



7 March 2011

By email: christian.mikula@treasury.gov.au

Dear Christian,

**Exposure Draft  
National Consumer Credit Protection Amendment (Credit Cards and Home Loans) Bill 2011**

The consumer representatives wish to provide some additional feedback on the Exposure draft, following the telephone meeting on 4<sup>th</sup> March 2011.

We note that some significant key provisions will be included in the Regulations, so we are unable, at this stage, to provide our overall assessment of the Bill. However, we provide the following comments.

**Definition of “credit card”.**

Under the Bill, a credit card contract is limited to a contract under which credit is ordinarily obtained “only by the use of a credit card”. “Credit card” includes another “article” if it is used to obtain goods or services on credit. The legislation therefore doesn’t apply to any account which is similar to a credit card account, but for which there is no card or similar article. A significant amount of credit card transactions can be undertaken without a physical card, but by the use of a number. It is therefore foreseeable that an account number alone could be issued without a card. While we are unaware of any such account, we believe that the definition should include any account that operates the same way as a credit card account, but for the existence of a card or similar article. The legislation should allow the Regulations to prescribe types of accounts that are “credit card accounts” for the purpose of these provisions.

**Credit in excess of credit limit**

We support the introduction of a default buffer of the lesser of 10% of the limit and \$500. We understand that some industry representatives believe the buffer should exceed \$500 for larger credit limits. We do not agree. However, should the buffer be allowed to exceed \$500, it would increase the importance of appropriate procedures to allow consumers to opt-out of the buffer and of effective notification requirements.

**Key Fact Sheets**

The legislation says that the application form in relation to credit card contracts must *include* the key fact sheet .133AC(1). Similarly, in relation to standard home loans it states that the ‘...key fact sheet for a standard home loan is a document... that *contains* the information... required by the regulations’: 133BB(1)(a). It should be specified in relation to both credit card contracts and standard home loans that this must be a stand-alone page, and should be the front page of any application.

We support the format of the home loan fact sheet, and the credit card factsheet which outlines the details of only one type of credit card.

However, we don’t believe that the combined credit card factsheet is acceptable. Unlike the other two fact sheets, this document contains information about a number of different types of accounts. While this could be useful for some consumers who are trying to decide which card to choose, it is too “busy”, is likely to confuse some consumers and it does not meet the objective of providing consumers with a “clear summary of key account features.”. We also note that this document does not resemble the design successfully tested as part of the research prepared for SCOCA.

### **Limit increase invitations**

We note that the Government is committed to prohibiting “unsolicited credit limit extension offers”- not “pre-approved” offers as some industry representatives appear to be suggesting.

We note that to receive credit limit extension offers, the consumer must have provided “informed consent”. Based on our casework experience, and the analysis of credit limit increase offers<sup>1</sup>, the detriment is caused because some consumers don’t make a considered decision about accepting the offer, and the wording of offers is designed to encourage an impulsive response.

While we do not yet know what, if anything, the Regulations will prescribe in relation to obtaining consent, we are concerned that the process of obtaining consent cannot be used in a way that encourages a lack of engagement by the consumer or an impulsive response. We believe that unless the Regulations clearly prescribe how consent can be obtained, the obtaining of consent will simply replace the credit limit increase offers as a cause for concern.

Based on current marketing practices, we envisage that unless there is significant prescription relating to the obtaining of consent a notice to the consumer could take the form of our examples below.

"As a special customer, have you thought about how convenient it would be if we could offer you an increased credit limit? You may not need it now, but wouldn't it be nice to have funds just in case? - just tick the box and return this in the enclosed envelope".

“You could win a holiday – just log into your internet banking preferences and choose to accept offers about increasing your credit limit”

Or:

"Have you thought about how useful a credit limit increase could be? Very handy for emergencies or just for rewarding yourself. We would like to be able to send you a credit limit increase invitation. Just tick the box, sign, and return this form before the end of the month and you'll receive your special invitation within 2 weeks."

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<sup>1</sup> Consumer Action Law Centre, *Congratulations, You're Pre-approved*, August 2008

The consent should be separate from the credit application, or from an application for a credit limit increase.

The Regulations must prescribe a document for these purposes, which should not contain, or be attached to, any other information from the credit provider.

Similarly, the Regulations should clearly prescribe a process by which consumers can easily withdraw their consent to receiving the credit limit extension offers. Unless the Regulations prescribe a process, it is possible that credit providers would make it difficult for a customer to withdraw their consent. If a customer is required to, for example, go into a branch in person, they are unlikely to withdraw their consent where desired given the level of inconvenience.

It may be useful if consumers were informed, when deciding whether to opt-in to receiving credit limit increase offers, that they don't need to opt-in in order for them to apply for a credit limit increase or decrease. However, if the content of this notice is not prescribed, this would open up an opportunity to market credit limit increases, which would defeat the Government's commitment.

We also believe that the consent should be limited to a particular period of time. Some credit card accounts continue for many decades and it would be appropriate to require that consent be obtained after a determined number of years.

During the telephone meeting last Friday, it appeared that industry at one point suggested that if they were required to send a SMS to a customer upon a licensee approving the use of a credit card into the default buffer (where it applies), they should be able to, in the same SMS, suggest that a consumer apply for a credit limit increase. It is our view that such conduct falls squarely within the type of conduct that the Government committed to prohibiting. A 'written communication' as referred to in sub-s.133AE(5)(a) should not be amended to remove the application of it to a SMS as industry appeared to suggest.

### **Allocation of payments to higher interest balances**

Borrowers will pay less interest if payments are allocated to the highest balance first.

However, we understand that industry representatives have identified that some borrowers may wish to have payments allocated to the lower rate amount first, for example if they have purchased an item at a promotional rate for another person who has agreed to reimburse them for that item.

While borrowers should have a choice, we have concerns that this could be abused. Financial literacy research confirms that many borrowers don't have a good understanding of interest rates. While we assume that many consumers could recall the simple advice to repay interest-free credit within the interest-free period, we suspect that many borrowers may not be aware that this advice does not apply if the higher rate of interest applies to other outstanding debt on the account. While we are not aware of any consumer testing on this point, we suspect that some borrowers who have an interest bearing component as well as a component that was interest-free or low-interest for a limited period of time, may be inclined to choose to pay off the lower interest component first to ensure it is repaid within the low-interest period.

We believe there are risks that borrowers will make the wrong choice, unless it is clear to them that repaying the highest interest component first will cost them less. Therefore, the way in which the ability to choose is presented to the customer is critical.

It is therefore necessary to prescribe what information can be provided to borrowers about their right to make a request relating to the allocation of payments, and there should be a prohibition on presenting any positive information or incentives to repay lower interest bearing balances first. For example, the legislation – or Regulations – should not allow a consumer to be asked “would you like your payments allocated so that you can repay this interest-free purchase within the interest free period?”

There should be a requirement that this is an informed request. This would exclude a request being made by ticking a box in a credit application for example.

Yours faithfully,

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Karen Cox - Consumer Credit Legal Centre  
Katrina Lee - CHOICE