after seven months so the rebate on the insurance premium is calculated as follows:

$$\text{rebate} = \frac{50 \times 5 \times (5 + 1)}{12 \times (12 + 1)} = \$9.62$$

Hardship applications

A debtor may ask you for a variation in the consumer credit contract in any situation. But the Act provides that in certain situations a debtor under a consumer credit contract can apply to you to vary the contract on the grounds of hardship, and, if you refuse, they can then apply to the court for orders to vary the contract.

The changes the Act allows the debtor to apply for are:

- extending the term of the contract and reducing the amount of each payment;
- postponing the due dates of payments; and
- extending the term of the contract and postponing for a specified period the dates on which payments are due.

These changes do not include any variation to annual interest rates.

A debtor may, under the Act, seek changes to a contract when:

- they suffer an unforeseen hardship (including illness and injury, the end of a relationship or loss of employment); and
- they cannot reasonably meet their contractual obligations because of that hardship; and
- they reasonably expect to be able to meet their obligations were the contract to be varied; and
- they are not, at the time they apply, in default of their financial obligations under the contract and their account is not at the time over its credit limit.

If you turn down the debtor's application, they may ask the court to order one of the above variations. The court may also make any other order it sees fit, and may stay any enforcement action or make other orders until the application is decided.

YOUR OBLIGATIONS UNDER A CONSUMER LEASE

Disclosure

You must provide disclosure under a consumer lease in three situations:

- at the start of the lease (initial disclosure);
- if you and the lessee agree to change the terms of the lease (variation disclosure); and
- if the lessee requests it (request disclosure).

The Act stipulates methods of making disclosure for consumer leases and you must comply with the standards sets out.

See: Disclosure standards P32

Initial disclosure

You must provide the lessee with initial disclosure before the lease is made. You must also give them a copy of all other terms of the lease either before or within **five working days** of when the lease is made.

The law of contracts governs when a contract is “made”. If you are in any doubt consult your lawyer.

The key information that must be provided to a lessee is set out in Schedule 2 of the Act. The regulations set out several assumptions that apply to this key information, and if the information can be ascertained using these assumptions, you must disclose it.

See: Assumptions P32

Initial disclosure must include:

- your full name and address;
- the fact that the lease is a consumer lease under the Act;
- the term of the lease;
- the cash price of the goods being leased;
- whether the lessee has an option to buy the goods, and if so, how much the lessee must pay to do so (or a method of calculating that amount);
- the amount, timing and number of payments to be made under the lease;

- how much is to be paid at the start of the lease or before the lessee takes the goods (such as a deposit);
- the total amount payable under the lease (if ascertainable);
- a statement of how the lessee may terminate the lease, including how any amount payable on termination would be calculated;
- particulars of any services that are in substance financed by the lease;
- any default fees, charges or enforcement costs that may be payable; and
- any other information or warnings required by the regulations.

Failure to make initial disclosure

If you fail to make initial disclosure to a lessee under a consumer lease, you will be unable to enforce the lease nor will you have any right to recover the leased property or any security interest. You will have committed an offence under the Act and may be liable to pay statutory damages.

See: Prohibited enforcement P62, Statutory damages P63, Offences P66

Variation disclosure

If the lessee agrees to change the terms of a consumer lease you must disclose full particulars of the change before it takes effect, unless the change reduces the lessee's obligations under that Act, in which case you do not need to provide variation disclosure.

Failure to make variation disclosure

If you fail to make variation disclosure you will not be able to enforce the lease nor will you have any right to recover leased property or any security interest. You will have committed an offence under the Act and may be liable to pay statutory damages.

See: Prohibited enforcement P62, Statutory damages P63, Offences P66

Request disclosure

A lessee is entitled to write to you for information about the consumer lease and you are obliged to disclose:

- the amount, timing and number of payments to be made under the lease;
- full particulars of any changes made to the lease since its start; and
- a copy of any disclosure statement that was provided or should have been provided before the request was made.



You must provide request disclosure within **15 working days** of receiving a request from a lessee or, if you charge a reasonable fee for disclosure, **15 working days** from receiving the fee. If you do not intend providing the information until a fee is paid you should inform the lessee in writing as soon as you receive the request.

You do not have to provide request disclosure if:

- you have provided the information the lessee wants in the previous three months; or
- the request comes more than a year after the lease has ended.

Failure to make request disclosure

If you fail to make request disclosure you will have committed an offence under the Act and may be liable to pay statutory damages.

See: Statutory damages P63, Offences P66

Disclosure standards

The Act regulates the way disclosure is provided.

You must ensure you give the lessee a written disclosure statement containing all the required information.

You must ensure all information is expressed clearly and concisely and in a way that is likely to bring it to the lessee's attention. The way you make disclosure must not be likely to mislead or deceive the lessee.

Assumptions

The regulations set out several assumptions that apply to providing information that must be disclosed. If the information can be ascertained on the basis of the following assumptions, you must disclose it.

The regulations set out the following assumptions to help you draw up information you must disclose. Information will be ascertainable and must be disclosed if you can establish it assuming that:

- the lessee will make the payments due under the contract on time;
- every day is a business day;
- charges and fees will not change nor will new fees or charges be imposed.



How disclosure is made

Disclosure must be made by:

- handing the lessee the disclosure statement; or
- posting the statement to the lessee's last known address; or
- if the lessee has agreed to electronic disclosure, sending the statement to the information system specified by the lessee.

Electronic disclosure

You can provide disclosure to a lessee in electronic form (such as e-mail) if:

- the information is readily accessible; and
- the lessee consents; you should make sure you get this consent in writing. Note, too, that a person may give their consent subject to conditions about the form of the information or the way it is produced, sent, received, processed, stored or delivered.

You must still ensure the information is expressed clearly and concisely, in a manner likely to bring it to the attention of a reasonable person and that it is not likely to mislead or deceive.

Time for disclosure

For the purposes of establishing whether you are able to enforce the lease disclosure is treated as being made **four working days** after having been posted or **two working days** after having been sent by fax or e-mail. For all other purposes disclosure is treated as having been made on the day it was posted, faxed or e-mailed.

Credit related insurance, extended warranties and repayment waivers

Credit-related insurance is:

- insurance of secured property or leased goods;
- gap insurance to cover a possible shortfall should secured property or leased goods get damaged and an existing insurance policy is not sufficient to cover the lessee's obligations under the contract; or
- consumer credit insurance; that is – insurance cover where the insurer will pay towards the lease in the event of the lessee's sickness, unemployment, disability or death.

The Act defines an extended warranty as an arrangement whereby for an extra payment, you agree to repair or replace defective goods outside the normal warranty period.

A repayment waiver is where for extra payment you waive your right to an amount specified in the contract should the lessee become unemployed, sick or injured, or die.



You may not require a lessee to unreasonably take out credit-related insurance, an extended warranty or a repayment waiver. It will be unreasonable to require such cover if it is not necessary to protect your legitimate interests or not justifiable in light of the risks undertaken by the parties.

The court can annul any unreasonably required credit-related insurance, extended warranty or repayment waiver and you may have to reimburse the lessee for any premiums paid.

If you do require the lessee to get credit-related insurance and you arrange it, you must ensure every insured person has a copy of the insurance terms within **15 working days** of when the insurance is arranged.

You will be considered to have 'arranged' insurance if:

- you or a related company are the insurer;
- you or a related company act as the insurer's agent;
- you or a related company receive a commission from the insurer; or
- you require the lessee to obtain the insurance from a particular insurer.

If you require the lessee to take a repayment waiver or extended warranty, you must ensure they have a copy of its terms within **15 working days** of when it is arranged.

If you fail to comply with the disclosure obligations for credit-related insurance, repayment waivers and extended warranties you may be liable for statutory damages.

See: Statutory damages P63

Termination payments

If a consumer lease is terminated before the end of its term you may charge the lessee the lesser of:

- an amount not exceeding a reasonable estimate of your loss due to termination; or
- an amount worked out according to a method set out in the Act's regulations.



YOUR OBLIGATIONS UNDER A BUY-BACK TRANSACTION OF LAND

Disclosure

If you are a transferee or buy-back promoter in a buy-back transaction of land there are three situations in which you must provide the occupier with disclosure:

- at the start of the transaction (initial disclosure);
- if the transaction is varied at any time (variation disclosure); and
- if the occupier asks for it (request disclosure).

The Act spells out the information you must provide, and how and when to provide it.

The Act stipulates methods for making initial disclosure, and you must comply with the standards set out.

See: Disclosure standards P57

As well as providing disclosure, you must also ensure the occupier has been given a copy of all the transaction's terms **and** has received independent legal advice **before** entering into any part of the transaction.

See: Independent legal advice P59

Initial disclosure

You must provide the occupier with initial disclosure and a complete copy of all the buy-back transaction's terms **before** the occupier agrees to any part of it.

Schedule 3 of the Act sets out the key information that must be provided to the occupier. The regulations set out several assumptions that apply to this key information, and if information can be ascertained using these assumptions, you must disclose it.

See: Assumptions P51

Initial disclosure must include:

- **Transferee's full name and address**
- **How much is to be paid to the occupier or for their benefit**



You must describe:

- the amount, timing and details of money to be paid to the occupier or to third parties they nominate; and
- full details of the discharge, payment or consolidation of any pre-existing financial obligations the occupier has.

■ **Right to occupy**

You must provide full particulars of the right to occupy the land, including:

- when the right to occupy begins;
- the date of the agreement conferring right to occupy;
- your address for service;
- the amount of any bond;
- any rent payable;
- the frequency and amount of rental payments;
- the place or bank account number where any rent is to be paid;
- a statement (if applicable) that the occupier must pay any solicitor or real estate agent fees or charges related to the right to occupy;
- a statement (if applicable) that the occupier must pay for any metered water;
- a list of any goods you have provided; and
- if the right to occupy is for a fixed term, the date it will cease.

■ **Right or understanding to re-purchase land**

You must state the terms of the right to re-purchase the land, including the purchase price or the method of calculating it.

■ **Fees and charges**

You must clearly describe any charges that are or may become payable, including the amounts (or if the amount is not ascertainable, the method of calculation) of each charge and when it is payable.

■ **Payments required**

For each payment (except already disclosed rental payments) that the transaction will entail, you must clearly describe:

- how much the occupier must pay (or where this is not ascertainable, the method of calculation);
- the number of payments to be made (if ascertainable);
- the total amount of the payment (if ascertainable); and
- when the first payment is due and how often the remaining payments should be made.

- **Buy-back default fees**

You must clearly describe any potential default fees, including a description of how and when each would become payable.

- **Consent to electronic communications**

If the occupier agrees to electronic communications, you must include a statement recording that consent. The statement should include the occupier's preferred electronic address.

- **Other items**

You must include any other information or warnings the regulations require.

If you fail to make proper initial disclosure or provide a copy of the terms of the transaction or ensure the occupier has had independent legal advice **before** they agree to any part of the transaction, you will be unable to enforce any part of the buy-back transaction or security interest, and you will be prohibited from transferring the property to a third party. You will also have committed an offence under the Act and you may be liable for statutory damages.

See: Prohibited enforcement P62, Statutory damages P63, Offences P66

Variation disclosure

You must disclose any agreed changes to the buy-back transaction **before** the change takes effect unless the variation only reduces the occupier's obligations.

You may also have additional obligations under general law to advise the occupier of any variation to the arrangements, or any exercise of a power. The Act does not affect these obligations. If you are in doubt about your obligations, seek legal advice.

Failure to make variation disclosure

If you fail to make variation disclosure you will be unable to enforce the transaction or any security interest and you may be liable to pay statutory damages.

See: Prohibited enforcement P62, Statutory damages P63, Offences P66

Request disclosure

An occupier is entitled to write to you for information about the buy-back transaction.

Request disclosure may cover any or all of the following information about a buy-back transaction:

- the amount, timing and number of payments to be made;
- full particulars of any changes made to the transaction since its commencement; or
- a copy of any disclosure statement that was or should have been provided before the date the request was made.



You must provide request disclosure within **15 working days** of getting a request from the occupier or, if you charge a reasonable fee for disclosure, within **15 working days** of receiving the fee. If you do not intend providing the information until the occupier pays a fee, you should tell them so in writing as soon as you receive the request.

You do not have to provide request disclosure if:

- you have given the occupier this information in the previous three months; or
- you get the request more than a year after the transaction has ended.

Failure to make request disclosure

If you fail to make request disclosure you will have committed an offence under the Act and may be liable to pay statutory damages.

See: Statutory damages P63, Offences P66

Disclosure standards

The Act regulates the way in which disclosure must be provided.

You must ensure you give the occupier a written disclosure statement.

You must ensure all information is expressed clearly and concisely and in a way likely to bring it to the occupier's attention. The way you make disclosure must not be likely to mislead or deceive the occupier.

If any of the information contained in any disclosure statement is false or inaccurate you will not have fulfilled your obligations and will be treated as not having made disclosure. You may have also breached the Fair Trading Act if the statement is false, deceptive or misleading.

Assumptions

The regulations set out the following assumptions to help you draw up information you must disclose. Information will be ascertainable and must be disclosed if you can establish it assuming that:

- the occupier will make the payments due under the contract on time;
- every day is a business day;
- charges and fees will not change nor will new fees or charges be imposed;
- if you do not know the date of an advance when the disclosure statement is prepared, you may assume the advance will be made on the most likely date.

How to make disclosure

Disclosure must be made by:

- handing the disclosure statement to the occupier; or
- posting the statement to the occupier's last known address; or
- if the occupier has consented to electronic disclosure, sending the statement to the information system the occupier has specified.

Electronic disclosure

You can provide electronic disclosure to the occupier in electronic form (for example by fax or e-mail) if:

- the information is readily accessible; and
- the occupier consents; you should make sure you get this consent in writing. Note, too, that a person may give their consent subject to conditions about the form of the information or the way it is produced, sent, received, stored, processed or delivered.

You must still ensure the information is expressed clearly and concisely and that it is not likely to mislead or deceive and in a manner likely to bring it to the attention of a reasonable person.

If you do not make disclosure you will not be able to enforce the contract. For the purposes of establishing whether you are able to enforce the contract disclosure is treated as being made **four working days** after having been posted or **two working days** after having been sent by fax or e-mail. For all other purposes disclosure is treated as having been made on the day it was posted, faxed or e-mailed.



Independent legal advice

You must ensure the occupier in a buy-back transaction has had independent legal advice **before** they agree to any part of the transaction. A lawyer must witness the signature of every occupier on any contract or document forming part of a buy-back transaction; a lawyer must also certify that they have explained to the occupier the implications of each contract or document.

Independent legal advice can only be given by a lawyer who has no interest in or relationship with the transferee or the buy-back promoter.

You cannot transfer the property to anyone else without leave from the High Court if you know or have reason to believe the occupier did not receive initial disclosure, or a copy of all the transaction's terms, or independent legal advice before agreeing to the transaction. If you do transfer the property in this situation, you will have committed an offence under the Act.

See: Prohibited enforcement P62

Fees

You must not require the occupier to pay unreasonable fees or default fees to any party in relation to a buy-back transaction.

The court may reduce or cancel an unreasonable charge or fee.

If a third party charges you a fee and the contract gives you the right to pass it on to the occupier, the amount you charge must not exceed the amount the third party charged you. You must not charge any premium, commission or mark-up on the fee. If the third-party fee is subject to a discount or rebate you must pass that on as well. If you estimate the fee a third party will charge you and the actual fee turns out to be less than you estimated, you must immediately refund the difference to the occupier.

Right to caveat

The Act gives the occupier a caveatable interest in the property, so any contract purporting to restrict or prohibit the occupier's right to lodge a caveat has no effect, and would constitute a breach of the Fair Trading Act.



OPPRESSIVE CONTRACTS – RE-OPENING PROVISIONS

The Act allows the courts to re-open oppressive credit and consumer credit contracts (including leases treated as consumer credit contracts and credit sales), consumer leases and buy-back transactions, as well as collateral contracts and linked transactions.

The court is able to consider whether non-credit terms (warranty disclaimers, other clauses excluding liability) as well as credit terms (terms relating to interest, fees, defaults) are oppressive.

The court can re-open a contract, lease or transaction if it considers it is oppressive or if a party to the contract, lease or transaction has exercised or intends to exercise a contractual power in an oppressive manner or if a party has induced another party to enter into the arrangement by oppressive means. In this context, a power includes:

- refusing to agree to end a contract early;
- refusing to vary or waive any contractual term; or
- imposing a condition on an agreement to terminate the contract early.

The Act defines 'oppressive' as: 'harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice'.

The court will consider the following factors in determining whether or not to re-open a contract on the grounds of oppression:

- all the surrounding circumstances;
- whether the amounts payable by the debtor are oppressive;
- whether the time allowed to remedy any default is oppressive, given the likelihood of loss to the creditor;
- whether a refusal to release a security is oppressive in terms of obligations secured and the extent of any security remaining after the release; and
- whether an amount charged on full prepayment is oppressive, bearing in mind the creditor's expenses and the likelihood the amount repaid could be re-invested on similar terms.



The courts have considered the meaning of oppression in cases brought under the Credit Contracts Act. Some points that can be drawn from decided cases are:

- where you and the debtor, lessee or occupier are in some respect on an unequal footing (eg English is their second language) oppression may be easier to find;
- your conduct will be relevant. If you have behaved unconscionably or with little regard to procedural fairness the courts are more likely to find oppression;
- current market practice and standard market practice will be important. If the terms of the contract are outside current market practices the court may be more inclined to find oppression; and
- disadvantageous terms of a contract may be oppressive if you know that the debtor, lessee or occupier cannot look elsewhere for finance and where you take advantage of that situation.

A debtor or lessee has **one year** from the end of a contract or one year from the date the last obligation is due to be performed to take proceedings to re-open an oppressive contract. In the case of a buy-back transaction of land, the debtor has **three years** from the day the last obligation is due to be performed.

The court can also make reopening orders in any proceedings (whether brought under the Act or not).

Orders following re-opening

The court has wide powers to deal with a re-opened contract. It may:

- order an account be taken;
- vest, or direct the transfer or assignment of property;
- direct any party to pay any money to another;
- extinguish or alter any outstanding obligations;
- set aside or alter any contractual term or security interest;
- direct any party to do or to stop doing anything to any other party; and
- order full payment of the cost to the consumer of bringing the re-opening proceedings.

The court can also make any orders against people who are not parties to the contract or transaction but who have either a beneficial interest or have shared the profits.



CONSEQUENCES OF BREACHING THE ACT

See: Re-opening provisions P60

The possible consequences of breaching the provisions of the Act are:

- you may be unable to enforce the contract (prohibited enforcement);
- you may be liable for a set statutory penalty (statutory damages);
- you may be prevented from behaving in a particular way (injunctions) or you may be banned from operating within the finance industry (banning orders);
- you may be convicted of a criminal offence and face a fine and/or imprisonment (offences); and
- you may be ordered to pay compensation or to refund money to the debtor (general remedial orders).

Prohibited enforcement

The Act prohibits you from enforcing consumer credit contracts, consumer leases and buy-back transactions of land before you have complied with its disclosure requirements.

Consumer credit contracts

If you do not make initial disclosure or disclosure of agreed changes to a consumer credit contract you may not take steps to enforce the contract, and you will have no right to recover property or enforce any security interest under the contract until that disclosure is made.

If you have not made guarantee disclosure according to the Act, you cannot take steps to enforce a guarantee until that disclosure is made.

Consumer leases

If you have not made initial disclosure or variation disclosure in relation to a consumer lease, you may not enforce it or enforce any right to recover leased property or any security interest under the lease until the disclosure has been made.

Buy-back transactions of land

If you have not provided initial disclosure or variation disclosure on a buy-back transaction of land, you may not enforce the buy-back transaction or any right to recover related property or any security interest under the buy-back.



The Act stipulates that a transferee in a buy-back transaction may not transfer the land if the occupier was not given initial disclosure as well as all the terms of the transaction and independent legal advice **before** entering into the transaction. This cannot be remedied by late disclosure; instead the transferee must apply for leave from the High Court.

Statutory damages

Consumer credit contracts

You will be liable to pay the debtor statutory damages if you breach any provisions relating to:

- initial disclosure;
- continuing disclosure;
- variation disclosure;
- request disclosure;
- disclosure standards;
- charging of interest; and
- disclosure of credit-related insurance, repayment waivers and extended warranties.

You will be liable to pay statutory damages to a guarantor if you breach any provisions relating to:

- request disclosure;
- guarantee disclosure; or
- disclosure standards.

Consumer leases

You will be liable to pay statutory damages to lessees under consumer leases if you breach any provisions relating to:

- initial disclosure;
- variation disclosure;
- request disclosure;
- disclosure standards; or
- disclosure requirements for credit-related insurance, repayment waivers and extended warranties.

Buy-back transactions of land

The transferee and buy-back promoter in a buy-back transaction of land will be liable to pay statutory damages if they breach the Act's provisions on:

- initial disclosure;
- variation disclosure;
- request disclosure; or
- disclosure standards.

Amount of statutory damages

The statutory damages are set by the Act and do not depend on the debtor, guarantor, lessee or occupier having suffered any loss. The amounts you will be liable to pay are:

Breach	Statutory damages
Failing to provide continuing disclosure to a debtor under a consumer credit contract:	Interest charges and credit fees payable for the period the breach covers (ie from the date continuing disclosure should have been provided until it actually was provided).
Failing to provide a debtor or guarantor with request disclosure:	Interest charges and credit fees payable from when the request was received to when disclosure is given or the contract ceases.
Failing to provide a guarantor with the terms of any guarantee:	Whichever is the smaller of: <ul style="list-style-type: none">■ \$3000; or■ 5% of all advances made and agreed under the guaranteed contract.
Any other breach:	Whichever is the smaller of: <ul style="list-style-type: none">■ \$3000; or■ in the case of a revolving credit contract, 5% of the credit limit at the time of the breach; or■ in the case of a consumer lease, 5% of the cash price of the goods; or■ 5% of the total advances agreed and made under the contract; or■ 5% of the rateable value of the land for a buy-back transaction.

There is a minimum of \$100 statutory damages.

The Commission may apply for statutory damages on behalf of an individual or on behalf of a class of people.

Reducing Statutory damages

You can apply to the court to reduce or extinguish your liability to pay statutory damages but only where the mistake occurs across a class of contracts. The court will consider these factors:

- the role that statutory damages have in providing an incentive for compliance with the Act; and
- whether or not you have an appropriate compliance programme in place; and
- the extent of the breach and the reasons for it; and



- the extent to which you have already compensated the persons affected; and
- whether it is just and equitable to make the order; and
- any other matters.

Defence

It is a defence to a claim for statutory damages if you prove that:

- the breach was caused by a reasonable mistake or events beyond your control;
- the breach was remedied as soon as possible; and
- you have offered to compensate anyone who suffered loss or damage.

The Act specifically recognises the existence of a compliance programme in deciding whether a mistake is reasonable.

A mistake does not include a mistake of law. It will not be a defence to claim you were unaware your actions breached the Act.

Injunctions and banning orders

The court can grant injunctions and interim injunctions restraining anyone from breaching or attempting to breach the Act, being a party to a breach or conspiring to breach the Act.

The Act gives the court the power to make orders banning people from:

- providing credit or being involved in buy-back transactions;
- taking any part in the management of companies who provide credit or are involved in buy-back transactions; and
- being employed by or acting as the agent of a credit provider or person involved in any buy-back transaction.

Banning orders may be made where the person:

- has been convicted of an offence under the Act or a crime of dishonesty; or
- has had a credit contract re-opened under the Credit Contracts Act; or
- has had a credit contract, consumer lease or buy-back transaction of land re-opened under the Act; or
- has failed to comply on more than one occasion with the Act or the Credit Contracts Act 1981; and
- in the opinion of the Court is not a fit and proper person to be a credit provider, consumer lessor or buy-back operator or promoter.

It is an offence to contravene a banning order, carrying a maximum penalty of \$30,000 or up to three months imprisonment.

Offences

It is an offence to contravene the Act's provisions relating to:

- disclosure requirements;
- disclosure standards;
- the debtors' right to cancel consumer credit contracts;
- interest charges on consumer credit contracts;
- fees;
- payments and prepayments;
- hardship provisions;
- declarations about the lessor's purpose in entering into the lease in consumer lease; and
- independent legal advice for occupiers in buy-back transactions.

Conviction carries a penalty of up to \$30,000.

It is also an offence for a transferee to transfer to a third party any land subject to a buy-back transaction without leave of the court if they know or have reason to believe that, before the occupier entered into any part of the transaction:

- they had not received initial disclosure; or
- they had not received a copy of all the terms of the transaction; or
- they had not had independent legal advice.

If you are found guilty of this offence you may be fined up to \$200,000 or imprisoned for up to one year.

Defence

It is a defence to a claim that you breached the Act if you prove that:

- the breach was caused by a reasonable mistake or events beyond your control;
- the breach was remedied as soon as possible; and
- you have offered to compensate anyone who suffered loss or damage.

The Act specifically recognises the existence of a compliance programme in deciding whether a mistake is reasonable.

A mistake does not include a mistake of law. It will not be a defence to claim you were unaware your actions breached the Act.



General remedial orders

The Act gives the court wide powers to make remedial orders against any creditor, lessor, and transferee, buy-back promoter, paid adviser or broker if they do anything that constitutes:

- a breach of the Act;
- aiding, abetting, counselling or procuring anyone else to breach the Act;
- inducing or attempting to induce anyone to breach the Act;
- being a party to or knowingly concerned in (directly or indirectly) a breach of the Act; or
- conspiring with anyone to breach the Act.

These orders include:

- refunds of any amounts improperly received (eg you may be ordered to refund an unreasonable fee);
- compensation for loss;
- exemplary damages; or
- consequential relief.

Orders can be made in favour of anyone who has suffered loss or damage, whether or not they were a party to the contract or transaction.

Court jurisdiction

The District Court and the Disputes Tribunal have jurisdiction to consider applications under the Act. Disputes Tribunal jurisdiction extends to considering applications of less than \$7,500 for:

- statutory damages;
- orders to annul or reduce unreasonable fees;
- orders to cancel credit-related insurance, extended warranties or repayment waivers where they have been unreasonably required and for orders to reimburse the debtor accordingly;
- general remedial orders;
- re-opening orders; and
- orders made under the Act's hardship provisions.

The Disputes Tribunal is able to hear applications for up to \$12,000 with the agreement of both parties.

The District Court's jurisdiction extends to prosecutions for offences under the Act, and applications for any orders where the contract, lease or transaction has a value of less than \$200,000. The District Court does not have authority to consider applications for injunctions. The District Court may make banning orders under the Act.

The High Court's jurisdiction extends to appeals and applications for injunctions, as well as a general jurisdiction to consider applications for orders under the Act. The High Court cannot consider applications for banning orders.

Transitional provisions

The Act covers all buy-back transactions from 14 October 2003.

All credit contracts, consumer leases and guarantees entered into after 1 April 2005 must comply with the Act.

The Credit Contracts Act 1981 and the Hire Purchase Act 1971 will continue to apply to transactions entered into before 1 April 2005.

From 1 April 2005, you may opt to have the Act apply to any credit contracts or guarantees entered into before 1 April 2005, but only if it does not increase the debtor's obligations. If you choose to do this, the Credit Contracts Act 1981 and the Hire Purchase Act 1971 will not apply.

If you opt to have the Act apply, you must tell the debtor within **five working days** that you have made this election and that the Act will apply to the contract.

Compliance programmes

The Act recognises the role of compliance programmes in assisting individuals and businesses in complying with the Act. Whether or not you have a compliance programme is likely to be relevant in deciding the outcome of any application you make to reduce statutory damages. It would also be relevant to a defence of reasonable mistake in a prosecution under the Act. The Commission supports businesses developing compliance programmes.

A compliance programme requires:

- a programme which requires your employees and agents to follow procedures that are designed to ensure compliance;
- systems to deal with deficiencies in the effectiveness of a programme; and
- prompt remedial action for any deficiencies discovered.

Your compliance programme should:

- include a clear policy statement on your commitment to compliance;
- include an everyday operating system designed to promote compliance;



- ensure your staff are trained in compliance issues and their areas of responsibility are clear;
- ensure you identify risks of non-compliance and take steps to manage them;
- ensure you have systems for reporting and monitoring the success of your programme;
- ensure that you have adequate resources (including equipment, staff training and reference materials) to ensure implementation;
- include procedures for handling complaints; and
- include a process for regular audits and reviews of your programme.

COMMERCE COMMISSION POWERS

The Act gives the Commerce Commission a range of powers currently set out in the Commerce Act 1986 including power to require a person or business to:

- provide in writing particular information or class of information;
- produce a particular document or class of documents; and
- appear before the Commission at a particular time and place to give evidence and produce any document or class of documents.

The Commission is empowered to take criminal action against any business that refuses to provide the information it has requested under these powers.

The Commission also has the power to obtain and execute search warrants which means it may:

- search specified premises, seize and remove goods, documents, computer records and other items; and
- enter premises with force if necessary.

The person in charge of the premises to be searched has to provide the Commission with reasonable facilities and assistance when a search warrant is executed. This includes assisting in:

- identifying and locating the required information; and
- reproducing stored or recorded information (eg computer records).

The Commission is empowered to take criminal action against the person in charge of premises who refuses to help it execute a search warrant.

The Commission may also take criminal action against anyone who attempts to deceive the Commission or knowingly mislead it.

The CCCF Act empowers the Commission to take individual and class actions for:

- re-opening proceedings;
- statutory damages; and
- general remedial orders.



The Commission may also:

- take proceedings for offences under the Act;
- apply for injunctions and interim injunctions;
- apply for orders reducing or annulling unreasonable fees;
- apply for orders re-opening a credit contract, consumer lease or buy-back transaction of land on the grounds that it is oppressive; and
- apply for orders that a person be prohibited from acting as a creditor, lessor, transferee or buy-back promoter.

The Commission may also give evidence in any proceeding brought wholly or partly under the Act, whether or not it is a party to the proceedings.

Enforcement Criteria

The Commission has developed generic enforcement criteria. The criteria are such that they can be applied across the Commission's range of enforcement responsibilities and at each stage of its enforcement process.

The Commission will apply the criteria as they relate to the enforcement of the CCCF Act.

The courts recognise that the Commission must apply an administrative discretion. Two previous High Court judgments have said the Commission must exercise judgement about a wide range of matters including the strength of the Commission's case, the availability of funds, competing claims on those funds by other cases and assessments of the comparative importance of the various cases in which the Commission is involved.

The Commission gathers information from members of the public and industry, market and business-specific monitoring. The Commission considers the available information for its relevance to the Commission's responsibilities and current work programme, the enforcement criteria and priority areas for new enforcement work.

The Commission decides whether to commence or continue enforcement action, the most appropriate type(s) of enforcement action and the most appropriate response in each case. To assist it in making these decisions, the Commission applies the following enforcement criteria:

- extent of detriment;
- seriousness of conduct;
- public interest.

Extent of detriment

Detriment is assessed by applying both quantitative and qualitative measures to determine the impact and consequences of the alleged contravention. The greater the likely level of detriment arising from the conduct in question, the more likely it is that the Commission will take or continue with enforcement action.

In assessing detriment the Commission considers the following questions:

- Are consumers or businesses likely to suffer and to what extent:
 - physical harm?
 - increased costs?
 - loss of property?
 - impaired choice?
- Are the more vulnerable targeted by the behaviour?
- Are a wide range of consumers or businesses likely to be affected?
- Is competition in the relevant markets likely to be adversely affected?
- Are excess profits likely to be gained?
- Are emerging markets likely to be adversely affected?
- Is the behaviour likely to have significant adverse national or regional impact?

Seriousness of conduct

The more serious the conduct, the more likely it is that the Commission will begin or continue enforcement action. In assessing the conduct, the Commission considers the following questions:

- Is the conduct deliberate, reckless or very careless?
- Is the conduct repeat or on-going behaviour?
- Is there a serious departure from expected lawful commercial behaviour?
- Is the conduct/information difficult to detect by businesses or consumers?
- Can the conduct be undone?
- Is there likely to be a contravention of a per se provision?

In the Public Interest

The Commission must have regard to a number of factors in the wider public interest. In assessing public interest the Commission considers the following questions:

- Is there likely to be widespread public interest in the issue?
- Would a decision not to commence or continue enforcement action likely undermine public confidence in the law?



- Is it more appropriate for the Commission, rather than another agency or an affected party to address the issue?
- Are there any mitigating or aggravating features involved?
- Do the personal circumstances of the parties involved argue for or against enforcement action?
- Is there a significant need to clarify the law?
- Is it necessary to reinforce the application of the legislation?
- Are the issues timely?

The Commission considers the criteria together, weighing them against the available information, and, standing back, deciding what action is required in the context of the Commission's overall activities. In applying the criteria, the Commission is also mindful of the changes it wishes to achieve from taking or continuing enforcement action in each matter.

Enforcement Responses – Options

The Commission has identified a number of enforcement responses, set out below, as options for resolving investigations into, and prosecutions of, suspected breaches of the Commerce, Dairy Industry Restructuring, Electricity Industry Reform, Fair Trading and CCCF Acts. In determining the preferred responses, the Commission considers the individual circumstances against its enforcement criteria.

<p>No further enforcement</p>	<p>There is no breach or possible or likely breach of the Act. This outcome may be appropriate in situations where the information received is incorrect, the behaviour is outside the jurisdiction of the Commission or it is more appropriate for another agency to consider the matter.</p>
<p>Compliance advice letter</p>	<p>There is a possible or likely but not serious breach of Act. The aim of this option is to inform the person or business in question and deter future illegal behaviour.</p>
<p>Warning letter</p>	<p>There is a likely breach of the Act. The aim of this option is to inform, stop the behaviour in question and deter the business from repeat or new illegal behaviour.</p>
<p>Settlement</p>	<p>There is a likely and serious breach of the Act which the business acknowledges. The aim of this option is to modify the behaviour of the business in question, inform others and where appropriate to seek redress for affected parties through the terms and conditions of the settlement. Settlements are entered into in circumstances where the Commission holds the view that the benefits obtained through the terms of the settlement provide a more appropriate outcome.</p>
<p>Decision to prosecute</p>	<p>There is a likely and serious breach of the Act. The aim of this option is to modify or stop the behaviour of and penalise the business in question, inform and modify the behaviour in question, inform others and, where appropriate, seek redress for affected parties.</p> <p>The Commission may take criminal or civil action against the business in question. Civil action will be taken in relation to:</p> <ul style="list-style-type: none"> ■ applications for statutory damages; ■ applications for injunctions and interim injunctions; ■ applications for general orders; ■ applications for order re-opening oppressive contracts; ■ applications for order prohibiting a person from operating as a financier. <p>Criminal action is taken in relation to offences under the Act.</p>

APPENDIX ONE – MODEL DISCLOSURE FORMS

DISCLOSURE STATEMENT FOR CONSUMER CREDIT CONTRACTS (other than revolving credit contracts)

Statement Date
/ /

IMPORTANT—The creditor is required to provide you with this disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003. This document sets out the key information about your consumer credit contract. You should read it thoroughly. **If you do not understand anything in this document, you should seek independent advice.** You should keep this disclosure statement and a copy of your consumer credit contract in a safe place.

This disclosure statement must be provided to you within 5 working days of the day on which the contract is made. The law gives you a limited right to cancel the consumer credit contract. See the statement of right to cancel below and your consumer credit contract for full details of your right to cancel. **Note that strict time limits apply.**

FULL NAME AND ADDRESS OR CREDITOR This is the person providing you the credit.

You may send notices to the creditor by: • writing to the creditor at the creditor's postal address; or • sending a fax to the number specified (if any); or • sending an email to the address specified (if any).	Name:
	Physical address:
	Postal address:
	Fax:
	Email:

CREDIT DETAILS

Initial unpaid balance
This is the amount you owe as at the date of this statement (including any fees charged by the creditor).

\$..... made up of: \$..... [describe any advance, charge, fee,
\$..... optional service, etc]
\$.....
Less
\$..... [eg, payment received, deposit,
\$..... trade-in allowance, etc]

Subsequent advance(s) This amount (or these amounts) will be provided to you by the creditor on the date(s) specified. \$..... [description, timing] \$..... [description, timing]	Total advances This is the total amount of all advances made or to be made to you. \$.....
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PAYMENTS You are required to make each payment of the amount specified and by the time specified.

Timing of payments Frequency..... First payment..... Last payment.....	Number of payments	Amount of each payment \$.....	Total amount of payments \$.....
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INTEREST

Annual interest rate(s) % fixed for the whole term of the contract, being..... [specify term of the contract]; or % fixed for part of the term of the contract, being..... [specify period during which the annual interest rate is fixed]; or the base rate..... [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates]; or % above/below base rate..... [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates]	Total interest charges This is the total amount of the interest charges payable under the contract. \$.....
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Interest free period
..... days/weeks/months/years. When interest will begin to accrue:

Method of charging interest
 Interest charges are calculated by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate by 365. Interest is charged to your account [specify frequency, eg, monthly, fortnightly]; or
 Interest charges are calculated and charged at the end of each [specify period, eg, month, fortnight] by multiplying the average unpaid daily balance for the preceding [specify period, eg, month, fortnight] by a [specify frequency, eg, monthly, fortnightly] interest rate. The [specify frequency, eg, monthly, fortnightly] interest rate is calculated by dividing the annual interest rate by [specify number of periods in a year, eg 12, 26]; or
 Interest charges are calculated by [specify description of other method of charging interest and frequency with which interest charges are debited].

CREDIT FEES AND CHARGES

The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract.
 Your credit contract may allow the creditor to vary this/these fee(s) and charge(s).
 \$ [amount or, if not ascertainable, method of calculation] [description, timing]
 \$ [amount or, if not ascertainable, method of calculation] [description, timing]
 Administration costs and fees payable on full prepayment are disclosed under the full prepayment heading.

CONTINUING DISCLOSURE

The creditor may be required to provide you with regular statements. The statements will give you information about your account. Statements will be provided [specify frequency, eg, monthly]

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS

Security interest
 The creditor has an interest in the property listed below to secure performance of your obligations under the contract, or the payment of money payable under the contract, or both. **If you fail to meet your commitments under the contract, then to the extent of the security interest, the creditor may be entitled to repossess and see this property.**
 [description of security interest, property, and extent to which debtor's obligations to creditor are secured]
 [description of security interest, property, and extent to which debtor's obligations to creditor are secured]

Default interest charges and default fees
 In the event of a default in payment and while the default continues you must pay the default interest charges. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the creditor to vary these fees and charges.
 Default interest is [description of the amount and how and when default interest charges become payable]
 Default fees:
 \$ [description of the amount and how and when default fees become payable]
 \$ [description of the amount and how and when default fees become payable]

FULL PREPAYMENT

If you pay the unpaid balance in full before the final payment is due (**full prepayment**), you may be required to pay a fee or charge to compensate the creditor for any loss resulting from the full prepayment. The creditor may have suffered a loss if the creditor's current interest rate is lower than the interest rate applying to your original consumer credit contract. You may also have to pay the creditor's administrative costs relating to the full prepayment.
 The amount you may have to pay to compensate the creditor for the loss is calculated using the formula prescribed in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004; or
 [alternative procedure]
 Administrative costs/fees \$ [description]



RIGHT TO CANCEL

Statement of right to cancel

The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

How to cancel

If you want to cancel this contract you must give written notice to the creditor.

***You must also—**

- (a) return to the creditor any advance and any other property received by you under the contract (but you cannot do this if you have taken possession of any goods or if you bought any property at an auction or if the contract is for the sale of services that have been performed); or
- (b) pay the cash price of the property or services within 15 working days of the day you give notice.

[*Delete if the credit contract does not involve a credit sale.]

†You must also return to the creditor any advance and any other property received by you under the contract.

[†Delete if the credit contract involves a credit sale.]

Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 3 working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, email) you must give notice that you intend to cancel within 5 working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within 7 working days after they were posted.

Saturdays, Sundays, and national public holidays are not counted as working days.

What you may have to pay if you cancel

If you cancel the contract the creditor can charge you—

- (a) the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and
- * (b) interest for the period from the day you received the property or services until the day you either pay the cash price for the property or services or return the property to the creditor.

[*Delete if the credit contract does not involve a credit sale.]

† (b) interest for the period from the day you received the advance until the day you repay the advance.

[†Delete if the credit contract involves a credit sale.]

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is being unreasonable in any way, you should seek legal advice immediately.

**DISCLOSURE STATEMENT FOR
REVOLVING CREDIT CONTRACTS**

Statement Date
/ /

IMPORTANT—The creditor is required to provide you with this disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003. This document sets out the key information about your consumer credit contract. You should read it thoroughly. **If you do not understand anything in this document, you should seek independent advice.** You should keep this disclosure statement and a copy of your consumer credit contract in a safe place.

This disclosure statement must be provided to you within 5 working days of the day on which the contract is made. The law gives you a limited right to cancel the consumer credit contract. See your consumer credit contract for full details of your right to cancel. **Note that strict time limits apply.**

FULL NAME AND ADDRESS OF CREDITOR This is the person providing you the credit.

You may send notices to the creditor by: • writing to the creditor at the creditor's postal address; or • sending a fax to the number specified (if any); or • sending an email to the address specified (if any).	Name:..... Physical address:..... Postal address: Fax:..... Email:
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CONTINUING DISCLOSURE

Continuing disclosure statements
 The creditor is required to provide you with regular statements. The statements will give you information about your account (eg, any interest or fees charged during the statement period) and the amount and timing of your next payment.
 Statements will be provided [specify frequency, eg, monthly, fortnightly]

INITIAL UNPAID BALANCE This is the amount you owe as at the date of this statement (including any fees charged by the creditor).

\$.....	made up of: \$..... [describe any advance, charge, fee, optional service, etc]
\$.....	 [optional service, etc]
\$.....	
	Less	
\$.....	 [eg, payment received, etc]
\$.....	

PAYMENTS

Minimum payment
 You may choose to pay more than the minimum payment.
 \$.....; or
 % of the unpaid balance as at the end of each statement period; or
 The minimum payment is calculated by.....
 [description of other method of calculating minimum payment]

When payments are due
 Payments must be made..... [specify frequency, eg, monthly, fortnightly]

The date that payments are due will be specified in your continuing disclosure statements.

CREDIT DETAILS

Annual interest rate(s)
 Current annual interest rate (this rate may vary); or
 % fixed for [specify period]; or
 the base rate [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates]; or
 % above/below base rate [name and description of base rate; when and where published or how ascertained; current annual interest rate or rates].

Credit Limit
 \$.....

Method of charging interest
 Interest charges are calculated by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate by 365. Interest is charged to your account [specify frequency, eg, monthly, fortnightly]; or
 Interest charges are calculated by [specify description of other method of charging interest and frequency with which interest charges are debited].

Interest free period
 days/weeks/months/years. When interest will begin to accrue:



CREDIT FEES AND CHARGES

The following credit fee(s) and charge(s) (which are not included in the initial unpaid balance) are, or may become, payable under, or in connection with, the contract.

Your credit contract may allow the creditor to vary this/these fee(s) and charge(s).

\$ [amount or, if not ascertainable, method of calculation] [description, timing]

\$ [amount or, if not ascertainable, method of calculation] [description, timing]

WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS

Security interest

The creditor has an interest in the property listed below to secure performance of your obligations under the contract or the payment of money under the contract, or both. **If you fail to meet your commitments under the contract, the to the extent of the security interest the creditor may be entitled to repossess and sell this property.**

..... [description of security interest, property, and extent to which debtor's obligations to creditor are secured]

..... [description of security interest, property, and extent to which debtor's obligations to creditor are secured]

Default interest charges and default fees

You must pay the default interest charges in the event of a default in payment and while the default continues, or in the event of you causing the credit limit under the contract to be exceeded and while the credit limit is exceeded. In the event of a breach of the contract or on the enforcement of the contract, the default fees specified below are payable. Your credit contract may allow the creditor to vary these fees and charges.

Default interest is [description of the amount and how and when default interest charges become payable]

Default fees:

\$ [description of the amount and how and when default fees become payable]

\$ [description of the amount and how and when default fees become payable]

CONTACTING THE COMMERCE COMMISSION

To contact the Commission with information about potential breaches of the Act:

- call the Contact Centre on 0800 94 3600;
- write to Contact Centre, Commerce Commission, PO Box 2351, Wellington;
- email contact@comcom.govt.nz; or

■ www.comcom.govt.nz

ISBN 1-86945-240-2

March 2005



COMMERCE COMMISSION

NEW ZEALAND