

THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

RULES RELATING TO INTEREST CHARGES – CONSUMER CREDIT CONTRACTS

If interest charges are payable under a consumer credit contract, the annual interest rate or rates must be specified in the initial disclosure statement.

The Credit Contracts and Consumer Finance Act (CCCF Act) also sets out rules around how interest may be calculated and charged.

CHARGING INTEREST IN ADVANCE

Under the CCCF Act, interest cannot be charged in advance, ie, before the end of the day to which the charge relates. This effectively prohibits the creditor collecting the interest before it is earned. Two very narrow exceptions to this rule are:

- a creditor 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
- interest can be debited on the last day of a multi-day period as long as, when the interest is calculated, the debited interest charge is not considered part of the unpaid balance on that day.

In debiting interest, a contract may specify when a day ends for the purposes of deducting the charge. In other words, a creditor may debit at 10am if that is the time specified in the contract as the 'day's end'.

LIMIT ON INTEREST CHARGES

The CCCF Act specifies the maximum interest that can be charged 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; or 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 this method is used it may be assumed that all months, quarters or half-years are the same length, although average daily balances must be calculated according to the actual number of days in the period.

The CCCF Act does not, however, impose an interest rate cap or explicitly limit the annual interest rate a creditor may charge.

DEFAULT INTEREST CHARGES

In the event that a debtor does not make a scheduled payment, a consumer credit contract may allow for a higher rate of interest to be charged, but only while the default continues. Under the CCCF Act, all possible default interest charges must be fully disclosed in the initial disclosure statement.

The higher rate of interest may not be imposed for any breach or default other than a default in payment, or where a debtor has exceeded a credit limit. In each case the higher rate can only be charged for the period the debtor remains in default or over their credit limit.

The CCCF 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.

There is no longer a 14 day stand-down period on charging penalty interest.

EXAMPLE

A pawnbroker offered personal loans to customers, using their vehicles as security when they could not raise the money they needed by pawning their goods. The company calculated interest on the total amount of the initial loan, as opposed to charging interest on the decreasing unpaid balance under the loan and thereby overcharged customers. The company was convicted under the CCCF Act, fined and ordered to repay customers the overcharged amount.

The CCCCF Act does not impose an interest rate cap, or explicitly limit the annual interest rate a creditor may charge.

DEFINITIONS

INTEREST CHARGE A charge that accrues over time and is calculated by applying a rate to an amount owing under a credit contract.

DEFAULT INTEREST CHARGE An additional interest charge payable on a breach of a credit contract by a debtor.

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:
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This fact sheet is part of a series looking at the Credit Contracts and Consumer Finance Act. Other fact sheets can be downloaded from
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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,
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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.