



National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011

No. 84, 2011

***An Act to amend the *National Consumer Credit
Protection Act 2009*, and for related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011

No. 84, 2011

**An Act to amend the *National Consumer Credit
Protection Act 2009*, and for related purposes**

[Assented to 25 July 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Consumer Credit Protection
Amendment (Home Loans and Credit Cards) Act 2011*.

National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011

No. 84, 2011 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 July 2011
2. Schedule 1, Part 1	1 January 2012.	1 January 2012
3. Schedule 1, Part 2	1 July 2012.	1 July 2012
4. Schedule 2	1 July 2012.	1 July 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments relating to home loans

National Consumer Credit Protection Act 2009

1 Subsection 5(1)

Insert:

Key Facts Sheet for a standard home loan: see section 133AB.

2 Subsection 5(1)

Insert:

residential property has the same meaning as in section 204 of the National Credit Code.

3 Subsection 5(1)

Insert:

standard home loan: see subsection 133AA(1).

4 Part 3-2 (heading)

Repeal the heading, substitute:

Part 3-2—Licensees that are credit providers under credit contracts: general rules

5 After Part 3-2

Insert:

Part 3-2A—Licensees that are credit providers under credit contracts: additional rules relating to standard home loans

Division 1—Introduction

133A Guide to this Part

This Part has rules that apply to licensees that are credit providers under standard home loans. It applies in addition to the general rules in Part 3-2.

Division 2 imposes requirements aimed at ensuring a consumer can obtain a Key Facts Sheet for a standard home loan.

Division 2—Key Facts Sheets for standard home loans

133AA What is a *standard home loan*?

- (1) A *standard home loan* of a licensee is a standard form of credit contract under which the licensee provides credit:
 - (a) to purchase residential property; or
 - (b) to refinance credit that has been provided wholly or predominantly to purchase residential property.
- (2) The regulations may make provisions that apply to determining, for the purpose of subsection (1), whether a credit contract is a standard form of credit contract.

133AB What is a *Key Facts Sheet* for a standard home loan?

- (1) A *Key Facts Sheet* for a standard home loan is a document:
 - (a) that contains the information relating to the standard home loan that is required by the regulations; and
 - (b) that complies with any other requirements prescribed by the regulations.
- (2) Without limiting paragraph (1)(a), regulations made for the purpose of that paragraph:

- (a) may require a Key Facts Sheet for a standard home loan to contain information:
 - (i) that is specific to the consumer by whom the Key Facts Sheet is to be generated under section 133AC or to whom it is to be provided under section 133AD; and
 - (ii) that relates to the cost or implications of the loan for the consumer; and
- (b) may require information contained in a Key Facts Sheet for a standard home loan to be based on either or both of the following:
 - (i) information provided by the consumer;
 - (ii) particular assumptions.

133AC Credit provider's website to provide capacity to generate Key Facts Sheet

When this section applies

- (1) This section applies if a licensee has a website that can be used by a consumer to apply for, or make an inquiry about, one or more standard home loans of the licensee.

Requirement

- (2) The licensee must ensure that the website satisfies all of the following paragraphs:
 - (a) the website tells the consumer that the consumer may use the website to generate a Key Facts Sheet for the standard home loan, or for each of the standard home loans;
 - (b) the website:
 - (i) tells the consumer what information the consumer will need to enter in order to generate the Key Facts Sheet or Sheets; and
 - (ii) provides the consumer with instructions on how to generate the Key Facts Sheet or Sheets;
 - (c) if the consumer enters the information and follows those instructions, the consumer can use the website to generate the Key Facts Sheet or Sheets, containing up-to-date information, in a form that can be printed;

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Part 1 Amendments relating to home loans

- (d) the website complies with any other requirements prescribed by the regulations.

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.

133AD Credit provider to provide Key Facts Sheet in other situations

When this section applies

- (1) This section applies if:
 - (a) either:
 - (i) a consumer makes a request to a licensee (otherwise than by using a website of the licensee) to be provided with a Key Facts Sheet for one or more standard home loans of the licensee that are specified in the request; or
 - (ii) the regulations require a consumer, in circumstances prescribed by the regulations, to be provided with a Key Facts Sheet for one or more standard home loans of a licensee; and
 - (b) the consumer has given the licensee the consumer's name, and the contact details required by the regulations.

Requirement

- (2) The licensee must, in accordance with any requirements prescribed by the regulations:
 - (a) provide the consumer with a Key Facts Sheet containing up-to-date information for the standard home loan, or for each of the standard home loans; and

- (b) provide the consumer with any other information relating to other standard home loans of the licensee that is required by the regulations.

Note: Subsection 133AE(4) and section 133AF provide defences to liability under this subsection.

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.

Note: Subsection 133AE(4) and section 133AF provide defences to liability under this subsection.

133AE What if more information is needed from the consumer?

When this section applies

- (1) This section applies if:
 - (a) a licensee is required by section 133AD to provide a consumer with a Key Facts Sheet for a standard home loan; but
 - (b) the licensee does not have all the information from the consumer that the licensee needs in order to be able to prepare the Key Facts Sheet.

Requirement

- (2) The licensee must, in accordance with any requirements prescribed by the regulations, tell the consumer what information the licensee needs in order to be able to prepare the Key Facts Sheet.

Civil penalty: 2,000 penalty units.

Offence

- (3) A person commits an offence if:
-

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Part 1 Amendments relating to home loans

- (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.

Defence for subsections 133AD(2) and (3)

- (4) For the purposes of applying subsections 133AD(2) and (3) to a failure by a licensee to provide a Key Facts Sheet to a consumer, it is a defence if:
 - (a) the licensee has, in accordance with subsection (2) of this section, told the consumer what information the licensee needs in order to be able to prepare the Key Facts Sheet; and
 - (b) the consumer has not provided that information to the licensee.

Note: For the purpose of subsection 133AD(3), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

133AF Defences to obligation to provide a Key Facts Sheet

- (1) For the purpose of applying subsection 133AD(2) or (3) to a failure by a licensee to provide a consumer with a Key Facts Sheet (the ***new Key Facts Sheet***) for a standard home loan, it is a defence if:
 - (a) the following conditions are satisfied:
 - (i) the licensee has previously provided the consumer with a Key Facts Sheet (the ***previous Key Facts Sheet***) for the standard home loan;
 - (ii) the new Key Facts Sheet would be the same (except for its date) as the previous Key Facts Sheet; or
 - (b) the licensee reasonably believes that:
 - (i) another person has previously provided the consumer with a Key Facts Sheet (the ***previous Key Facts Sheet***) for the standard home loan; and
 - (ii) the new Key Facts Sheet would be the same (except for its date) as the previous Key Facts Sheet; or
 - (c) the licensee reasonably believes that the consumer would not be eligible for the standard home loan; or

(d) under regulations made for the purpose of subsection (2), the licensee is not required to provide the consumer with the new Key Facts Sheet.

Note: For the purpose of subsection 133AD(3), a defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(2) The regulations may prescribe circumstances in which a licensee is not required to provide a consumer with a Key Facts Sheet for a standard home loan.

Part 2—Amendments relating to credit cards

National Consumer Credit Protection Act 2009

6 Subsection 5(1)

Insert:

annual percentage rate has the same meaning as in section 27 of the National Credit Code.

8 Subsection 5(1)

Insert:

continuing credit contract has the same meaning as in section 204 of the National Credit Code.

9 Subsection 5(1)

Insert:

credit card: see subsection 133BA(2).

10 Subsection 5(1)

Insert:

credit card contract: see subsection 133BA(1).

12 Subsection 5(1)

Insert:

credit limit increase invitation, in relation to a credit card contract: see subsection 133BE(5).

14 Subsection 5(1) (definition of *Key Facts Sheet*)

Repeal the definition, substitute:

Key Facts Sheet:

- (a) for a credit card contract—see section 133BB; and
- (b) for a standard home loan—see section 133AB.

15 Subsection 5(1)

Insert:

linked: for when a credit card is *linked* to a credit card contract, see subsection 133BA(3).

17 Subsection 5(1)

Insert:

use of a credit card: see subsection 133BA(4).

18 Subsection 6(2) (note)

Omit “credit contracts for credit cards”, substitute “credit card contracts”.

19 After Part 3-2A

Insert:

Part 3-2B—Licensees that are credit providers under credit contracts: additional rules relating to credit card contracts

Division 1—Introduction

133B Guide to this Part

This Part has rules that apply to licensees that are credit providers under credit card contracts. It applies in addition to the general rules in Part 3-2.

Division 2 defines key concepts used in this Part (including credit card contract and credit card).

Division 3 imposes requirements aimed at ensuring a consumer obtains a Key Facts Sheet before entering into a credit card contract.

Division 4 imposes restrictions on a licensee making offers etc. to increase the credit limit of a credit card contract.

Division 5 provides for consumers to be notified if a credit card is used in excess of its credit limit, and restricts the charging of fees etc. for use of a credit card in excess of its credit limit.

Division 6 imposes requirements relating to the order of application of payments made under credit card contracts. Generally, a payment must be applied against higher interest rate debts first.

Division 2—Credit card contracts and related concepts

133BA Meaning of *credit card contract* etc.

Meaning of credit card contract

- (1) A **credit card contract** is a continuing credit contract under which credit is ordinarily obtained only by the use of a credit card.

Meaning of credit card

- (2) A **credit card** is:
- (a) a card of a kind commonly known as a credit card; or
 - (b) a card of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit; or
 - (c) anything else that may be used as a card referred to in paragraph (a) or (b).

Meaning of linked to a credit card contract

- (3) A credit card is **linked** to a credit card contract if:
- (a) the credit card is issued under or in relation to the contract; and
 - (b) the credit card can be used to obtain credit under the contract as referred to in subsection (1).

Meaning of use of a credit card

- (4) A reference to the **use** of a credit card to obtain cash, goods or services includes a reference to the use or provision of the number of the credit card to obtain cash, goods or services.

Articles that can be used as credit cards and in other ways

- (5) If a credit card can also be used in other ways (for example, as a debit card, or to access other accounts):
- (a) the article is a credit card (despite the fact that it can also be used in those other ways); but
 - (b) the provisions of this Act that are expressed to apply in relation to credit cards do not apply to the article in so far as it can be used in those other ways.

Division 3—Key Facts Sheets for credit card contract

133BB What is a *Key Facts Sheet* for a credit card contract?

A *Key Facts Sheet* for a credit card contract is a document:

- (a) that contains the information relating to the contract that is required by the regulations; and
- (b) that complies with any other requirements prescribed by the regulations.

133BC Application form for credit card contract to include up-to-date *Key Facts Sheet*

Requirement

- (1) If a licensee makes available to consumers an application form that can be used to apply for a credit card contract under which the licensee would be the credit provider, the licensee must ensure that the application form includes a *Key Facts Sheet* for the contract that contains up-to-date information.

Civil penalty: 2,000 penalty units.

Offence

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

Criminal penalty: 50 penalty units.

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Part 2 Amendments relating to credit cards

Circumstances in which application form may, for limited period, include out-of-date Key Facts Sheet

- (3) The regulations may prescribe circumstances in which a licensee may, for a period prescribed by the regulations, make available an application form that includes a Key Facts Sheet containing information that has ceased to be up-to-date.

Note: If a consumer applies using such an application form, the consumer must be given the up-to-date information: see paragraph 133BD(1)(b).

- (4) If a licensee makes available an application form that includes a Key Facts Sheet containing information that has ceased to be up-to-date, it is a defence for the purposes of subsections (1) and (2) if the application form was made available as permitted by regulations made for the purpose of subsection (3).

Note: For the purpose of subsection (2), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

133BD Credit provider not to enter into credit card contract unless Key Facts Sheet has been provided etc.

Requirement

- (1) If a consumer applies to a licensee for a credit card contract under which the licensee would be the credit provider, the licensee must not enter into, or offer to enter into, the contract unless:
- (a) the application is made using an application form that includes a Key Facts Sheet for the contract that contains up-to-date information; or
 - (b) the following conditions are satisfied:
 - (i) the application is made using an application form that includes a Key Facts Sheet for the contract that contains information that has ceased to be up-to-date;
 - (ii) the consumer has been provided with the up-to-date information in accordance with any requirements prescribed by the regulations; or
 - (c) the consumer has otherwise been provided with a Key Facts Sheet for the contract that contains up-to-date information in accordance with any requirements prescribed by the regulations.

Civil penalty: 2,000 penalty units.

Offence

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

Criminal penalty: 100 penalty units.

Division 4—Offers etc. to increase credit limit of credit card contract

133BE Credit provider not to offer etc. to increase credit limit of credit card contract

Requirement

- (1) A licensee who is the credit provider under a credit card contract must not make a credit limit increase invitation in relation to the contract.

Civil penalty: 2,000 penalty units.

Note 1: Subsection 133BF(1) provides a defence to liability under this subsection.

Note 2: For other provisions that must be complied with in relation to increasing credit limits, see:

- (a) Divisions 3 and 4 of Part 3-2; and
- (b) subsection 67(4) of the National Credit Code.

Offence

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

Criminal penalty: 100 penalty units.

Schedule 1 Amendments

Part 2 Amendments relating to credit cards

Note: Subsection 133BF(1) provides a defence to liability under this subsection.

Strict liability offence

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

Criminal penalty: 10 penalty units.

Note: Subsection 133BF(1) provides a defence to liability under this subsection.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Meaning of credit limit increase invitation

- (5) A licensee makes a ***credit limit increase invitation***, in relation to a credit card contract, if:
- (a) the licensee gives a written communication that relates to the contract to the consumer who is the debtor under the contract; and
 - (b) one or more of the following conditions is satisfied in relation to the communication:
 - (i) the communication offers to increase the credit limit of the contract;
 - (ii) the communication invites the consumer to apply for an increase of the credit limit of the contract;
 - (iii) the licensee gave the communication to the consumer for the purpose (or for purposes including the purpose) of encouraging the consumer to consider applying for an increase of the credit limit of the contract.
- (6) The regulations may make provisions that apply to determining whether a written communication is covered by the definition in subsection (5).

133BF Informed consent of the consumer to the making of credit limit increase invitations

- (1) For the purposes of applying subsections 133BE(1), (2) and (3) to the making of a credit limit increase invitation, it is a defence if:
- (a) the licensee has, in accordance with this section, obtained express consent, from the consumer who is the debtor under the credit card contract, to the licensee making credit limit increase invitations; and
 - (b) the consent has not been withdrawn in accordance with this section.

Note 1: The consent must be express, and cannot be implied from the actions of the consumer or from other circumstances.

Note 2: The licensee must keep records of consents and withdrawals: see section 133BG.

Note 3: For the purposes of subsections 133BE(2) and (3), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (2) The consumer may consent to the licensee making credit limit increase invitations.
- (3) The consent must be expressed to relate to any credit limit increase invitations that the licensee may, from time to time, make to the consumer.

Note: A consent expressed in more limited terms is not effective for the purpose of this section.

- (4) Before obtaining the consumer's consent, the licensee must inform the consumer of the following matters:
- (a) that the consumer has a discretion whether to apply for any increase of the credit limit;
 - (b) that the licensee has a discretion whether to grant any increase applied for;
 - (c) that the consumer may withdraw the consent at any time;
 - (d) any other matters prescribed by the regulations.
- (5) The consent may be obtained before or after the credit card contract is entered into, but it does not cover any credit limit increase invitation made before the consent is obtained.
- (6) The consumer may withdraw the consent at any time.

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Part 2 Amendments relating to credit cards

- (7) The regulations may prescribe requirements to be complied with in relation to any of the following:
- (a) giving consent under subsection (2) or withdrawing consent under subsection (6);
 - (b) informing the consumer of matters under subsection (4).

133BG Records of consents and withdrawals to be kept

Requirement

- (1) A licensee must, in accordance with the requirements prescribed by the regulations, keep a record of:
- (a) consents the licensee obtains under section 133BF; and
 - (b) withdrawals of such consents.

Civil penalty: 2,000 penalty units.

Offence

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

Criminal penalty: 50 penalty units.

Division 5—Use of credit card in excess of credit limit

133BH Credit provider to notify consumer of use of credit card in excess of credit limit

Regulations may require licensee to notify consumer of use of credit card in excess of credit limit

- (1) The regulations may require a licensee who is the credit provider under a credit card contract to notify the consumer who is the debtor under the contract if the licensee becomes aware that the debtor has used a credit card that is linked to the contract to obtain cash, goods or services in excess of the credit limit for the contract.

- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may deal with:
- (a) how and when the licensee must notify the consumer; and
 - (b) the matters that must be included in the notification.

Requirement to comply with the regulations

- (3) A licensee must comply with regulations made for the purpose of subsection (1).

Civil penalty: 2,000 penalty units.

Offence

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

Criminal penalty: 50 penalty units.

133BI Credit provider not to impose fees etc. because credit card used in excess of credit limit

- (1) If a credit card is used to obtain cash, goods or services in excess of the credit limit for the credit card contract, the licensee who is the credit provider under the contract must not, because the credit limit was exceeded, impose any liability to pay fees or charges, or a higher rate of interest, on the consumer who is the debtor under the contract unless:
- (a) the licensee has, in accordance with this section, obtained express consent from the consumer covering the imposition of the fees or charges, or the higher rate of interest; and
 - (b) the consent has not been withdrawn; and
 - (c) any other requirements prescribed by the regulations are complied with.

Note 1: The consent must be express, and cannot be implied from the actions of the consumer or from other circumstances.

Note 2: The licensee must keep records of consents and withdrawals: see section 133BJ.

Schedule 1 Amendments

Part 2 Amendments relating to credit cards

- (2) The consumer may consent to the licensee imposing a liability to pay fees or charges, or a higher rate of interest, if the credit card is used to obtain cash, goods or services in excess of the credit limit.
- (3) Before obtaining the consumer's consent, the licensee must, in accordance with the regulations, inform the consumer of any matters prescribed by the regulations.
- (4) The consent may be obtained before or after the credit card contract is entered into, but it does not cover any fees, charges or interest imposed before the consent is obtained.
- (5) The consumer may withdraw the consent at any time.
- (6) The regulations may prescribe requirements to be complied with in relation to giving consent under subsection (2), or withdrawing consent under subsection (5).
- (7) For the purpose of subsection 23(1) of the National Credit Code (and the other provisions of the Code that refer to, or apply in relation to, that subsection):
 - (a) a liability to pay a fee or charge that is imposed contrary to subsection (1) of this section is taken to be a credit fee or charge that is prohibited by the Code; and
 - (b) a liability to pay interest that is imposed contrary to subsection (1) of this section is taken to be an interest charge under the credit card contract exceeding the amount that may be charged consistently with the Code.

Note: For the civil and criminal consequences of contravening subsection 23(1) of the National Credit Code, see subsections 23(2) to (4), section 24, and Part 6, of the Code.

133BJ Records of consents and withdrawals to be kept

Requirement

- (1) A licensee must, in accordance with the requirements prescribed by the regulations, keep a record of:
 - (a) consents the licensee obtains under section 133BI; and
 - (b) withdrawals of such consents.

Civil penalty: 2,000 penalty units.

Offence

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

Criminal penalty: 50 penalty units.

Division 6—Order of application of payments made under credit card contracts

133BO Credit provider to apply payments in accordance with this Division

Requirement

- (1) If a payment (the *relevant payment*) is made under a credit card contract:
- (a) by or on behalf of the consumer who is the debtor under the contract; and
 - (b) to the licensee who is the credit provider under the contract; the licensee must apply the payment in accordance with this Division (despite any provision to the contrary in the contract, any other contract or instrument or any other law).

Civil penalty: 2,000 penalty units.

- (2) To avoid doubt, an amount:
- (a) that is credited to the consumer's account by the licensee; and
 - (b) that is, or is in the nature of:
 - (i) a total or partial refund in relation to a transaction entered into using the credit card; or
 - (ii) a total or partial reversal of such a transaction;is not a payment to which subsection (1) applies.

Offence

- (3) A person commits an offence if:

Schedule 1 Amendments

Part 2 Amendments relating to credit cards

- (a) the person is subject to a requirement under subsection (1);
and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

Strict liability offence

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

Criminal penalty: 10 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

133BP Agreement to apply payment against particular amount owed

- (1) This section applies if, at the time when the licensee applies the relevant payment, the following conditions are satisfied:
 - (a) the consumer has requested the licensee to apply certain payments made under the credit card contract against a particular amount:
 - (i) owed by the consumer to the licensee under the contract; and
 - (ii) in relation to which any other requirements prescribed by the regulations are satisfied;
 - (b) the licensee has agreed to the request;
 - (c) the relevant payment is a payment to which the request relates;
 - (d) neither the request, nor the agreement to the request, has been withdrawn in accordance with this section.
- (2) The licensee must apply the relevant payment against the amount referred to in paragraph (1)(a) in accordance with the request.

- (3) The consumer may withdraw the request at any time.
- (4) The licensee may withdraw the agreement to the request, but only if the consumer has consented to the withdrawal.
- (5) The regulations may prescribe requirements to be complied with in relation to any of the following:
 - (a) making a request under paragraph (1)(a);
 - (b) agreeing to a request under paragraph (1)(b);
 - (c) withdrawing a request under subsection (3);
 - (d) withdrawing agreement to a request under subsection (4);
 - (e) consenting under subsection (4) to the withdrawal of agreement to a request.

133BQ Application of payment against last statement balance, with higher interest debts to be discharged first

- (1) Subject to subsection (2), the licensee must apply the relevant payment (or any part of the relevant payment remaining after complying with section 133BP) against so much as remains owing of the closing balance shown in the last statement of account for the credit card contract that the licensee gave the consumer before the relevant payment was made.
- (2) If different annual percentage rates apply to different parts of that closing balance, the licensee must apply the relevant payment (or any remaining part of the payment) first to the part of that balance to which the highest rate applies, next to the part of that balance to which the next highest rate applies, and so on.

133BR Application of any remaining part of the relevant payment

The licensee must apply any part of the relevant payment remaining after complying with sections 133BP and 133BQ in accordance with the terms of the credit card contract.

20 Subsection 23(1) of the *National Credit Code* (note)

Omit “Note”, substitute “Note 1”.

21 At the end of subsection 23(1) of the *National Credit Code*

Add:

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Part 2 Amendments relating to credit cards

Note 2: This subsection also applies to liabilities imposed contrary to section 133BI of the National Credit Act: see subsection (7) of that section.

22 At the end of Division 3 of Part 2 of the *National Credit Code*

Add:

30B Regulations about credit card contracts

- (1) The regulations may make provision in relation to any of the following matters relating to interest charges under credit card contracts:
 - (a) the day from which a daily percentage rate may be applied, and the balance (or the part of a balance) to which it may be applied;
 - (b) how matters relating to interest charges may be described in:
 - (i) credit card contracts; and
 - (ii) other documents or advertisements published or broadcast by or on behalf of licensees who are credit providers under credit card contracts.
- (2) Regulations made for the purpose of subsection (1) may:
 - (a) provide for offences against the regulations; and
 - (b) provide for civil penalties for contraventions of the regulations.
- (3) The penalties for offences referred to in paragraph (2)(a) must not be more than 50 penalty units for an individual or 250 penalty units for a body corporate.
- (4) The civil penalties referred to in paragraph (2)(b) must not be more than 500 penalty units for an individual or 2,500 penalty units for a body corporate.
- (5) This Division has effect subject to regulations made for the purpose of subsection (1).

23 Paragraph 33(2)(a) of the *National Credit Code*

Omit “continuing credit contract under which credit is ordinarily obtained only by the use of a card”, substitute “credit card contract”.

24 Subsection 34(5) of the *National Credit Code*

Omit “continuing credit contract under which credit is ordinarily obtained only by the use of a card”, substitute “credit card contract”.

25 Subsection 204(1) of the *National Credit Code*

Insert:

credit card has the same meaning as in subsection 133BA(2) of the National Credit Act.

26 Subsection 204(1) of the *National Credit Code*

Insert:

credit card contract has the same meaning as in subsection 133BA(1) of the National Credit Act.

**27 Subsection 204(1) of the *National Credit Code*
(paragraph (b) of the definition of *credit fees and charges*)**

Omit “continuing credit contracts under which credit is ordinarily obtained only by the use of a card”, substitute “credit card contracts”.

28 Subsection 204(1) of the *National Credit Code*

Insert:

credit limit has the same meaning as in section 5 of the National Credit Act.

Schedule 2—Application and transitional provisions

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

1 At the end of the Act

Add:

Schedule 4—Other application and transitional provisions

Part 1—Application and Transitional provisions for the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011

1 Definitions

In this Part:

amended Act means the *National Consumer Credit Protection Act 2009* as amended by Part 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*.

commencement means the commencement of Part 2 of Schedule 1 to the *National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011*.

2 Application of Divisions of Part 3-2B of the amended Act

- (1) Division 4 of Part 3-2B of the amended Act applies to credit card contracts whether entered into before, on or after commencement.
- (2) Divisions 5 and 6 of Part 3-2B of the amended Act apply to credit card contracts entered into after commencement.

3 Pre-commencement consents for credit limit increase invitations

- (1) Subject to subitem (2), if:
- (a) before commencement, a licensee who is the credit provider under a credit card contract obtained express consent, from the consumer who is the debtor under the contract, to the licensee making credit limit increase invitations; and
 - (b) the consent is expressed to relate to any credit limit increase invitations that the licensee may, from time to time, make to the consumer; and
 - (c) before obtaining the consumer's consent, the licensee informed the consumer of the matters mentioned in paragraphs 133BF(4)(a), (b) and (c) of the amended Act; and
 - (d) the consumer did not withdraw the consent before commencement;

then, for the purposes of Division 4 of Part 3-2B of the amended Act, the licensee is taken to have obtained the consent under, and in accordance with, section 133BF of the amended Act.

Note: The consumer may, after commencement, withdraw the consent in accordance with section 133BF of the amended Act.

- (2) Section 133BG of the amended Act does not apply in relation to the consent, so far as that section would otherwise require a record of the consent to be kept. However that section does apply in relation to a withdrawal of the consent after commencement.

*[Minister's second reading speech made in—
House of Representatives on 24 March 2011
Senate on 23 June 2011]*

(66/11)

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