treasury laws amendment (2017 Measures no. 8) bill 2017: credit cards  
  
national consumer credit protection amendment (credit cards) regulations 2017

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations, acronyms and concepts are used throughout this explanatory memorandum.

|  |  |
| --- | --- |
| Abbreviation | Definition |
| ASIC | Australian Securities and Investments Commission |
| Bill | Exposure draft of the *Treasury Laws Amendment (2017 Measures No. 8) Bill 2017: Credit card reforms* |
| Code | National Credit Code |
| Credit Act | *National Consumer Credit Protection Act 2009* |
| Credit card provider | A licensee that is a credit provider under a credit contract to which Part 3-2B of the Credit Act applies. |
| Credit Regulations | *National Consumer Credit Protection Regulations 2010* |
| Regulations | Exposure draft of the *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017* |

1. Credit card reforms

## Outline of chapter

* 1. The exposure draft of Schedule 1 to the *Treasury Laws Amendment (2017 Measures No. 8) Bill 2017: Credit card reforms* (the Bill) and the exposure draft of Schedule 1 to the *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017* (the Regulations) introduce a series of reforms to improve consumer outcomes under credit card contracts. This is achieved by amending the *National Consumer Credit Protection Act 2009* (the Credit Act) and the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations).
  2. The reforms include: tightening responsible lending obligations; prohibiting credit card providers from offering unsolicited credit limit increases; simplifying the calculation of interest charges; and requiring credit card contracts to allow consumers to reduce credit limits and terminate credit card contracts, including by online means.
  3. The purpose of the amendments is to reduce the likelihood of consumers being granted excessive credit limits, to align the way interest is charged with consumers’ reasonable expectations and to make it easier for consumers to terminate a credit card or reduce a credit limit.
  4. All legislative references in this Chapter are to the Credit Actunless otherwise specified.

## Context of amendments

* 1. On 16 December 2015, the Senate Economics References Committee released its report into interest rates and informed choice in the Australian credit card market. The report examined the level of credit card interest rates and the competitive dynamics of the credit card market, as well as the impact of responsible lending obligations on credit card debt.
  2. The report made eleven recommendations which mostly related to improving disclosures on the costs of credit cards, improving cancellation and switching options and tightening responsible lending obligations. The Government supported the majority of the reforms.
  3. In response to the Senate Inquiry, the Government released the consultation paper ‘Credit cards: improving outcomes and enhancing competition’ on 6 May 2016. The consultation paper identified that there is a small subset of consumers that persistently incur very high credit card interest charges due to the inappropriate selection and provision of credit cards as well as certain patterns of credit card use.
  4. The consultation paper identified that these outcomes reflect a relative lack of competition on credit card interest rates (partly compounded by the complexity with which interest is calculated) and behavioural biases which contribute to consumers borrowing more and repaying less than they would otherwise intend.
  5. To address these problems, the Government proposed a package of reforms split between phase 1 reforms, which could be implemented as outlined in the consultation paper, and phase 2 reforms, which were recommended for further consumer testing by the Australian Government’s Behavioural Economics Team (located in the Department of Prime Minister and Cabinet) to determine their efficacy.
  6. As part of the 2017-18 Budget, the Government committed to implementing the phase 1 reforms from the consultation paper. These reforms are briefly as follows:
* Reform 1: tighten responsible lending obligations to require that the suitability of a credit card contract for a consumer is assessed on the consumer’s ability to repay the credit limit of the contract within a certain period;
* Reform 2: prohibit credit card providers from making any unsolicited credit limit offers in relation to credit card contracts by broadening the existing prohibition to all forms of communication with a consumer and removing the informed consent exemption;
* Reform 3: simplify the calculation of interest charges in relation to credit cards by prohibiting credit card providers from retrospectively charging interest on credit card balances; and
* Reform 4: require new credit card contracts to allow consumers to reduce credit card limits and terminate credit card contracts and require credit card providers to establish and maintain a website that allows consumers to request to exercise these entitlements online.

## Summary of new law

* 1. Schedule 1 to the Bill amends the Credit Act to introduce a series of reforms to improve consumer outcomes under credit card contracts.
  2. The reforms include: tightening responsible lending obligations; prohibiting credit card providers from offering unsolicited credit limit increases; simplifying the calculation of interest charges; and requiring credit card contracts to allow consumers to reduce credit limits and terminate credit card contracts, including by online means.

##### Reform 1: tighten responsible lending obligations for credit card contracts

* 1. Reform 1 is implemented by Part 1 of Schedule 1 to the Bill, which introduces a new requirement that a consumer’s unsuitability for a credit card contract or credit limit increase be assessed on whether the consumer could repay an amount equivalent to the credit limit of the contract within a period determined by the Australian Securities and Investments Commission (ASIC).
  2. This requirement will apply to licensees that provide credit assistance, and licensees that are credit providers, in relation to both new and existing credit card contracts from 1 January 2019. Existing civil and criminal penalties for breaches of the responsible lending obligations will apply to breaches of the new requirement. Existing infringement notice powers will also apply.

##### Reform 2: prohibit unsolicited credit limit offers in relation to credit card contracts

* 1. Reform 2 is implemented by Division 1 of Part 2 of Schedule 1 to the Bill, which prohibits credit card providers from making any unsolicited credit limit offers by broadening the existing prohibition to all forms of communication and removing the informed consent exemption. These amendments apply in relation to both new and existing credit card contracts from 1 January 2018. Existing civil and criminal penalties for breaches of the prohibition against unsolicited credit limit offers will apply. Existing infringement notice powers will also apply.

##### Reform 3: simplify the calculation of interest charges under credit card contracts

* 1. Reform 3 is implemented by Part 3 of Schedule 1 to the Bill. These amendments will prevent credit card providers from imposing interest charges retrospectively to a credit card balance, or part of a balance, that has had the benefit of an interest-free period. These amendments apply in relation to both new and existing credit card contracts from 1 January 2019.
  2. Failure to comply with this requirement attracts civil penalties of 2,000 penalty units and criminal penalties of 50 penalty units. The infringement notice scheme contained in the Credit Act will also apply.

##### Reform 4: reducing credit limits and terminating credit card contracts, including by online means

* 1. Reform 4 is implemented by Division 2 of Part 2 and Part 4 of Schedule 1 to the Bill. A key amendment is to require credit card contracts entered into on or after 1 January 2019 to allow consumers to request to reduce the limit of their credit card (a ‘credit limit reduction entitlement’) or terminate a credit card contract (a ‘credit card termination requirement’).
  2. Where a credit card contract contains a credit limit reduction entitlement or a credit card termination requirement the amendments also provide for the following:
* the credit card provider must provide an online means for the consumer to make a request to reduce their credit card limit or terminate their credit card contract;
* following such a request, the credit card provider must not make a suggestion that is contrary to the consumer’s request; and
* the credit card provider must take reasonable steps to ensure that the request is given effect to.
  1. These further amendments apply to credit card contracts entered into before, on or after 1 January 2019.
  2. Failure to comply with these requirements attracts civil penalties of 2,000 penalty units and criminal penalties of 50 penalty units. The infringement notice scheme contained in the Credit Act will also apply.

##### Consequential amendments

* 1. Consequential amendments are made to the Credit Regulations to support the above amendments to the Credit Act.

Comparison of key features of new law and current law

|  |  |
| --- | --- |
| New law | Current law |
| **Reform 1: tighten responsible lending obligations for credit card contracts** | |
| A consumer is taken to be able to comply with their financial obligations under a credit card contract only with substantial hardship if they could not comply with an obligation to repay an amount equivalent to the credit limit of the contract within a period determined by ASIC.  Existing civil and criminal penalties will apply, along with existing infringement notice powers. | A credit contract is, or will be unsuitable for a consumer if it is likely that the consumer would be unable to comply with their financial obligations under the contract, or could only comply with substantial hardship.  It is presumed that, if the consumer could only comply with their financial obligations under the credit contract by selling their principal place of residence, then they could only comply with their obligations with substantial hardship, unless the contrary is proved. |
| **Reform 2: prohibit unsolicited credit limit offers in relation to credit card contracts** | |
| Credit card providers must not make credit limit increase invitations. There is no exception to this.  A credit limit increase invitation is made where a licensee gives any unsolicited form of communication to a consumer about increasing the credit limit of the credit card contract.  Existing civil and criminal penalties will apply, along with existing infringement notice powers. | Credit card providers must not make credit limit increase invitations, except where they have obtained the express consent of the consumer to do so.  A credit limit increase invitation is made where a licensee gives a written communication to a consumer about increasing the credit limit of the credit card contract. |
| **Reform 3: simplify the calculation of interest charges under credit card contracts** | |
| Credit card providers are prohibited from imposing interest charges retrospectively to a credit card balance, or part of a balance, that has had the benefit of an interest free period.  Failure to comply with the requirements relating to application of interest charges under credit card contracts attracts civil and criminal penalties and infringement notices. | The maximum amount of interest charge that can be imposed under a credit contract is prescribed. |
| **Reform 4: reducing credit limits and terminating credit card contracts, including by online means** | |
| All credit card contracts must allow consumers to request to reduce the limit of their credit card or terminate a credit card contract.  Additional requirements are imposed on a credit card provider where a consumer is entitled, under their credit card contract, to reduce their credit limit or terminate their credit card contract. These requirements are:   * the credit card provider must provide an online means for the consumer to make a request to reduce their credit card limit or terminate their credit card contract; * following a request, the credit card provider must not make a suggestion that is contrary to the consumer’s request; and * the credit card provider must take reasonable steps to ensure that the request is given effect to.   Failure to comply with the requirements relating to reducing credit limits and terminating credit card contracts attracts civil and criminal penalties and infringement notices. | No equivalent. |

## Detailed explanation of new law

### Reform 1: tighten responsible lending obligations for credit card contracts

#### Context of amendments

* 1. Whether a credit card is suitable for a consumer is typically assessed on the basis of whether the consumer can afford to pay the minimum monthly repayment on the proposed credit limit amount. This may result in some consumers incurring credit card debt that cannot be paid down in a timely manner and which are associated with large cumulative interest charges.
  2. Reform 1 will address this situation by introducing a requirement that a consumer’s suitability for a credit card contact or credit limit increase be assessed according to their ability to pay the credit limit over a certain period.

#### Current law

* 1. The Credit Act requires persons who engage in credit activities to hold an Australian credit licence. A key obligation on licensees is to comply with the responsible lending obligations in Chapter 3. Relevantly, Part 3-1 imposes responsible lending obligations on licensees that provide credit assistance in relation to credit contracts, and Part 3-2 imposes responsible lending obligations on licensees that are credit providers under credit contracts.
  2. A person provides ‘credit assistance’ to a consumer where they suggest the consumer apply for or assist the consumer to apply for a provision of credit or an increase to the credit limit of a particular credit contract with a particular provider. In addition a person provides ‘credit assistance’ where they suggest the consumer remain in a credit contract.
  3. The definition of ‘credit assistance’ applies to situations such as:
* finance brokers where they recommend a particular credit contract; and
* a person who suggests a consumer apply for a particular credit contract, but does not necessarily proceed to arrange the credit contract for the consumer.
  1. A person is a ‘credit provider’ where they provide credit.
  2. Licensees that provide credit assistance in relation to credit contracts and licensees that are credit providers under credit contracts must prepare an assessment of unsuitability of a credit contract for a consumer before providing credit assistance, or before entering into a credit contract or increasing the credit limit of a credit contract with a consumer.
  3. Licensees that provide credit assistance in relation to credit contracts and licensees that are credit providers under credit contracts are also prohibited from providing credit assistance, or entering into a credit contract or increasing the credit limit of a credit contract, if the contract is unsuitable for a consumer.
  4. One of the circumstances in which a contract is, or will be, unsuitable for a consumer is if it is likely that the consumer would be unable to comply with their financial obligations under the contract, or could only comply with substantial hardship. It is presumed that if a consumer would only be able to comply with their financial obligations under the contract by selling their principal place of residence, the consumer could only comply with their obligations with substantial hardship, unless the contrary is proven.

#### New law

* 1. Part 1 of Schedule 1 to the Bill introduces, in Parts 3-1 and 3-2 of the Credit Act, an additional circumstance in which a consumer could only comply with their financial obligations under a credit contract with substantial hardship. That is, a consumer is taken to be able to comply with their financial obligations under a credit card contract only with substantial hardship if the consumer could not comply with an obligation to repay an amount equivalent to the credit limit of the contract within a period determined by ASIC. [Schedule 1, Part 1, items 1 to 6, subsections 118(3AA), 119(3A), 123(3AA), 124(3A), 131(3AA), 133(3AA)]
  2. This additional obligation applies to licensees that provide credit assistance in relation to credit contracts and licensees that are credit providers under credit contracts for the purposes of:
* preliminary assessments of unsuitability required under paragraphs 118(2)(a), 119(2)(a), and 131(2)(a); and
* prohibiting licensees from providing credit assistance or entering or increasing the credit limit of unsuitable credit contracts under paragraphs 123(2)(a), 124(2)(a) and 133(2)(a).
  1. ASIC may, by legislative instrument, determine the period within which a consumer must be assessed as being able to repay an amount equivalent to the credit limit of the credit card contract. The period may be a fixed period (e.g. 4 years) or a range of time (e.g. 3 to 5 years). [Schedule 1, Part 1, items 7 and 8, section 160A and subsection 160F(1)]
  2. ASIC may determine different periods in relation to:
* different classes of credit card contracts;
* different credit limits;
* different rates of interest.

[Schedule 1, Part 1, item 8, subsection 160F(2)]

* 1. For example, ASIC may determine a period of years for a certain credit limit amount, or a different period of years for a certain rate of interest. These periods would apply to all consumer credit card contracts with that particular credit limit amount or rate of interest.
  2. In determining a period, ASIC must have regard to ensuring that a reasonable balance is achieved between preventing consumers from being in unsuitable credit card contracts and not preventing consumers from accessing credit through suitable credit card contracts, and any other relevant matter. An example of a relevant matter that ASIC could consider is the loan terms for other credit products, such as personal loans. [Schedule 1, Part 1, item 8, subsection 160F(3)]

##### *Application provisions*

* 1. The amendments in Part 1 of Schedule 1 to the Bill commence on 1 January 2019. The amendments to sections 118, 119, 123, 124, 131 and 133 apply:
* so far as the sections apply in relation to entering a credit card contract – to credit card contracts entered into on or after the commencement of Part 1; and
* so far as the sections apply in relation to remaining in a credit card contract or increasing the credit limit of a credit card contract – to credit card contracts entered into before, on or after the commencement of Part 1.

[Schedule 1, Part 5, item 24, Parts 1 and 2 of Schedule 6 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]

* + - 1. **: Application of amendments to existing contracts**

On 28 February 2019 Kamala applies to increase the credit limit of her Savings Bank credit card from $5,000 to $10,000. Kamala has had this particular credit card for 5 years.

Prior to increasing Kamala’s credit limit, Savings Bank must make an assessment of unsuitability of the credit card contract for Kamala. As part of this assessment, Savings Bank must consider whether Kamala would be unable to comply with an obligation to repay the credit limit as proposed to be increased ($10,000) within a period determined by ASIC.

If Kamala is assessed as being unable to do so, then she would be taken to only be able to comply with her financial obligations under the contract with substantial hardship and the contract (as proposed to be increased) must therefore be assessed as unsuitable for her.

### Reform 2: prohibit unsolicited credit limit offers in relation to credit card contracts

#### Context of amendments

* 1. The Credit Act prohibits credit card providers from making unsolicited offers to increase a consumer’s credit limit in writing, unless the provider has received prior consent from the consumer to do so.
  2. However, some credit card providers circumvent this prohibition by making unsolicited offers by other means, such as over the phone or via online banking portals. Consumers are also often unaware that they have granted their prior consent to receiving unsolicited offers, because of the way in which consent is sought at the time of applying for a credit card.
  3. Reform 2 addresses this situation by prohibiting unsolicited offers by way of all forms of communication, and by removing the informed consent defence.

#### New law

* 1. Division 1 of Part 2 of Schedule 1 to the Bill amends Division 4 of Part 3-2B of the Credit Act to prohibit credit card providers from making unsolicited credit limit offers by broadening the prohibition against making written credit limit invitations so that it extends to all forms of communication and by removing the informed consent exemption.
  2. The definition of ‘credit limit increase invitation’ in subsection 133BE(5) is amended so that a credit card provider will make a credit limit increase invitation if they give any form of communication to the consumer about their credit card contract which:
* offers to increase the credit limit of the contract;
* invites the consumer to apply for an increase; or
* has a purpose of encouraging the consumer to consider applying for an increase.

[Schedule 1, Part 2, items 12 and 13, paragraph 133BE(5)(a) and subsection 133BE(6)]

* 1. Amending the definition of ‘credit limit increase invitation’ in this way is intended to extend the prohibition against unsolicited credit limit offers to invitations given to consumers in any form whatsoever (e.g. letters, emails, phone, in branch, or through an online portal).
  2. The informed consent defence in section 133BF is also removed. Previously credit card providers could give consumers credit limit increase invitations where the consumer had expressly consented for the provider to do so. This defence will no longer be available for credit card providers for both new and existing credit card contracts from commencement of Division 1 of Part 2 of Schedule 1 to the Bill. [Schedule 1, Part 2, items 9 to 11 and 14, the notes to subsections 133BE(1), (2) and (3) and section 133BF]

##### Consequential amendments

* 1. Section 133BG, which requires licensees to keep a record of consents obtained under section 133BF and withdrawals of such consents, is repealed. This provision is no longer required as the informed consent defence in section 133BF is repealed. [Schedule 1, Part 2, item 14, section 133BG]
  2. Credit card providers may opt to retain a record of consents and withdrawals obtained in accordance with section 133BG in order to ensure they can demonstrate compliance with the law prior to commencement of Division 1 of Part 2 of Schedule 1 to the Bill.

##### Application provisions

* 1. The amendments in Division 1 of Part 2 of Schedule 1 to the Bill commence on 1 January 2018.
  2. The removal of the informed consent defence in section 133BF applies in relation to communications given on or after commencement of Division 1 of Part 2 of Schedule 1 to the Bill in relation to credit card contracts entered into before, on or after that commencement. [Schedule 1, Part 5, item 24, Parts 1 and 3 of Schedule 6 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]
  3. This means that credit card providers can rely on the informed consent exemption in respect of credit limit increase invitations made prior to commencement of Division 1 of Part 2 of Schedule 1 to the Bill, if they have maintained records of that consent. However, from commencement, credit card providers will not be able to make credit limit increase invitations for both new and existing credit card contracts, even where the consumer has previously provided express consent for the credit card provider to do so.

### Reform 3: simplify the calculation of interest charges under credit card contracts

#### Context of amendments

* 1. The application of interest charges to credit card balances is complex and can be difficult for consumers to understand.
  2. Many credit cards provide an interest free period for purchases made on the card. However, where a credit card balance is not paid in full by the payment due date listed on the monthly credit card statement, interest is generally charged on every purchase made on the credit card from the date of the purchase to the date on which the repayments are made. This interest is charged in the subsequent statement period for the credit card. As a consequence:
* interest is charged not only for that second statement period but also the previous one, back to the date on which the purchase was made; and
* interest is retrospectively charged on the total balance of the credit card – not just the unpaid balance – such that any interest free period is lost for all purchases in that statement period and not merely those that were unpaid by the due date.
  1. These arrangements are explained in product terms and conditions and other relevant disclosure documents (such as on the credit card issuer’s website). However, the complex nature of the calculation means that industry practice may not align with consumers’ understanding and expectation about how interest is to be charged in the event a credit card balance is not paid off in full by the payment due date. As a result, many consumers incur unexpected and disproportionate interest charges when their credit card balance is not paid off in full.
  2. Reform 3 addresses this situation by standardising and simplifying the application of interest to credit card balances when the balance is only partly paid off in a statement period. The amendments do not directly affect consumers who repay their balances in full every month, or those who have already lost their interest free period by only making a partial payment of the credit card balance in a previous month.

#### New law

* 1. Part 3 of Schedule 1 to the Bill amends Part 3-2B of the Credit Act to impose new requirements relating to the application of interest charges under credit card contracts.
  2. A credit card provider is prohibited from imposing a liability to pay a rate of interest retrospectively to the balance (or part of the balance) of a credit card contract. A liability to pay a rate of interest is deemed to have been applied retrospectively on a day if the facts and circumstances that trigger the application of interest on that day – for example, the non‑payment of some or all of the credit card balance – come into existence after the end of that day. [Schedule 1, Part 3, items 19 and 20, section 133BS]
  3. The prohibition on backdating interest charges means that if some or all of a credit card balance is subject to an interest free period on a day, a credit card provider will not be permitted to subsequently apply a liability to pay a rate of interest to that balance for that day because that balance was not paid off in full by the payment due date. However, a credit card provider will be able to apply a rate of interest to any unpaid balance on days that occur after the unpaid balance’s payment due date.
  4. Failure to comply with the prohibition on charging interest retrospectively attracts a civil penalty of up to 2,000 penalty units and is an offence, attracting a criminal penalty of up to 50 penalty units. A contravention will arise for each statement period covered by a statement of account in which interest is imposed in contravention of the prohibition. [Schedule 1, Part 3, item 20, subsection 133BS(1) and (2)]
  5. The Credit Regulations are amended so that the infringement notice scheme of the Credit Act applies to a contravention of this prohibition. [Schedule 1 of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017, item 2, subparagraph (b)(xxiie) of the definition of ‘infringement notice offence’ in regulation 38 of the National Consumer Credit Protection Regulations 2010]
  6. These changes will also strengthen the existing prohibition in section 28 of the National Credit Code, which prevents interest from being imposed on the part of a balance that has been paid off, but does not prohibit backdating interest charges on the unpaid part of a balance where a consumer does not comply with the conditions of an interest-free period.
     + 1. Contravention of prohibition

Sam has a credit card with an interest-free period of up to 44 days with Northern Bank. His first credit card statement period runs from 1 April to 30 April with a credit card repayment due on 14 May.

Sam makes a purchase of $1,000 on day 5 of his statement period. At the end of his statement period, Sam’s outstanding credit card balance is $1,000. On the statement due date (day 44), Sam makes a credit card repayment of $250. The remaining balance of $750 is rolled-over into the next statement period.

In Sam’s second credit card statement (for the period from 1 May to 31 May), Northern Bank charges Sam backdated interest from the purchase date of 5 April on the outstanding balance of $750.

As Northern Bank has charged Sam backdated interest for purchases made within an interest-free period, it has contravened the prohibition on the backdating of interest charges.

* + - 1. Compliance with prohibition

Lisa has a credit card with an interest-free period of up to 55 days with Savings Bank. Her credit card statement period runs from 1 June to 30 June and a credit card repayment is due on 25 July.

Lisa makes a purchase of $600 on day 10 of her statement period. Her outstanding credit card balance at the end of the statement period is $600. On the statement due date (day 55), Lisa makes a credit card repayment of $200. The remaining balance of $400 is rolled-over into the next statement period.

In Lisa’s second credit card statement (from the period 1 July to 31 July), Savings Bank charges Lisa interest on the outstanding balance of $400 from the previous statement’s due date.

As Savings Bank has charged interest on the unpaid balance from the credit card due date of the June statement period, it has complied with the prohibition on the backdating of interest charges.

##### Application provisions

* 1. The amendments in Part 3 of Schedule 1 to the Bill commence on 1 January 2019.
  2. The prohibition on imposing retrospective interest charges applies to credit card contracts entered into before, on or after the commencement of Part 3 of Schedule 1 to the Bill. [Schedule 1, Part 5, item 24, Part 1 and subitems 5(1) and (2) of Part 4 of Schedule 6 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]
  3. However, the prohibition does not apply in relation to use of a credit card before the commencement of Part 3 of Schedule 1 to the Bill. That is, while the amendments apply to credit card contracts entered into before 1 January 2019, the new requirements relating to application of interest only apply on transactions made on or after 1 January 2019. [Schedule 1, Part 5, item 24, Part 1 and subitem 5(3) of Part 4 of Schedule 6 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]

### Reform 4: reducing credit limits and terminating credit card contracts, including by online means

#### Context of amendments

* 1. Consumers wishing to reduce their credit limit or terminate their credit card contract are often required to do so by visiting a bank branch or by calling a customer service representative. This process can be unnecessarily onerous and can constrain a consumer’s willingness to initiate a credit limit decrease or credit card termination. It is also possible that a consumer could be convinced to retain their current credit limit or remain in their credit card contract.
  2. Reform 4 will address this situation by introducing a requirement that credit card providers provide an online means for consumers to request to reduce their credit limit or terminate their credit card contract. Once a request is made, credit card providers will be prohibited from making suggestions that are contrary to the consumers request and the credit provider must take reasonable steps to give effect to the request.

#### New law

* 1. Division 2 of Part 2 and Part 4 of Schedule 1 to the Bill insert new requirements into Part 3-2B of the Credit Act to improve consumers’ abilities to reduce the credit limit of their credit card and terminate their credit card contracts. These requirements apply to licensees that are credit providers in relation to credit card contracts.
  2. Key amendments include introducing a requirement that all credit card contracts give consumers who are debtors under the contract a ‘credit limit reduction entitlement’ and a ‘credit card termination entitlement’. Additional requirements are imposed on a credit provider where a consumer has a credit limit reduction entitlement or a credit card termination entitlement.
  3. From commencement of Division 2 of Part 2 and Part 4 of Schedule 1 to the Bill, all credit card contracts entered into will be required to contain both these entitlements. However, it is important to note that some credit card contracts entered into before commencement may also contain these entitlements. Where this is the case, credit card providers will need to comply with the additional requirements detailed below.
  4. This is discussed in further detail below.

##### Credit card contracts must allow consumers to reduce their credit limit and terminate their credit card contract

* 1. Licensees that are credit providers must not enter into, or offer to enter into, a credit card contract with a consumer unless the consumer would have a ‘credit limit reduction entitlement’ and a ‘credit card termination entitlement’ under the contract. [Schedule 1, Parts 2 and 4, items 15 to 18 and 21 to 23, the definitions of ‘credit card termination entitlement’ and ‘credit limit reduction entitlement’ in subsection 5(1), section 133B, Divisions 4 and 8 of Part 3-2B, subsections 133BF(1) and 133BT(1)]
  2. A consumer has a credit limit reduction entitlement under a credit card contract where, for a contract that does not have a minimum credit limit – the consumer is entitled to reduce the credit limit to any amount or, for a contract that has a minimum credit limit – the consumer is entitled to reduce the credit limit to an amount that equals or exceeds that minimum. [Schedule 1, Part 2, item 18, subsection 133BF(3)]
  3. A consumer has a credit card termination entitlement under a credit card contract if the consumer is entitled, under the contract, to terminate the credit card contract. [Schedule 1, Part 4, item 23, subsection 133BT(3)]
  4. Failure to comply with either of these requirements attracts a civil penalty of up to 2,000 penalty units and is an offence, attracting a criminal penalty of up to 50 penalty units. [Schedule 1, Parts 2 and 4, items 18 and 23, subsections 133BF(3) and 133BT(3)]
  5. If a credit card contract is entered into in breach of either of these requirements, it is still valid and enforceable, pursuant to section 333.
  6. The Credit Regulations are amended so that the infringement notice scheme of the Credit Act applies to a contravention of either of these requirements. [Schedule 1 of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017, item 2, subparagraphs (b)(xxiia) and (xxiif) of the definition of ‘infringement notice offence’ in regulation 38 of the National Consumer Credit Protection Regulations 2010]
  7. If a consumer has a credit limit reduction entitlement or a credit card termination entitlement under a credit card contract, then additional requirements are imposed on the credit provider. These are described in further detail below.
  8. The above changes compliment sections 26 and 82 of the National Credit Code, which entitle a debtor to pay out a credit contract at any time, subject to certain exceptions.

##### Credit card provider must provide online options for consumers to request to reduce their credit limit or terminate their credit card contract

* 1. Where a consumer has a credit limit reduction entitlement or a credit card termination entitlement under a credit card contract, the credit card provider must establish and maintain a website that allows the consumer to request a reduction in their credit limit or termination of their credit card contract. [Schedule 1, Parts 2 and 4, items 18 and 23, subsections 133BFA(1) and (2) and 133BU(1) and (2)]
  2. The credit card provider must ensure that the website informs the consumer that they are able to use the website to request a reduction in their credit limit or termination of their credit card contract, what information the consumer needs to enter in order to request the reduction or termination and instructions on how to make the request. [Schedule 1, Parts 2 and 4, items 18 and 23, subsections 133BFA(2) and 133BU(2)]
  3. If the consumer enters the information and follows the instructions the consumer is able to use the website to request a reduction in their credit limit or termination of their credit card contract. [Schedule 1, Parts 2 and 4, items 18 and 23, paragraphs 133BFA(2)(c) and 133BU(2)(c)]
  4. The credit card provider must ensure that the website is available on the day the consumer seeks to request the credit limit reduction or credit card termination. [Schedule 1, Parts 2 and 4, items 18 and 23, paragraphs 133BFA(2)(d) and 133BQA(2)(d)]
  5. Failure to comply with either of these requirements attracts a civil penalty of up to 2,000 penalty units. [Schedule 1, Part 2, items 18 and 23, subsection 133BFA(2) and 133BU(2)]
  6. It is a defence if the website is reasonably unavailable on the day the consumer seeks to request the credit limit reduction or credit card termination. For example, a website might be unavailable because of scheduled maintenance or unexpected and unavoidable systems issues. [Schedule 1, Parts 2 and 4, items 18 and 23, subsection 133BFA(3) and 133BU(3)]
  7. The Credit Regulations are amended so that the infringement notice scheme of the Credit Act applies to a contravention of either of these requirements. [Schedule 1 of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017, item 2, subparagraphs (b)(xxiib) and (xxiig) of the definition of ‘infringement notice offence’ in regulation 38 of the National Consumer Credit Protection Regulations 2010]

##### Credit card provider must give effect to a consumer’s request to reduce their credit limit or terminate their credit card contract

* 1. Where a consumer has a credit limit reduction entitlement or a credit card termination entitlement and the consumer exercises either of these entitlements by requesting that their credit limit be reduced or their credit card terminated, the credit card provider must take reasonable steps to ensure that the request is given effect to as soon as practicable. [Schedule 1, Parts 2 and 4, items 18and 23, subsections 133BFC(1) and (2) and 133BW(1) and (2)]
  2. Reasonable steps may include communicating any further actions that must be undertaken by the consumer for the credit provider to complete the request. For example, a reasonable step may be communicating to the consumer that they are required to repay any outstanding balance before the credit card contract can be terminated or communicating to the consumer that they are required to cancel any credit card authorisations (for example direct debits) before the contract can be terminated.
  3. Failure to comply with either of these requirements attracts a civil penalty of up to 2,000 penalty units and is an offence, attracting a criminal penalty of up to 50 penalty units. [Schedule 1, Parts 2 and 4, items 18 and 23, subsections 133BFC(2) and (3) and 133BW(2) and (3)]
  4. The Credit Regulations are amended so that the infringement notice scheme of the Credit Act applies to a contravention of either of these requirements. [Schedule 1 of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017, item 2, subparagraphs (b)(xxiid) and (xxiij) of regulation 38 of the National Consumer Credit Protection Regulations 2010]

##### Credit card provider must not make suggestions that are contrary to the consumer’s request to reduce their credit limit or terminate their credit card contract

* 1. Additionally, where a consumer has a credit limit reduction entitlement or a credit card termination entitlement and the consumer exercises either of these entitlements by requesting that their credit limit be reduced or their credit card contract terminated, the credit card provider must not make suggestions to the consumer that are contrary to that request. That is, in respect of a request to reduce a credit limit, a credit card provider must not do any of the following:
* suggest that the consumer apply for an increase to the credit limit of the credit card contract;
* suggest that the consumer not reduce the consumer’s credit limit under the contract;
* suggest that the consumer instead reduce the consumer’s credit limit under the contract by an amount that is smaller than the reduction amount.

[Schedule 1, Part 2, item 18, subsections 133BFB(1) and (2)]

* 1. In respect of a request to terminate a credit card contract, a credit card provider must not suggest that the consumer remain in the credit card contract, which would include suggesting the consumer increase or retain their credit limit. [Schedule 1, Part 4, item 23, subsections 133BV(1) and (2)]
  2. This is intended to prevent credit card providers from using retention techniques to persuade consumers to remain in credit card contracts that the consumer has decided do not suit their circumstances.
  3. Failure to comply with either of these requirements attracts a civil penalty of up to 2,000 penalty units and is an offence, attracting a criminal penalty of up to 50 penalty units. [Schedule 1, Parts 2 and 4, items 18 and 23, subsections 133BFB(2) and (3) and 133BV(2) and (3)]
  4. The Credit Regulations are amended so that the infringement notice scheme of the Credit Act applies to a contravention of either of these requirements. [Schedule 1 of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017, item 2, subparagraphs (b)(xxiic) and (xxiih) of the definition of ‘infringement notice offence’ in regulation 38 of the National Consumer Credit Protection Regulations 2010]

##### Application provisions

* 1. Division 2 of Part 2 and Part 4 of Schedule 1 to the Bill commence on 1 January 2019.
  2. The provisions that require credit card contracts to allow consumers to reduce their credit limit or terminate their credit card contract apply to credit card contracts entered into on or after the commencement of Division 2 of Part 2 and Part 4. [Schedule 1, Part 5, item 24, Part 1 and subitem 4(1) of Part 3 and subitem 6(1) of Part 5 of Schedule 6 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]
  3. This means that all credit card contracts entered into on or after 1 January 2019 must give consumers an entitlement to reduce their credit limit (subject to the minimum limit for that card) and terminate their credit card contract.
  4. The provisions that impose the following requirements apply to credit card contracts entered into before, on or after commencement of Division 2 of Part 2 and Part 4 of Schedule 1 to the Bill:
* the requirement for credit card providers to provide an online means for consumers to make a request to reduce their credit card limit or terminate their credit card contract;
* the requirement that, following a request to reduce a credit card limit or terminate a credit card contract, a credit card provider must not suggest that the consumer apply for an increase to their credit limit, not reduce their credit limit, reduce by a smaller amount than that requested or remain in the credit card contract; and
* the requirement that credit card providers must give effect to a request to reduce a credit limit or terminate a credit card contract.

[Schedule 1, Part 5, item 24, item 4 of Part 3 and item 6 of Part 5 of Schedule 6 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]

* 1. This means that, if a credit card contract entered into before 1 January 2019 contemplates a consumer reducing their credit limit or terminating their credit card contract, the credit card provider will need to comply with the above requirements in relation to those contracts from 1 January 2019. Credit card providers will also need to comply with these requirements in relation to all credit card contracts entered into on or after 1 January 2019 as those contracts will be required to allow consumers to reduce their credit limits and terminate their credit card contracts.

## Consequential amendments

##### Infringement notices

* 1. Part 6-2 of the Credit Regulations sets out a scheme under the Credit Act for the issuance of infringement notices by ASIC. Regulation 38 contains definitions that apply in respect of Part 6-2, including a definition of ‘infringement notice offence’ clarifying that strict liability offences or any of the civil penalty provisions listed under paragraph (b) of the definition are infringement notice offences under the Credit Act.
  2. Subparagraph (b)(xxi) of the definition of ‘infringement notice offence’ in regulation 38 of the Credit Regulations incorrectly refers to subsection 131(2) of the Credit Act as the civil penalty offence provision for contravening the requirement in section 131 to assess a credit contract as unsuitable in certain circumstances. This reference is amended to refer to subsection 131(1) which is the relevant civil penalty offence provision under section 131. [Schedule 1 of the National Consumer Credit Protection Amendment (Credit Cards) Regulations 2017, item 1, subparagraph (b)(xxi) of the definition of ‘infringement notice offence’ in regulation 38 of the National Consumer Credit Protection Regulations 2010]

## Application and transitional provisions

* 1. Division 1 of Part 2 of Schedule 1 to the Bill commences on 1 January 2018. Part 1, Division 2 of Part 2, and Parts 3 and 4 of Schedule 1 to the Bill commence on 1 January 2019. Part 5 of Schedule 1 to the Bill commences the day after the Act receives Royal Assent.
  2. Application provisions for each Part are discussed separately above.