

Do my terms of trade mean I need a Credit Licence?

Legislative requirements on whether an organisation or business is to be classed as a “credit provider” needing to have a licence under the Consumer Credit Code are complex.

If an organisation or a small business operator supplies “credit”¹ in the course of the sale of goods or services and the repayments are deferred for at least 7 days,² then that organisation or a small business operator is classed as a “credit provider” under the National Credit Code (the “Code”).

If one is classed as a “credit provider”, the next question is whether there is a need to obtain a credit licence so that it may employ the use of credit contracts or consumer leases.

This paper will be divided into the following two sections:

1. When traders of goods and services requires a credit licence.
2. When traders of goods and services are exempt from obtaining a credit licence.

When traders of goods and services require a credit licence

Before establishing whether an entity requires a credit licence, the issue is whether payment arrangements are within the definition of ‘credit activity’.³ An entity, in the course of its business would need to be involved, in the sale of goods and/or services that require credit contracts or consumer leases.

This note deals only with payment terms relating to the supply of goods or services to consumers who engage with:

1. credit contracts; or
2. credit service.

Once an entity is satisfied that its operations involve “credit” attracting the operation of the National Credit Code, the entity may require a credit licence if it falls within the criteria set out below, where the credit is provided to a “consumer”:⁴

Where there is a credit contract, a credit licence will be required where:

- (a) the borrower is a natural person or strata corporation;
- (b) the credit is wholly or partly for personal domestic use, or relates to a residential investment property; and
- (c) a charge is made for the credit.

Examples of credit providers under a credit contract include: bank, finance company, building society or a credit union but it can be wider.

When traders of goods and services are exempt

Some entities are exempt from the need for a “credit licence”. Suppliers, in the course of selling goods or services, mentioned in this note will not normally require a credit licence if they fall within the below criteria:

¹ *National Consumer Credit Protection Act 2009* (Cth) schedule 1 (the “Act”).

² *Privacy Act 1988* (Cth) s 6G.

³ *Act* (n 1) s 6.

⁴ *Ibid* s 5(1).

A supplier of goods and services or a related body corporate of the supplier is exempt from the requirement of a credit licence, when carrying out credit activities, in relation to:

- (a) credit contracts or proposed credit contracts;
- (b) consumer leases or proposed consumer leases;
- (c) credit contracts or consumer leases under which a credit card is provided;

where the supplier is providing “credit” in respect of a its own sale or provision of goods or services

Interest may be charged under such a contract. However, there are certain requirements in relation to the amount of interest charged, which must be set out in the terms and conditions of a credit contract. This includes:

- (a) the parties must act fair and reasonably;
- (b) the interest rate must be reasonable and be set out as an annual interest rate (the interest rate can be divided daily, monthly, quarterly and half yearly. This should be part of the calculation mentioned in (c) below)
- (c) the method of calculation of interest must be included in the credit contract or consumer lease;

It should be noted that there can be no interest charged in a small credit contract that is for \$2,000 or less⁵.

This paper highlights only the basic detail of the requirements of whether or not entities engaging in the sale of goods or services require a credit licence and whether interest can be imposed on the contract, in the course of the entity’s business.

However, whether a particular entity, selling goods or services, has terms of trade involving a price or a fee deferral arrangement amounting to a “credit contract” and whether an entity requires registration as a “credit provider”, requires a detailed examination of the entity’s business operations.

Feel free to contact your usual Eakin McCaffery Cox contact if you want assistance in any way about the above.



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*The above was prepared for and is intended to provide a broad general overview of issues only.
It is not intended, and or must not be relied upon, as definitive legal advice.*

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⁵ *ibid* s 5.