





# **Treasury Laws Amendment (Banking Measures No. 1) Act 2018**

**No. 9, 2018**

**An Act to amend the law relating to banking, insurance, credit, registrable corporations and financial system regulation, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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**An Act to amend the law relating to banking, insurance, credit, registrable corporations and financial system regulation, and for related purposes**

*[Assented to 5 March 2018]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018*.

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	5 March 2018
2. Schedules 1 and 2	The day this Act receives the Royal Assent.	5 March 2018
3. Schedule 3	The day after the end of the period of 2 months beginning on the day this Act receives the Royal Assent.	5 May 2018
4. Schedule 4	The day this Act receives the Royal Assent.	5 March 2018
5. Schedule 5, Part 1	1 January 2019.	1 January 2019
6. Schedule 5, Part 2, Division 1	1 July 2018.	1 July 2018
7. Schedule 5, Part 2, Division 2	1 January 2019.	1 January 2019
8. Schedule 5, Parts 3 and 4	1 January 2019.	1 January 2019
9. Schedule 5, item 24	1 July 2018.	1 July 2018
10. Schedule 5, item 25	1 January 2019.	1 January 2019

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Note: This table relates only to the provisions of this Act as originally enacted.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.

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- (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 Schedules**

Legislation 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—Non-ADI lender rules

### *Banking Act 1959*

#### 1 Subsection 5(1)

Insert:

*non-ADI lender* has the meaning given by section 38B.

*non-ADI lender rule* means a rule under section 38C.

*Part IIB provision of finance* has the meaning given by section 38B.

#### 2 After Part IIA

Insert:

### Part IIB—Provisions relating to the non-ADI lenders

#### Division 1—Main concepts

##### 38B Meaning of *non-ADI lender* and *Part IIB provision of finance*

- (1) A *non-ADI lender* is a registrable corporation (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) that is engaged in the Part IIB provision of finance.
- (2) *Part IIB provision of finance* means the provision of finance (within the meaning of the *Financial Sector (Collection of Data) Act 2001*), other than:
  - (a) the activities mentioned in paragraphs 32(1)(e), (f), (g) and (h) of that Act; and
  - (b) the provision of finance (within the meaning of that Act) outside Australia; and
  - (c) the entry into an arrangement that is a derivative (within the meaning of the *Corporations Act 2001*).

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**Division 2—Non-ADI lender rules****38C APRA may make non-ADI lender rules for non-ADI lenders**

- (1) Subsection (2) applies if:
  - (a) APRA considers that the Part IIB provision of finance by one or more non-ADI lenders materially contributes to risks of instability in the Australian financial system; and
  - (b) APRA considers that it is necessary, in order to address those risks, to make rules under subsection (2).
- (2) APRA may, in writing, determine rules for the purpose of addressing those risks, to be complied with by:
  - (a) all non-ADI lenders; or
  - (b) a specified class of non-ADI lenders; or
  - (c) one or more specified non-ADI lenders.
- (3) To avoid doubt, a rule cannot require a non-ADI lender to conduct its business and activities in a particular way to the extent that the business and activities are unrelated to the Part IIB provision of finance.
- (4) A rule may impose different requirements to be complied with in different situations or in respect of different activities.
- (5) Without limiting the matters in relation to which APRA may determine a rule, a rule may require:
  - (a) each non-ADI lender; or
  - (b) each non-ADI lender included in a specified class of non-ADI lenders; or
  - (c) a specified non-ADI lender; or
  - (d) each of 2 or more specified non-ADI lenders;to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to the risks mentioned in subsection (1).
- (6) A rule may provide for APRA to exercise powers and discretions under the rule, including (but not limited to) discretions to approve, impose, adjust or exclude specific requirements in relation to one or more specified non-ADI lenders.

- (7) A rule may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:
  - (a) section 46AA of the *Acts Interpretation Act 1901*; and
  - (b) section 14 of the *Legislation Act 2003*.
- (8) A rule referred to in paragraph (2)(c) has effect:
  - (a) from the day on which the rule is made; or
  - (b) if the rule specifies a later day—from that later day.

### **38D Non-ADI lender rules revoked after 2 years**

- (1) A non-ADI lender rule is revoked at the end of the period of 2 years beginning on the day the rule is made.
- (2) If, at any time during that period, APRA considers that the conditions in subsection 38C(1) still apply in relation to the non-ADI lender rule, APRA may, by written instrument, extend (or further extend) the period for a period of 2 years beginning on the day the instrument is made.

Note: An extension under this subsection does not affect the operation of Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*.

### **38E Variation and revocation of non-ADI lender rules**

- (1) APRA may, in writing, vary or revoke a non-ADI lender rule.
- (2) An instrument varying or revoking a non-ADI lender rule referred to in paragraph 38C(2)(c) has effect:
  - (a) from the day on which the instrument is made; or
  - (b) if the instrument specifies a later day—from that later day.

### **38F Notification and consultation regarding non-ADI lender rules**

#### *Notification*

- (1) If APRA makes or varies a non-ADI lender rule referred to in paragraph 38C(2)(c) it must, as soon as practicable, give a copy of the rule, or of the variation, to the non-ADI lender, or to each non-ADI lender, to which the rule applies.

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- (2) If APRA revokes a non-ADI lender rule referred to in paragraph 38C(2)(c) it must, as soon as practicable, give notice of the revocation to the non-ADI lender, or to each non-ADI lender, to which the rule applied.
  - (3) If APRA extends the period mentioned in subsection 38D(1) in relation to a non-ADI lender rule referred to in paragraph 38C(2)(c) it must, as soon as practicable, give notice of the extension to the non-ADI lender, or to each non-ADI lender, to which the rule applies.

*Consultation*

- (4) Before making a non-ADI lender rule, or varying or revoking a non-ADI lender rule, APRA must consult with ASIC.
- (5) A failure to comply with subsection (4) does not affect the validity of the action concerned.

**38G Which non-ADI lender rules, etc., are legislative instruments**

- (1) The following instruments are not legislative instruments:
  - (a) a non-ADI lender rule referred to in paragraph 38C(2)(c);
  - (b) an instrument under section 38E varying or revoking a non-ADI lender rule referred to in paragraph 38C(2)(c);
  - (c) an instrument under subsection 38D(2) extending the period mentioned in subsection 38D(1) in relation to a non-ADI lender rule referred to in paragraph 38C(2)(c).
- (2) Otherwise, an instrument made under section 38C, 38D or 38E is a legislative instrument.

**38H Review of decisions relating to non-ADI lender rules**

Part VI applies to the following decisions:

- (a) a decision to make a non-ADI lender rule referred to in paragraph 38C(2)(c);
- (b) a decision to vary such a rule;
- (c) a decision to make an instrument under subsection 38D(2) in relation to such a rule.

### **38J Division not to limit operation of other provisions**

Nothing in this Division is intended to limit the operation of any other provision of this Act or of the *Reserve Bank Act 1959*.

## **Division 3—APRA’s power to issue directions**

### **38K APRA may give directions in certain circumstances**

- (1) APRA may give a body corporate that is a non-ADI lender a direction to take specified action to comply with the whole or a part of a non-ADI lender rule if APRA has reason to believe that:
  - (a) the body corporate has contravened the non-ADI lender rule;  
or
  - (b) the body corporate is likely to contravene the non-ADI lender rule.
- (2) The direction must:
  - (a) be given by notice in writing to the body corporate; and
  - (b) specify the ground referred to in subsection (1) as a result of which the direction is given.
- (3) In deciding whether to give a direction under subsection (1), APRA must consider whether the body corporate has taken reasonable steps in the past to comply with the non-ADI lender rule.
- (4) The direction may deal with the time by which, or period during which, it is to be complied with.
- (5) The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (6) APRA may, by notice in writing to the body corporate, vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (7) The direction has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

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- (8) Part VI applies to a decision to give a direction under subsection (1).

### **38L Non-compliance with a direction under section 38K**

- (1) A non-ADI lender commits an offence if:
- (a) it does, or fails to do, an act; and
  - (b) doing, or failing to do, the act results in a contravention of a direction given to it under section 38K.

Penalty: 50 penalty units.

Note: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

- (2) If a non-ADI lender does or fails to do an act in circumstances that give rise to the non-ADI lender committing an offence against subsection (1), the non-ADI lender commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the non-ADI lender committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (3) An officer of a non-ADI lender commits an offence if:
- (a) the officer fails to take reasonable steps to ensure that the non-ADI lender complies with a direction given to it under section 38K; and
  - (b) the officer's duties include ensuring that the non-ADI lender complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

Note: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

- (4) If an officer of a non-ADI lender fails to take reasonable steps to ensure that the non-ADI lender complies with a direction given to

it under section 38K in circumstances that give rise to the officer committing an offence against subsection (3), the officer commits an offence against that subsection in respect of:

- (a) the first day on which the offence is committed; and
- (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (5) In this section, **officer** has the meaning given by section 9 of the *Corporations Act 2001*.

### 3 Subparagraph 65A(1)(a)(i)

Repeal the subparagraph, substitute:

- (i) a provision of this Act, the regulations, the prudential standards or the non-ADI lender rules; or

### 4 Paragraph 65A(4)(a)

Repeal the paragraph, substitute:

- (a) by a provision of this Act, the regulations, the prudential standards or the non-ADI lender rules to do; or

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## **Schedule 2—Registrable corporations**

### ***Financial Sector (Collection of Data) Act 2001***

#### **1 Subsection 7(1)**

After “so formed and”, insert “any of the following requirements are satisfied”.

#### **2 Paragraphs 7(1)(a), (b) and (c)**

Repeal the paragraphs, substitute:

- (a) the corporation engages in the provision of finance in the course of carrying on business in Australia;
- (b) the corporation is specified in a determination under subsection (1A), or is in a class of corporations specified in a determination under subsection (1A).

#### **3 After subsection 7(1)**

Insert:

- (1A) For the purposes of paragraph (1)(b), APRA may:
  - (a) make a determination in writing specifying a particular corporation or corporations;
  - (b) make a determination in writing specifying a class of corporations or classes of corporations.
- (1B) A determination made under paragraph (1A)(a) is not a legislative instrument.
- (1C) A determination made under paragraph (1A)(b) is a legislative instrument.
- (1D) Before making a determination under paragraph (1A)(a) or (b), APRA must consider:
  - (a) in the case of a determination under paragraph (1A)(a)—whether the corporation or each of the corporations specified in the determination has business activities in Australia that include the provision of finance; or
  - (b) in the case of a determination under paragraph (1A)(b)—whether each corporation in the class of corporations or

classes of corporations specified in the determination has business activities in Australia that include the provision of finance.

- (1E) A failure to comply with subsection (1D) does not affect the validity of the determination.
- (1F) As soon as practicable after making a determination under paragraph (1A)(a), APRA must give a copy of the determination to each corporation specified in the determination.
- (1G) A failure to comply with subsection (1F) does not affect the validity of the determination.

#### **4 Paragraph 7(2)(h)**

Repeal the paragraph.

#### **5 Paragraph 7(2)(i)**

Repeal the paragraph, substitute:

- (i) the corporation is covered under subsection (2A); or
- (ia) the corporation is specified in a determination under subsection (2F), or is in a class of corporations specified in a determination under subsection (2F); or

#### **6 After subsection 7(2)**

Insert:

- (2A) For the purposes of paragraph (2)(i), a corporation is covered under this subsection if:
  - (a) the sum of the values of the corporation's assets in Australia that consist of debts due to the corporation resulting from transactions entered into in the course of the provision of finance by the corporation does not exceed:
    - (i) \$50,000,000; or
    - (ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed; and
  - (b) the sum of the values of the principal amounts outstanding on loans or other financing covered by subsection (2C) does not exceed:
    - (i) \$50,000,000; or

- (ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed.
- (2B) For the purposes of paragraph (2A)(b), determine the value of the principal amount outstanding on a loan or other financing at the time the loan or other financing arose.
- (2C) For the purposes of paragraph (2A)(b), a loan or other financing is covered by this subsection if:
  - (a) the loan or other financing arose in the relevant financial year mentioned in subsection (2D); and
  - (b) the funding or originating of the loan or other financing resulted from the carrying out, whether directly or indirectly, of activities by the corporation.
- (2D) In determining whether the corporation is a registrable corporation at a time, for the purposes of paragraph (2C)(a), the relevant financial year is the most recent financial year ending before that time.
- (2E) For the purposes of working out whether a corporation (the **test corporation**) is covered under subsection (2A):
  - (a) identify each other corporation (if any) that is related to the test corporation (disregarding subsections 34(2) and (3)); and
  - (b) treat those other corporations as not being a separate entity, but rather as being a part of the test corporation.
- (2F) For the purposes of paragraph (2)(ia), APRA may:
  - (a) make a determination in writing specifying a particular corporation or corporations;
  - (b) make a determination in writing specifying a class of corporations or classes of corporations.
- (2G) A determination made under paragraph (2F)(a) is not a legislative instrument.
- (2H) A determination made under paragraph (2F)(b) is a legislative instrument.
- (2J) As soon as practicable after making a determination under paragraph (2F)(a), APRA must give a copy of the determination to each corporation specified in the determination.

(2K) A failure to comply with subsection (2J) does not affect the validity of the determination.

**7 Subsection 7(3)**

Repeal the subsection.

**8 Section 31 (after paragraph (a) of the definition of *reviewable decision*)**

Insert:

- (aa) a decision to make a determination under paragraph 7(1A)(a);
- (ab) a decision not to make a determination under paragraph 7(2F)(a);

**9 After paragraph 32(1)(a)**

Insert:

- (aa) the carrying out of activities, whether directly or indirectly, that result in the funding or originating of loans or other financing;

**10 After subsection 32(1)**

Insert:

- (1A) A reference in this Act to the provision of finance does not include a reference to the following:
  - (a) the provision of financial advice;
  - (b) intra-group financing activity between corporations that are related to one another.

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## Schedule 3—Restricted words

### *Banking Act 1959*

#### **1 Subsection 9(3) (note 1)**

Repeal the note.

#### **2 Subsection 9(3) (note 2)**

Omit “Note 2”, substitute “Note”.

#### **3 Subsection 66(1AC)**

Repeal the subsection, substitute:

(1AC) It is not an offence against subsection (1) for an ADI to assume or use the words **bank**, **banker** or **banking** in relation to the ADI’s financial business.

Note: See also section 66AA, which deals with the use of the word **bank** by ADIs.

#### **4 Subsection 66(2C)**

Repeal the subsection.

#### **5 After section 66**

Insert:

#### **66AA Use of the word *bank* by ADIs**

- (1) A person commits an offence if:
- (a) the person is an ADI; and
  - (b) the ADI carries on a financial business, whether or not in Australia; and
  - (c) the person assumes or uses, in Australia, the word **bank** in relation to that financial business; and
  - (d) a determination under subsection (3) is in force that specifies that this section applies to the ADI.

Penalty: 50 penalty units.

Note 1: For the meanings of *assume or use* and *financial business*, see subsection (10).

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

- (2) If a person assumes or uses the word *bank* in circumstances that give rise to the person committing an offence against subsection (1), the person commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (3) APRA may, in writing, determine that this section applies to an ADI while the determination is in force.
- (4) A determination under subsection (3):
- (a) may be expressed to apply:
    - (i) to a particular ADI; or
    - (ii) to a class, or classes, of ADIs; and
  - (b) may specify the period during which the determination is in force.

A period specified under paragraph (b) must not begin before the day on which the determination is made.

- (5) If APRA makes a determination under subsection (3) that applies to a particular ADI, APRA must also give the ADI written notice of the determination.
- (6) APRA may, in writing, vary or revoke a determination made under subsection (3).
- (7) The following instruments are not legislative instruments:
- (a) a determination under subsection (3) that applies to a particular ADI;

- (b) an instrument made under subsection (6) varying or revoking a determination that applies to a particular ADI.
- (8) Otherwise, a determination under subsection (3) or an instrument under subsection (6) is a legislative instrument.
- (9) Part VI applies to the following decisions under this section:
  - (a) a decision to determine that this section applies to a particular ADI;
  - (b) a decision to vary a determination that applies to a particular ADI.
- (10) In this section:
  - (a) a reference to the word **bank** being assumed or used includes a reference to the word being assumed or used:
    - (i) as part of another word or expression; or
    - (ii) in combination with other words, letters or other symbols; and
  - (b) a reference to a financial business is a reference to a business that:
    - (i) consists of, or includes, the provision of financial services; or
    - (ii) relates, in whole or in part, to the provision of financial services.

## Schedule 4—Objects provisions

### *Banking Act 1959*

#### **1 After section 2**

Insert:

#### **2A Main objects of this Act**

- (1) The main objects of this Act are:
  - (a) to protect the interests of depositors in ADIs in ways that are consistent with the continued development of a viable, competitive and innovative banking industry; and
  - (b) to promote financial system stability in Australia.
- (2) This Act, and the prudential standards and non-ADI lender rules determined by APRA under this Act, achieve this mainly by:
  - (a) restricting who can carry on banking business in Australia; and
  - (b) providing for the prudential supervision of ADIs by APRA, by APRA determining prudential standards or taking other action to ensure prudent management of ADIs; and
  - (c) providing for APRA to manage or respond to circumstances in which the ability of an ADI to meet its obligations may be threatened; and
  - (d) providing for certain account-holders to be paid amounts where the financial claims scheme has been declared to apply in relation to an ADI; and
  - (f) for the purposes of paragraph (1)(b)—providing rules in relation to the provision of certain kinds of finance by non-ADI lenders.
- (3) It is intended that APRA, in taking actions to address risks to financial system stability in Australia, may consider specific sources of systemic risks, whether geographic, sectoral or otherwise.
- (4) This section does not apply to the following:

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- (a) Divisions 4 (Mobilization of foreign currency) and 5 (Advances) of Part II;
  - (b) Parts III (Foreign exchange, foreign investment etc.), IV (Gold) and V (Interest rates);
  - (c) any other provision of this Act, to the extent that it relates to any of the provisions mentioned in paragraph (a) or (b).

### ***Insurance Act 1973***

#### **2 Section 2A (heading)**

Repeal the heading, substitute:

#### **2A Main objects of this Act**

#### **3 Subsection 2A(1)**

Repeal the subsection, substitute:

- (1) The main objects of this Act are:
  - (a) to protect the interests of policyholders and prospective policyholders under insurance policies (issued by general insurers and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry; and
  - (b) to promote financial system stability in Australia.

#### **4 Paragraphs 2A(2)(e) and (f)**

Repeal the paragraphs, substitute:

- (e) providing for APRA to manage or respond to circumstances in which the ability of a general insurer to meet its obligations may be threatened; and
- (f) providing for certain policyholders to be paid amounts where the financial claims scheme has been declared to apply in relation to a general insurer.

### ***Life Insurance Act 1995***

#### **5 Subsection 3(1)**

Repeal the subsection, substitute:

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(1) The main objects of this Act are:

- (a) to protect the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable, competitive and innovative life insurance industry; and
- (b) to promote financial system stability in Australia.

**6 Paragraph 3(2)(d)**

Repeal the paragraph, substitute:

- (d) providing for APRA to manage or respond to circumstances in which the ability of a life company to meet its obligations may be threatened;

## **Schedule 5—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.

**Schedule 5** Credit card reforms

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

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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.

## **Part 2—Credit limits**

### **Division 1—Credit limit increases**

#### *National Consumer Credit Protection Act 2009*

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

Repeal the note.

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

Omit “Note 2”, substitute “Note”.

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

Repeal the note.

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

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

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

Omit “written”.

##### **14 Sections 133BF and 133BG**

Repeal the sections.

### **Division 2—Credit limit reductions**

#### *National Consumer Credit Protection Act 2009*

##### **15 Subsection 5(1)**

Insert:

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

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

Repeal the paragraph, substitute:

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

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

Repeal the heading, substitute:

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

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

Add:

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

*Requirement*

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

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.

*Meaning of credit limit reduction entitlement*

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

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

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

*When this section applies*

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

*Requirement*

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

Civil penalty: 2,000 penalty units.

*Defence*

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

**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 credit limit of the contract.

*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 contract;
  - (b) suggest that the consumer not reduce the credit limit of the contract;
  - (c) if the consumer's request is to reduce the credit limit of the contract by a specified amount—suggest that the consumer instead reduce the credit limit by a smaller 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:
- (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 credit limit of the contract.

*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.

## **Part 3—Interest charges**

### *National Consumer Credit Protection Act 2009*

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

Insert:

Division 7 imposes requirements relating to application of interest charges under credit card contracts.
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#### **20 At the end of Part 3-2B**

Add:

### **Division 7—Calculation of interest under credit card contracts**

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

##### *Requirement*

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

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.

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

### *National Consumer Credit Protection Act 2009*

#### **21 Subsection 5(1)**

Insert:

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

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

Add:

Division 8 imposes requirements aimed at ensuring the consumer can terminate a credit card contract.
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#### **23 Before Part 3-2C**

Insert:

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

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

#### *Requirement*

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

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.

*Meaning of credit card termination entitlement*

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

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

*When this section applies*

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

*Requirement*

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

Civil penalty: 2,000 penalty units.

*Defence*

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

**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

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- (b) the consumer has requested to terminate the consumer's credit card contract.

*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.

## **Part 5—Application provisions**

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

#### **24 In the appropriate position**

Insert:

### **Schedule 6—Application provisions for the Treasury Laws Amendment (Banking Measures No. 1) Act 2018**

#### **Part 1—Definitions**

##### **1 Definitions**

In this Schedule:

*amending Act* means the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018*.

#### **Part 2—Credit limits**

##### **2 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 5 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.

##### **25 At the end of Part 2 of Schedule 6**

Add:

##### **3 Application of sections 133BF, 133BFA, 133BFB and 133BFC of the National Credit Act**

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- (1) Sections 133BF, 133BFA, 133BFB and 133BFC of the National Credit Act, as inserted by Division 2 of Part 2 of Schedule 5 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 3—When a credit card contract, or a credit limit increase, is unsuitable**

#### **4 Application of provisions about unsuitability of credit card contracts or increases in the credit limit of a credit card contract**

The amendments of sections 118, 119, 123, 124, 131 and 133 of the National Credit Act made by Part 1 of Schedule 5 to the amending Act apply:

- (a) 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 that Part; and
- (b) 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:
  - (i) to credit card contracts entered into on or after the commencement of that Part; and
  - (ii) to credit card contracts entered into before the commencement of that Part.

### **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 5 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.
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- (3) However, the Division does not apply in relation to use of a credit card before the commencement of Part 3 of that Schedule.

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

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

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

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*[Minister's second reading speech made in—  
House of Representatives on 19 October 2017  
Senate on 8 February 2018]*

(230/17)

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