

**Australian Securities and Investments Commission****National Consumer Credit Protection Act 2009 – Paragraph 163(1)(a) – Exemption****Enabling power**

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraph 163(1)(a) of the *National Consumer Credit Protection Act 2009* (the *Act*).

**Title**

2. This instrument is ASIC Instrument [17-0814].

**Commencement**

3. This instrument commences on the date it is signed.

**Exemption**

4. Westpac Banking Corporation ACN 007 457 141 (*Westpac*) does not have to comply with Division 4 and Division 6 of Part 3-1 of the Act.
5. Westpac does not have to comply with sections 121 and 144 of the Act.

**Where this exemption applies**

6. The exemption in paragraph 4 applies where each of the following are met:
  - (a) Westpac has an agreement with American Express Australia Limited ACN 108 952 085 (*Amex*) under which:
    - (i) Amex is permitted to use Westpac's name or any other words, phrases, initials or logo associated with Westpac on the Amex Card and any letter or other material relating to the Amex Card; and
    - (ii) Westpac or credit representatives of Westpac will provide credit assistance to consumers in relation to the Amex Card;
  - (b) Westpac provides credit assistance in relation to an Amex Card only by:
    - (i) promoting the Amex Card either:
      - (A) to Existing Customers; or
      - (B) as part of promotion material for the Westpac Card to prospective customers and Existing Customers;
    - (ii) making available an application form that relates to the Amex Card and either directly assisting consumers to make an application for the Amex

Card or assisting consumers to make an application for the Amex card through an agent or third party;

- (iii) giving to Amex the consumer's details and any other information requested by Amex (if it is a reasonable request) in order to enable Amex to make an assessment about the Amex Card under section 130 of the Act;
- (c) before providing credit assistance other than Specified Credit Assistance to a consumer who is an Existing Customer, other than a customer who has been a holder of a Westpac Card for less than 60 days, Westpac has determined that the consumer is eligible to apply for the Amex Card by reference to:
  - (i) the Westpac Exclusion Criteria; and
  - (ii) the Amex Exclusion Criteria; and
- (d) Westpac has entered into an obligation under which it is jointly and severally liable with Amex to pay any compensation which Amex is ordered to pay to a consumer under section 178 of the Act as a consequence of a breach by Amex of Division 4 of Part 3-2 of the Act in relation to a Co-Branded Card.

Note: This obligation may be created in any way provided it is capable of being enforced by the consumer. It may, for example, be created by the terms of a contract or by deed poll.

7. The exemption in paragraph 5 applies where each of the following are met:
- (a) the circumstances described in paragraph 6 are met;
  - (b) the consumer is not liable to pay to Westpac any fees or charges in relation to the Amex Card;
  - (c) Westpac has told the consumer, in writing, that no such fees or charges will be payable in relation to the Amex card at the time, or as soon as practicable after, Westpac gives credit assistance in relation to an Amex card to the consumer; and
  - (d) Westpac has given the consumer, in writing, no more than 15 business days before the day Westpac would have been required to provide the consumer with a proposal disclosure document, information about:
    - (i) any commissions that Westpac is likely to receive, directly or indirectly, from Amex in relation to the credit contract;
    - (ii) the maximum amount of commission payable by Amex on entering into the contract (where that amount is ascertainable); and
    - (iii) if any additional commission is payable during the life of the contract – a statement that additional commission is payable, and either:
      - (A) a reasonable estimate of the amount of the additional commission;
      - or

- (B) if the amount of additional commission depends on the consumer's use of the credit card – information about how the commission is worked out.

### Conditions

#### 8. Westpac must:

- (a) where Westpac provides Specified Credit Assistance – not refer an Existing Customer to Amex until Westpac has determined that the consumer is eligible to apply for the Amex Card by reference to:
  - (i) the Westpac Exclusion Criteria; and
  - (ii) the Amex Exclusion Criteria; and
- (b) where the consumer is an Existing Customer – tell the consumer the following information, in writing, at or before the time Westpac provides the application form for the Amex Card to the consumer:
  - (i) the Amex Card is a separate credit card contract;
  - (ii) the credit limit on the Amex Card is in addition to the credit limit on the Westpac Card;
  - (iii) the consumer may request a reduction of the credit limit on the Westpac Card at any time;
  - (iv) details of how the consumer can request a reduction of the credit limit on the Westpac Card; and
- (c) provide to ASIC, in writing, within 90 days of the end of each Report Period, the following information about the operation of the Arrangement in the relevant Report Period:
  - (i) the number of consumers that make an application to Amex for an Amex Card, with a break down to show the number of:
    - (A) New Customers; and
    - (B) Existing Customers;
  - (ii) the number of New Customers referred to Amex under the Arrangement.
  - (iii) if known, the number of consumers referred to Amex under the Arrangement that were approved for an Amex Card, with a break down to show the number of:
    - (A) New Customers; and
    - (B) Existing Customers;

- (iv) in dollar values, the average credit limit and range (highest and lowest) of credit limits on the Westpac Card for consumers who completed the application form to request an Amex Card, as part of the same process as applying for a Westpac Card, broken down by:
  - (A) credit limits on the Westpac Card for consumers that were referred to Amex;
  - (B) credit limits on the Westpac Card for consumers that were not referred to Amex;
- (v) details of instances of default on repayments under the Westpac Card by consumers that were referred to Amex covering the following default categories:
  - (A) in default for 30 to 59 days;
  - (B) in default for 60 to 89 days; and
  - (C) in default for 90 days or over;

For the purposes of paragraph (v), to avoid double counting, each consumer who defaults during the Report Period is only required to be included once at the greatest number of days of default.

- (d) take reasonable steps to ensure that Amex will provide to ASIC, in writing, within 90 days of the end of each Report Period the following information about the operation of the Arrangement in the relevant Report Period:
  - (i) the number of consumers referred by Westpac that:
    - (A) were approved an Amex Card;
    - (B) made an application for an Amex Card that was refused by Amex;
  - (ii) in dollar values, the average and range (highest and lowest) credit limits on the Amex Card; and
  - (iii) details of instances of default on repayments under the Amex Card by consumers that were referred by Westpac covering the following default categories:
    - (A) in default for 30 to 59 days;
    - (B) in default for 60 to 89 days; and
    - (C) in default for 90 days or over,

For the purposes of paragraph ((iii)), to avoid double counting, each consumer who defaults during the Report Period is only required to be included once at the greatest number of days of default.

- (e) prior to Launch of the Arrangement, complete consumer testing (*Consumer Testing*) of a sample of Existing Customers to determine whether those consumers understand the following aspects of the Arrangement:
- (i) that the Westpac Card and the Amex Card are separate credit card facilities, with different credit providers;
  - (ii) that if the consumer applies for the Amex Card:
    - (A) the consumer will have both the existing Westpac Card with the existing credit limit, and a new credit card with Amex with an additional credit limit;
    - (B) the consumer will receive separate statements for each card;
    - (C) the consumer will be required to make separate repayments for each card;
- (f) prior to undertaking the Consumer Testing, provide the questions to be asked in the survey and the sample size to ASIC for approval; and
- (g) within 60 days after completion of the Consumer Testing, provide to ASIC:
- (i) a description of the responses to the survey;
  - (ii) whether the survey identified any points of misunderstanding by consumers; and
  - (iii) if there are points of misunderstanding, a description of changes being made to the disclosure and promotion material to address those points; and

### **Interpretation**

9. In this instrument:

*Amex Exclusion Criteria* means any criteria set by Amex and communicated to Westpac which specify circumstances in which a consumer is not eligible to apply for or be granted an Amex Card.

*Amex Card* means a consumer credit card issued by Amex and co-branded under Westpac's "Altitude Rewards" (or any renamed or replacement to Altitude Rewards) credit card portfolio.

*Arrangement* means the arrangement between Amex and Westpac under which Westpac will promote the Amex Card to customers of Westpac in conjunction with a Westpac Card, and assist those customers to apply for the Amex Card.

*Existing Customer* means a holder of a Westpac Card, as at the Launch of the Arrangement. *New Customer* means a customer or potential customer of Westpac who has made an application for both a Westpac Card and an Amex Card as part of the same process.

**Launch of the Arrangement** means the time from which a co-branded Amex Card is made available for customer applications (excluding any pilot testing).

**Report Period** is each of the following:

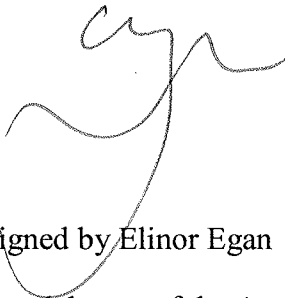
- (i) the period from the Launch of the Arrangement to the end of the 6th calendar month after Launch of the Arrangement; and
- (ii) the period from the beginning of the 7th calendar month after Launch of the Arrangement to the end of the 12th calendar month after the Launch of the Arrangement.

**Specified Credit Assistance** means credit assistance provided by Westpac, dealing directly with consumers, through providing information about the Amex Card (for example on the Westpac website, including making available an application form).

**Westpac Card** means an Altitude (or any renamed or replacement to Altitude) or Earth Rewards credit card issued by Westpac.

**Westpac Exclusion Criteria** means criteria set by Westpac which specify circumstances in which an Existing Customer is not eligible to be referred to Amex for the purpose of applying for an Amex Card, and which are substantially in the form of the criteria provided to ASIC dated 7 July 2017.

Dated this 2<sup>nd</sup> day of November, 2017



Signed by Elinor Egan

as a delegate of the Australian Securities and Investments Commission