

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (2017
Measures No. 8) Bill 2017: Credit card
reforms**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1.		
2. Schedule 1, Part 1	1 January 2019.	1 January 2019
3. Schedule 1, Part 2, Division 1	1 January 2018.	1 January 2018
4. Schedule 1, Part 2, Division 2	1 January 2019.	1 January 2019
5. Schedule 1, Parts 3 and 4	1 January 2019.	1 January 2019
6. Schedule 1, Part 5	The day after this Act receives the Royal Assent.	

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Schedule 1—Credit card reforms

Part 1—When a credit card contract, or a credit limit increase, is unsuitable

National Consumer Credit Protection Act 2009

1 After subsection 118(3)

Insert:

(3AA) For the purposes of paragraph (2)(a), a consumer is taken to be able to comply with the consumer's financial obligations under a contract only with substantial hardship if:

- (a) the contract is a credit card contract; and
- (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within the period determined by ASIC under section 160F.

2 After subsection 119(3)

Insert:

(3A) For the purposes of paragraph (2)(a), a consumer is taken to be able to comply with the consumer's financial obligations under a contract only with substantial hardship if:

- (a) the contract is a credit card contract; and
- (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within the period determined by ASIC under section 160F.

3 After subsection 123(3)

Insert:

(3AA) For the purposes of paragraph (2)(a), a consumer is taken to be able to comply with the consumer's financial obligations under a contract only with substantial hardship if:

- (a) the contract is a credit card contract; and
- (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within the period determined by ASIC under section 160F.

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4 After subsection 124(3)

Insert:

- (3A) For the purposes of paragraph (2)(a), a consumer is taken to be able to comply with the consumer's financial obligations under a contract only with substantial hardship if:
- (a) the contract is a credit card contract; and
 - (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within the period determined by ASIC under section 160F.

5 After subsection 131(3)

Insert:

- (3AA) For the purposes of paragraph (2)(a), a consumer is taken to be able to comply with the consumer's financial obligations under a contract only with substantial hardship if:
- (a) the contract is a credit card contract; and
 - (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within the period determined by ASIC under section 160F.

6 After subsection 133(3)

Insert:

- (3AA) For the purposes of paragraph (2)(a), a consumer is taken to be able to comply with the consumer's financial obligations under a contract only with substantial hardship if:
- (a) the contract is a credit card contract; and
 - (b) the consumer could not comply with an obligation to repay an amount equal to the credit limit of the contract within the period determined by ASIC under section 160F.

7 At the end of section 160A

Add:

Division 5 provides that ASIC may determine periods for the purpose of determining the unsuitability of credit card contracts.
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8 At the end of Part 3-6A

Add:

Division 5—Periods for determining unsuitability in respect of credit card contracts

160F Periods for determining unsuitability in respect of credit card contracts

- (1) ASIC may, by legislative instrument, determine a period for the purposes of the following provisions:
 - (a) paragraph 118(3AA)(b);
 - (b) paragraph 119(3A)(b);
 - (c) paragraph 123(3AA)(b);
 - (d) paragraph 124(3A)(b);
 - (e) paragraph 131(3AA)(b);
 - (f) paragraph 133(3AA)(b).
- (2) Without limiting subsection (1), a legislative instrument referred to in that subsection may determine different periods in relation to the following:
 - (a) different classes of credit card contracts;
 - (b) different credit limits;
 - (c) different rates of interest.
- (3) In determining a period under subsection (1), ASIC must have regard to:
 - (a) ensuring that a reasonable balance is achieved between:
 - (i) preventing consumers from being in unsuitable credit card contracts; and
 - (ii) not preventing consumers from accessing credit through suitable credit card contracts; and
 - (b) any other relevant matter.

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1 **Part 2—Credit limits**

2 **Division 1—Credit limit increases**

3 *National Consumer Credit Protection Act 2009*

4 **9 Subsection 133BE(1) (note 1)**

5 Repeal the note.

6 **10 Subsection 133BE(1) (note 2)**

7 Omit “Note 2”, substitute “Note”.

8 **11 Subsections 133BE(2) and (3) (note)**

9 Repeal the note.

10 **12 Paragraph 133BE(5)(a)**

11 Omit “a written communication”, substitute “any form of
12 communication”.

13 **13 Subsection 133BE(6)**

14 Omit “written”.

15 **14 Sections 133BF and 133BG**

16 Repeal the sections.

17 **Division 2—Credit limit reductions**

18 *National Consumer Credit Protection Act 2009*

19 **15 Subsection 5(1)**

20 Insert:

21 *credit limit reduction entitlement*: see subsection 133BF(3).

22 **16 Section 133B (paragraph relating to Division 4)**

23 Repeal the paragraph, substitute:

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1 Division 4 imposes restrictions on a licensee making offers etc. to
2 increase the credit limit of a credit card contract, and imposes
3 requirements aimed at ensuring the consumer can reduce the credit
4 limit of a credit card contract.

5 **17 Division 4 of Part 3-2B (heading)**

6 Repeal the heading, substitute:

7 **Division 4—Offers etc. to increase, and entitlement to** 8 **reduce, credit limit of credit card contract**

9 **18 At the end of Division 4 of Part 3-2B**

10 Add:

11 **133BF Credit provider not to enter into credit card contract unless** 12 **it allows credit limit to be reduced**

13 *Requirement*

- 14 (1) A licensee must not enter into, or offer to enter into, a credit card
15 contract under which the licensee would be the credit provider, if
16 the consumer who would be the debtor under the contract would
17 not have a credit limit reduction entitlement under the contract.

18 Civil penalty: 2,000 penalty units.

19 *Offence*

- 20 (2) A person commits an offence if:
21 (a) the person is subject to a requirement under subsection (1);
22 and
23 (b) the person engages in conduct; and
24 (c) the conduct contravenes the requirement.

25 Criminal penalty: 50 penalty units.

26 *Meaning of credit limit reduction entitlement*

- 27 (3) A consumer who is the debtor under a credit card contract has a
28 ***credit limit reduction entitlement*** under the contract if:

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- 1 (a) for a contract that does not provide for a minimum credit
2 limit—the consumer is entitled under the contract to reduce
3 the credit limit of the contract to any amount (including nil);
4 or
5 (b) for a contract that provides for a minimum credit limit—the
6 consumer is entitled under the contract to reduce the credit
7 limit of the contract to any amount that equals, or exceeds,
8 the minimum credit limit.

9 **133BFA Credit provider to provide online capacity to request** 10 **reduction of credit limit**

11 *When this section applies*

- 12 (1) This section applies if a consumer who is the debtor under a credit
13 card contract has a credit limit reduction entitlement under the
14 contract on a day (the *online reduction day*).

15 *Requirement*

- 16 (2) The licensee who is the credit provider under the credit card
17 contract must establish and maintain a website that satisfies all of
18 the following paragraphs:
19 (a) the website tells the consumer that the consumer may use the
20 website to request a reduction in the consumer's credit limit;
21 (b) the website:
22 (i) tells the consumer what information the consumer will
23 need to enter in order to request a reduction in the
24 consumer's credit limit; and
25 (ii) provides the consumer with instructions on how to
26 request a reduction in the consumer's credit limit;
27 (c) if the consumer enters the information and follows those
28 instructions, the consumer can use the website to request a
29 reduction in the consumer's credit limit;
30 (d) the website is available on the online reduction day.

31 Civil penalty: 2,000 penalty units.

32 *Defence*

- 33 (3) For the purposes of subsection (2), it is a defence if the website is
34 reasonably unavailable on the online reduction day.

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133BFB Credit provider not to suggest the consumer not reduce the credit limit

When this section applies

- (1) This section applies if:
- (a) a consumer who is the debtor under a credit card contract has a credit limit reduction entitlement under the contract; and
 - (b) the consumer has requested to exercise the entitlement by reducing the consumer's credit limit under the contract by an amount (the *reduction amount*).

Requirement

- (2) The licensee who is the credit provider under the credit card contract must not do any of the following:
- (a) suggest that the consumer apply for an increase to the credit limit of the credit card contract;
 - (b) suggest that the consumer not reduce the consumer's credit limit under the contract;
 - (c) suggest that the consumer instead reduce the consumer's credit limit under the contract by an amount that is smaller than the reduction amount.

Civil penalty: 2,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

133BFC Credit provider to give effect to request to reduce credit limit

When this section applies

- (1) This section applies if:
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- 1 (a) a consumer who is the debtor under a credit card contract has
2 a credit limit reduction entitlement under the contract; and
3 (b) the consumer has requested to exercise the entitlement by
4 reducing the consumer's credit limit under the contract.

5 *Requirement*

- 6 (2) The licensee who is the credit provider under the credit card
7 contract must take reasonable steps to ensure that the request is
8 given effect to the request as soon as practicable.

9 Civil penalty: 2,000 penalty units.

10 *Offence*

- 11 (3) A person commits an offence if:
12 (a) the person is subject to a requirement under subsection (2);
13 and
14 (b) the person engages in conduct; and
15 (c) the conduct contravenes the requirement.

16 Criminal penalty: 50 penalty units.

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1 **Part 3—Interest charges**

2 *National Consumer Credit Protection Act 2009*

3 **19 Section 133B (after the paragraph relating to Division 6)**

4 Insert:

5

Division 7 imposes requirements relating to application of interest 6 charges under credit card contracts.

7 **20 At the end of Part 3-2B**

8 Add:

9 **Division 7—Calculation of interest under credit card**
10 **contracts**

11 **133BS Credit provider not to impose retrospective interest charges**

12 *Requirement*

- 13 (1) A licensee who is the credit card provider under a credit card
14 contract must not, in relation to a statement period covered by a
15 statement of account, impose on the consumer who is the debtor
16 under the contract a liability to pay a rate of interest if the rate of
17 interest would:
- 18 (a) be applied to the balance, or a part of the balance, of the
19 credit card contract on a day in the statement period; and
 - 20 (b) be applied because of facts or circumstances coming into
21 existence after that day; and
 - 22 (c) be higher than the rate of interest (including nil) that would
23 have been applied to that balance, or that part of the balance,
24 on that day if those facts and circumstances had not come
25 into existence.

26 Civil penalty: 2,000 penalty units.

27 *Offence*

- 28 (2) A person commits an offence if:
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- 1 (a) the person is subject to a requirement under subsection (1);
2 and
3 (b) the person engages in conduct; and
4 (c) the conduct contravenes the requirement.
5 Criminal penalty: 50 penalty units.

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1 **Part 4—Ending credit card contracts**

2 *National Consumer Credit Protection Act 2009*

3 **21 Subsection 5(1)**

4 Insert:

5 *credit card termination entitlement*: see subsection 133BT(3).

6 **22 At the end of section 133B**

7 Add:

8

Division 8 imposes requirements aimed at ensuring the consumer 9 can terminate a credit card contract.

10 **23 Before Part 3-2C**

11 Insert:

12 **Division 8—Ending credit card contracts**

13 **133BT Credit provider not to enter into credit card contract unless**
14 **it allows for termination of contracts**

15 *Requirement*

- 16 (1) A licensee must not enter into, or offer to enter into, a credit card
17 contract under which the licensee would be the credit provider, if
18 the consumer who would be the debtor under the contract would
19 not have a credit card termination entitlement under the contract.

20 Civil penalty: 2,000 penalty units.

21 *Offence*

- 22 (2) A person commits an offence if:
23 (a) the person is subject to a requirement under subsection (1);
24 and
25 (b) the person engages in conduct; and
26 (c) the conduct contravenes the requirement.

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1 Criminal penalty: 50 penalty units.

2 *Meaning of credit card termination entitlement*

- 3 (3) A consumer who is the debtor under a credit card contract has a
4 *credit card termination entitlement* under the contract if the
5 consumer is entitled, under the contract, to terminate the credit card
6 contract.

7 **133BU Credit provider to provide online capacity to request**
8 **termination of credit card contract**

9 *When this section applies*

- 10 (1) This section applies if a consumer who is the debtor under a credit
11 card contract has a credit card termination entitlement under the
12 contract on a day (the *online termination day*).

13 *Requirement*

- 14 (2) The licensee who is the credit provider under the credit card
15 contract must establish and maintain a website that satisfies all of
16 the following paragraphs:
17 (a) the website tells the consumer that the consumer may use the
18 website to request to terminate the credit card contract;
19 (b) the website:
20 (i) tells the consumer what information the consumer will
21 need to enter in order to request to terminate the credit
22 card contract; and
23 (ii) provides the consumer with instructions on how to
24 request to terminate the credit card contract;
25 (c) if the consumer enters the information and follows those
26 instructions, the consumer can use the website to request to
27 terminate the credit card contract;
28 (d) the website is available on the online termination day.

29 Civil penalty: 2,000 penalty units.

30 *Defence*

- 31 (3) For the purposes of subsection (2), it is a defence if the website is
32 reasonably unavailable on the online termination day.

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133BV Credit provider not to suggest the consumer not terminate the credit card contract

When this section applies

- (1) This section applies if:
- (a) a consumer who is the debtor under a credit card contract has a credit card termination entitlement under the contract; and
 - (b) the consumer has requested to terminate the credit card contract.

Requirement

- (2) The licensee who is the credit provider under the credit card contract must not suggest that the consumer remain in the credit card contract.

Civil penalty: 2,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

133BW Credit provider to give effect to request to terminate credit card contract

When this section applies

- (1) This section applies if:
- (a) a consumer who is the debtor under a credit card contract has a credit card termination entitlement under the contract; and
 - (b) the consumer has requested to terminate the consumer's credit card contract.

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Requirement

(2) The licensee who is the credit provider under the credit card contract must take reasonable steps to ensure that the request is given effect to as soon as practicable.

Civil penalty: 2,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2);
 - and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

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1 **Part 5—Application provisions**

2 *National Consumer Credit Protection (Transitional and*
3 *Consequential Provisions) Act 2009*

4 **24 At the end of the Act**

5 Add:

6 **Schedule 6—Application provisions for the**
7 **Treasury Laws Amendment (2017**
8 **Measures No. 8) Act 2017**

9 **Part 1—Definitions**

10 **1 Definitions**

11 In this Schedule:

12 *amending Act* means the *Treasury Laws Amendment (2017 Measures*
13 *No. 8) Act 2017*.

14 **Part 2—When a credit card contract, or a credit limit**
15 **increase, is unsuitable**

16 **2 Application of provisions about unsuitability of credit card**
17 **contracts or increases in the credit limit of a credit card**
18 **contract**

19 The amendments of sections 118, 119, 123, 124, 131 and 133 of the
20 National Credit Act made by Part 1 of Schedule 1 to the amending Act
21 apply:

- 22 (a) so far as the sections apply in relation to entering a credit
23 card contract—to credit card contracts entered into on or after
24 the commencement of that Part; and
- 25 (b) so far as the sections apply in relation to remaining in a credit
26 card contract, or increasing the credit limit of a credit card
27 contract:
- 28 (i) to credit card contracts entered into on or after the
29 commencement of that Part; and

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- (ii) to credit card contracts entered into before the commencement of that Part.

Part 3—Credit limits

3 Application of amendments relating to credit limit increase invitations

- (1) The amendments of sections 133BE, 133BF and 133BG made by Division 1 of Part 2 of Schedule 1 to the amending Act apply in relation to communications given on or after the commencement of that Division in relation to credit card contracts entered into on or after that commencement.
- (2) The amendments also apply in relation to credit card contracts entered into before the commencement of that Division.

4 Application of sections 133BF, 133BFA, 133BFB and 133BFC of the National Credit Act

- (1) Sections 133BF, 133BFA, 133BFB and 133BFC of the National Credit Act, as inserted by Division 2 of Part 2 of Schedule 1 to the amending Act, apply to credit card contracts entered into on or after the commencement of that Division.
- (2) The sections, apart from subsections 133BF(1) and (2), also apply to credit card contracts entered into before the commencement of that Division.

Part 4—Interest charges

5 Application of Division 7 of Part 3-2B of the National Credit Act

- (1) Division 7 of Part 3-2B of the National Credit Act, as inserted by Part 3 of Schedule 1 to the amending Act, applies to credit card contracts entered into on or after the commencement of Part 3 of that Schedule.
- (2) The Division also applies to credit card contracts entered into before the commencement of Part 3 of that Schedule.
- (3) However, the Division does not apply in relation to use of a credit card before the commencement of Part 3 of that Schedule.

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1 **Part 5—Ending credit card contracts**

2 **6 Application of Division 8 of Part 3-2B of the National Credit**
3 **Act**

- 4 (1) Division 8 of Part 3-2B of the National Credit Act, as inserted by Part 4
5 of Schedule 1 to the amending Act, applies to credit card contracts
6 entered into on or after the commencement of Part 4 of that Schedule.
- 7 (2) Division 8 of Part 3-2B of the National Credit Act, apart from
8 subsections 133BT(1) and (2), inserted by Part 4 of Schedule 1 to the
9 amending Act, also applies to credit card contracts entered into before
10 the commencement of Part 4 of that Schedule.