

24 August 2017

Principal Adviser
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Tony

Credit cards: improving consumer outcomes and enhancing competition – Exposure Draft Bill

Thank you for the opportunity to comment on the draft bill.

We had four brief observations that may assist you in finalising the bill's text.

First, draft section 133BT requires that consumers have an entitlement to terminate credit card contracts. We note that, if consumers could cancel a contract, this would preclude card providers from recovering any outstanding balance under the contract.

The same policy intent could be achieved if the legislation provided that credit card contracts must allow consumers to cancel their credit card (thus foreclosing the ability to incur further debt) rather than providing customers a unilateral right to request termination of the contract.

Alternatively, the legislation could provide that a credit provider is not required to action a customer's request to terminate a credit card contract until all outstanding amounts under the contract are paid.

Second, draft sections 133BFB and 133BV respectively prohibit credit card providers from suggesting that consumers do not reduce their credit limits or remain in the credit card contract.

While we understand the intent of these provisions, we note that they may stop credit card providers from having potentially beneficial conversations with customers.

In particular, a customer may wish to reduce their limit or cancel a card to then allow them to take up a less suitable or unsuitable product. For example, a customer may want to take up a higher rate card that appeals due to reward points but which, due to the customer's typical balance, would see them pay more interest than under their current card. The provisions would likely stop credit card providers from suggesting that this rearrangement is not optimal for the customer.

Instead, the legislation could state that providers *must not attempt to convince* consumers to remain in credit card contracts or not reduce their limit (including by an amount smaller than the reduction amount). Such a phrase would allow card providers to still have conversations with customers that may suggest their course of action may not be optimal but would stop overt attempts to change the customer's mind.

It may also be beneficial if the explanatory memorandum that accompanies the bill explain that sections 133BFB and 133BV do not intend to prevent credit card providers from identifying to consumers any potential adverse outcomes from their course of action that includes the card cancellation or credit limit reduction. Specifically, it could refer to situations where the consumer is cancelling the card or reducing the limit in order to attempt to take up a less suitable card contract.



Third, draft section 133BS seeks to prohibit the retrospective charging of interest on balances during interest free periods where the customer fails to pay off the balance in full.

To help Treasury achieve the section's intent, we note that a credit card provider could construct the economic arrangement that Treasury seeks to prohibit by providing that interest is always chargeable on purchases unless the balance is paid by a certain date.

In such a case, it may be argued that the higher interest rate is not applied *because of* facts or circumstances coming into existence after the date of application. Instead the higher interest rate would *always be applicable*, subject to defeasance if full payment occurred.

A similar avoidance mechanism could exist in the use of fees (rather than interest) provided those fees did not constitute a penalty.

Treasury may wish to consider the drafting of section 133BS to occlude these potential loopholes.

Fourth, section 160F would give ASIC the power to set periods for determining unsuitability in respect of credit card contracts. Under this power, ASIC could set different periods based on different classes of credit card contracts, credit limits or rates of interest.

While we understand the policy desire for flexibility, we have difficulty understanding when it would be appropriate to set different time periods across these dimensions.

For example, cards with higher interest rates or credit limits will, by those reasons alone, have a higher affordability bar than cards with lower rates or limits. Prescribing differing repayment periods could create variances in affordability that may preclude customers from selecting, or moving to, the card that best suits their needs.

Further, introducing multiple periods would create operational complexity. This increases the risk of errors, the upfront and ongoing cost of the reforms. These concerns would be enhanced if ASIC was minded to adjust the periods over time.

We would prefer a single time period across all card contracts. This would ensure that affordability is being assessed on a consistent basis and simplify the reforms.

If you have any questions or require clarification, please do not hesitate to contact me on (03) 8654 3459.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rob Lomdahl', with a horizontal line extending to the left.

Rob Lomdahl
Group Head of Government and Regulatory Affairs