

Gault on Commercial Law

24/9/24 Update Summary

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COMMENTARY

COMMERCE ACT 1986

The commentary on pecuniary penalties has been revised in the following locations:

- [CA28.02] “Covenant”
- [CA80.10(3)] Prompt acknowledgement of liability in negotiated settlements

New paragraphs have been inserted at the following locations:

- [CA28.11(2)] *Commerce Commission v Foodstuffs North Island Ltd*
- [CA80.03(38)] *Commerce Commission v Foodstuffs North Island Ltd*
- [CA80.10(5)(zd)] *Commerce Commission v Foodstuffs North Island Ltd*

This has involved discussion or listing of the following pecuniary penalty case:

- *Commerce Commission v Foodstuffs North Island Ltd* [2024] NZHC 2222: [CA28.02], [CA28.11(2)], [CA80.10(3)], [CA80.10(5)(zd)], [CA80.03(38)]

CREDIT CONTRACTS AND CONSUMER FINANCE ACT 2003

There has been extensive updating of the Credit Contracts and Consumer Finance Act 2003 commentary – both section by section/annotations commentary in the Act and in the discursive chapter “Introduction to Consumer Law – Credit Contracts and Consumer Finance”. Much of the updating relates to changes in lenders’ assessment of affordability of loans and the associated Responsible Lending Code (revised July 2024).

DISCURSIVE COMMENTARY

The following new paragraphs have been included:

- FC2.02(7) Buy Now Pay Later agreements
- FC2.03A(4A) Affordability assessment from 31 July 2024
- FC2.03A(4B) Affordability regulations (revoked 31 July 2024)

SECTION BY SECTION/ANNOTATIONS COMMENTARY

The following new paragraphs have been included:

- CF5.09A.01 (“certified”), CF5.14.01 (“consumer goods”), CF5.15.01 (“consumer lease”), CF5.28A.01 (“debt collection”), CF5.32A.01 (“director”), CF5.40.01 (“full costs”), CF5.42.01 (“goods”), CF5.44A.01 (“high-cost consumer credit contract”), CF5.48.01 (“interest charge”), CF5.49A.01 (“layby sale agreement”), CF5.53A.01 (“Ministry”), CF5.54.01 (“mobile trader”), CF5.59.01 (“payment reminder”), CF5.74A.01 (“senior manager”), CF5.78A.01 (“weighted average annual interest rate”)
- CF9B.01A (“advertising”),
- CF9B.02A (“distribute”)
- CF9CA.01 (“records about inquiries made”)
- CF26B.01 (“information about dispute resolution and financial mentoring”)
- CF41A.01 (“records about fee calculations”)
- CF59B.01 (“due diligence duty of directors and senior managers”)
- CF116AAA.01 (“requirement for annual return”)
- CF116A.01 (“directors and senior managers – statutory damages”)
- CF131A.01 (“interpretation”)
- CF131B.01 (“when person needs to be certified”)
- CF131C.01 (“exemption from certification”)
- CF131D.01 (“prohibitions on holding out that person is certified”)
- CF131E.01 (“Commission may issue certification”)
- CF131F.01 (“application for certification”)

- CF131G.01 (“when certification must be issued”)
- CF131H.01 (“procedural requirements for Commerce Commission”)
- CF131I.01 (“notice of decision”)
- CF131J.01 (“certification details to go to Registrar”)
- CF131K.01 (“conditions of certification”)
- CF131L.01 (“when Commission may impose conditions”)
- CF131M.01 (“certified person may apply for variation of conditions”)
- CF131N.01 (“procedure for variation of conditions”)
- CF131O.01 (“duration of certification”)
- CF131P.01 (“cancellation or suspension of certification”)
- CF131Q.01 (“procedure for suspension or cancellation of certification”)
- CF131R.01 (“duty to notify changes”)
- CF131S.01 (“appeals against certification decisions”)
- CF131T.01 (“fees, charges, and costs”)
- CF132A.01 (“disclosure about debt collection”)

Existing commentary has been updated at the following locations:

- CF5.02.01 (“annual interest rate”), CF5.03.01 (“associated person”), CF5.16.01 (“costs of borrowing”), CF5.22.01 (“credit fees”), CF5.25.01 (“credit sale”), CF5.33.01 (“dispute resolution scheme”), CF5.49.01 (“lawyer”), CF5.53.01 (“Minister”), CF9B.01 (“agreement”), CF9B.03 (“lender”), CF9E.01 (“purpose of Responsible Lending Code”), CF9F.01 (“content of Responsible Lending Code”), CF9G.01 (“preparation and issue of Responsible Lending Code”), CF9I.01 (“amendment of Responsible Lending Code”), CF9K.01 (“publication of costs of borrowing”), CF57A.01 (“obligations of creditor in relation to application”), CF83A.01 (“outline of pt 3A”), CF83J.01 (“effect of debtor’s complaint or hardship application on rights to enforce”), CF83Q.01 (“creditor must exercise right to enter premises in accordance with lender responsibility principles”), CF88.01 (“liability for statutory damages”), CF99.01 (“prohibited enforcement of a consumer credit contract”), CF102A.01 (“infringement offences”), CF137A.01 (“regulation-making powers for new financial products”)

FAIR TRADING ACT 1986

The following commentary paragraphs have been updated:

[FT2.18.01(5)], [FT5D.02], [FT9.06(4)], [FT9.28(19)], [FT9.33], [FT41.02(4)], [FT43.04(2)], [FT45.01(4)] and [FT45.01(8)].

This has involved discussion of the following cases:

- *Banks v Farmer* [2023] NZCA 383: [FT9.28(19)]
- *Banks v Farmer* [2024] NZSC 95: [FT9.28(19)]
- *Chadda v Singh* [2024] NZHC 2318: [FT43.04(2)]
- *Church v Ellis* [2024] NZHC 2121: [FT2.18.01(5)]
- *Lay v Bank of New Zealand* [2024] NZHC 2282: [FT41.02(4)]
- *Luo v Shiu* [2024] NZSC 79: [FT45.01(4)]
- *Medtech Ltd v Valentia Technologies (NZ) Ltd* [2024] NZHC 2107: [FT41.02(4)]
- *Mikro Holdings Ltd v Digga NZ Ltd* [2024] NZHC 2281: [FT9.06(4)]
- *Shiu v Luo* [2024] NZCA 48: [FT45.01(4)], [FT45.01(8)]
- *Tauranga City Council v Harrison Grierson Holdings Ltd* [2024] NZHC 714: [FT5D.02]

At [FT9.33] (social media, “influencers” and the Fair Trading Act) the FTC’s issue of a new final rule (“Trade Regulation Rule on the Use of Consumer Reviews and Testimonials”) is noted.

LEGISLATION

CREDIT CONTRACTS AND CONSUMER FINANCE REGULATIONS 2004

The Credit Contracts and Consumer Finance Regulations 2004 were amended, as from 2 September 2024, by the Credit Contracts and Consumer Finance (Buy Now, Pay Later) Amendment Regulations 2023 as follows:

- in reg 3 definitions of “BNPL contract (buy now, pay later contract)” and “new borrower” inserted
- new reg 5B and cross-heading “BNPL contracts are consumer credit contracts” inserted
- new regs 18J–18L inserted

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