

## THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

### CREDIT-RELATED INSURANCE, EXTENDED WARRANTIES AND REPAYMENT WAIVERS – CONSUMER CREDIT CONTRACTS AND CONSUMER LEASES

Creditors must not make any unreasonable requirement as to the terms on which debtors take out credit-related insurance, an extended warranty or a repayment waiver under a consumer credit contract or consumer lease.

A requirement will be unreasonable if it is not necessary to protect either the creditor or debtor's legitimate interests or not justifiable in light of the risks undertaken by the parties. For example, a creditor cannot require a debtor to purchase:

- income-protection insurance if the debtor is unemployed;
- insurance for goods sold on credit if the debtor already has home and contents insurance that would cover the goods; or
- a warranty that simply duplicates the manufacturer's warranty (eg, a two-month warranty on goods that have a manufacturer's warranty of 18 months).

#### EXAMPLE

A finance company required its customers to insure their car loans against the risk of redundancy and injury. Over 1,500 borrowers were unemployed when they took the loan, but were still sold redundancy insurance. A clause in the contract meant that even if customers got a job after taking out the loan and were then made redundant, they would not be eligible for the redundancy insurance, so there was no possible way for them to benefit from the insurance. In a settlement with the Commerce Commission, the company agreed to refund the full amount of unnecessary insurance purchased to affected customers.

The court can annul any unreasonably required credit-related insurance, extended warranty or repayment waiver and may require that the debtor be reimbursed for some or all premiums paid.

If a consumer credit contract or consumer lease involves credit-related insurance, a repayment waiver or an extended warranty and it is arranged by the creditor, the creditor must ensure every insured person or debtor under the contract or lease has a copy of the terms within **15 working days** of when the insurance, warranty or waiver is arranged.

A creditor will be deemed to have 'arranged' insurance if:

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

A debtor is entitled to recover statutory damages where a creditor has failed to comply with the disclosure obligations for credit-related insurance, repayment waivers and extended warranties. It is also a criminal offence for a creditor to unreasonably require the insurance, warranty or waiver. If the creditor misleads the debtor about the need for credit-related insurance, a repayment waiver or extended warranty or fails to obtain the debtor's agreement to acquire such cover, but nevertheless charges the debtor for it, the creditor may also be in breach of the Fair Trading Act.

The court can annul any unreasonably required credit-related insurance, extended warranty or repayment waiver and may require that the debtor be reimbursed for some or all premiums paid.

## COMMISSION ON CREDIT-RELATED INSURANCE

Under the Credit Contracts and Consumer Finance Act, while third party fees must be passed on at cost, creditors may charge a reasonable commission in the case of credit related insurance being taken out by the debtor.

### DEFINITIONS

#### CREDIT-RELATED INSURANCE

- 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 not be sufficient to cover the debtor's obligations under the contract; or
- consumer credit insurance, where the insurer will pay any outstanding obligations against a credit contract in the event of the debtor's sickness, unemployment, disability or death.

**EXTENDED WARRANTY** An agreement where, for additional payment, a creditor agrees to repair or replace defective goods outside the warranty period that would otherwise apply.

**REPAYMENT WAIVER** An arrangement where, for additional payment, a creditor waives any amount payable under the contract should the debtor become unemployed, sick or injured, or die.

#### LENDERS AND BORROWERS

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

- Consumer credit contracts – creditors and debtors.
- Consumer leases – lessors and lessees.
- Buy back transactions – transferees and occupiers.

For the purposes of these fact sheets the terms creditor and debtor are used when referring generally to credit transactions, but the specific terms are used where relevant.

To check for updates to this fact sheet visit:  
[www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

This fact sheet is part of a series looking at the Credit Contracts and Consumer Finance Act.

Other fact sheets can be downloaded from  
[www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

### CONTACT

Contact the Commerce Commission with information about possible breaches of the Credit Contracts and Consumer Finance Act.

#### TELEPHONE

Our Contact Centre during office hours on 0800 943 600

#### WRITE

To us at Contact Centre,  
PO Box 2351, Wellington 6140

#### EMAIL

Us at [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

Only the courts can make an authoritative ruling on breaches of the Credit Contracts and Consumer Finance Act.