

The National Credit Act (NCA)

Does it apply to you?

- The NCA applies to credit agreements with all consumers, and to entities such as close corporations, companies, partnerships and trusts, whose asset value or annual turnover is below a prescribed threshold (currently R1 million).
- Other exceptions: It will not apply to lendings to the State or where an entity which falls within the NCA enters into a large transaction. Large transactions are defined as mortgage agreements and credit agreements above a prescribed threshold (currently R250 000).

Which transactions are covered by the NCA?

The NCA casts its net over most credit products where payment is deferred and a charge, interest or fee is payable on the outstanding balance. Typical products are: overdrafts and credit cards, incidental credit agreements, instalment agreements, mortgages or secured loans or leases and credit guarantees (suretyships).

New Institutions

Two new regulatory institutions have been established to administer the Act: The National Credit Regulator (NCR) is the administrative regulator dealing with issues such as research and policy development, registration of industry participants, investigation of serious complaints and will take responsibility for the enforcement of the act. The National Consumer Tribunal (NCT) will conduct hearings into complaints under the Act.

How will it affect you - the borrower?

The NCA introduces fundamental Consumer Rights including:

- Right to be given reasons for credit being refused or discontinued (reason(s) to be given in writing on request of the consumer).
- Right to information relating to the credit agreement in an official language. The requirement is that, Credit Providers must over a period of three years make its documents available to consumers in at least two official languages.
- Right to information in plain and understandable language in terms of which guidelines may be published.

- Right to have access to and to challenge credit records and information held by credit bureaux, to have **incorrect** records of debt adjustments expunged and, to be given notification before negative information is reported to the credit bureau.

Protection from aggressive advertising

- Negative option marketing is prohibited. (This occurs when goods or services are offered to you with the assertion that if you do not return the products or refuse the service within a certain time period you have 'purchased' them)
- Marketing of credit at the consumer's home or workplace is prohibited unless the visit is prearranged or the consumer invites the credit provider to visit for that purpose.
- The credit provider must give the consumer the option (and must not act contrary to the option selected), to: a) decline the option of pre-approved annual credit limit increases, b) to be excluded from any telemarketing campaign, marketing or customer list that may be sold or distributed, or any mass distribution of email or sms messages. The credit provider must maintain a register of options selected.

Protection from over-indebtedness

The credit provider must conduct a proper assessment of each consumer's ability to meet obligations, taking reasonable steps to investigate and evaluate the consumer's:

- Understanding and appreciation of the risks, costs and obligations of the proposed agreement; and
- Ability to meet those obligations in a timely manner in terms of the consumer's existing financial means and debt repayment history.

A credit agreement will be reckless if the credit provider fails to conduct the required assessment, or having conducted it, enters into an agreement with a consumer despite the fact that the consumer did not appreciate the nature of the risks, costs and obligations, or could not afford them. However the onus is on the consumer to fully and truthfully answer any request by the credit provider for information as part of the assessment required. Failure to do so, will be a defence to any allegation that the agreement is reckless.

The consumer may make a claim of reckless lending through a debt counsellor, who needs to investigate and seek an order from a court or the Tribunal.

Pricing (Interest rates and fees)

All existing lendings taken before 1 June 2007 will continue to be priced as agreed under the Usury Act, but all new lendings with effect from 1 June 2007, will be subject to the pricing provided for under the NCA.

The NCA limits credit providers from claiming non-interest fees, so that a consumer can easily make a comparison between facilities of different credit providers based on limited cost. Credit Providers are expected to claim costs under the interest to be charged.

The Minister is to establish an interest cap and other cost controls, prohibiting any costs other than the principle sum borrowed, interest, an initiation fee, periodic or transaction based service fees, insurance premiums for credit insurance, and delivery, installation and like charges, and collection costs. These fees, premiums and charges are subject to regulatory maximums or standards.

Surcharges for insurance and incidental costs are prohibited.

All costs must be advised in advance and the consumer has the right to arrange insurance directly, rather than pay the credit provider to do so, and to choose to arrange his or her own insurance policies.

Applying for credit under the NCA

Application requirements: The Act requires that the credit provider must provide the consumer with a pre-agreement, containing the main features of the proposed agreement and a quotation of the costs, before entering into any credit agreement which is to be binding on the credit provider for 5 days. The purpose is to provide all consumers with an opportunity to shop around for the best deal, within the 5 day period.

Credit assessment: The consumer will be required to provide detailed information to the lender. This may include a detailed statement of income and costs, a household budget and details of other credit commitments in order for the lender to assess affordability.

Consumer credit records: The Act requires the credit provider upon entering or amending or terminating a credit agreement to report the transaction to a credit bureau.

Records: The Act requires that credit providers keep records of all applications for credit, credit agreements and credit accounts for a prescribed time.

Payment of accounts: A consumer may pre-pay any amount owing at any time, and fully pay out the account at any time, subject to a termination charge of not more than three months interest, only in the case of mortgage bonds or agreements in excess of R250k.

Spouse's written consent: For marriages in community of property the NCA requires the written consent of the spouse, when one spouse applies for credit.