

Important information for customers with business finance contracts of \$1,000,000 or less



Bank of
Melbourne

Are you a business customer who has entered into, renewed or varied a business *finance contract* of \$1,000,000 or less since 12 November 2016? If so, the changes below may apply to your contract.

What is changing and what does it mean for you?

We have a strong commitment to supporting businesses and improving the way we do things. With this in mind, we're strengthening protections under some business *finance contracts*, to make them more favourable for our small business customers. This has been done in consultation with the Australian Securities and Investments Commission and the Australian Small Business and Family Enterprise Ombudsman.

The changes take effect from 10 November 2017 and apply to *finance contracts* entered into, renewed or varied since 12 November 2016. This notice describes the changes.

This notice is in 2 parts:	Part A: changes affecting all finance contracts including specialised finance contracts Part B: changes affecting only specialised finance contracts
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The meaning of terms printed like this is explained in Part A.

Is there anything you need to do?

No – you'll automatically receive the benefit of the changes described in this notice without the need for any update to your terms and conditions (so you won't receive new terms).

We're here to help.

If you have any concerns or questions about your small business financing arrangements, please contact your Relationship Manager or call 13 82 66, Monday to Friday 8:00am – 6:00pm.

What's changing?	
Entire agreement clauses	We won't rely on clauses that limit our agreement with you to the written finance contract. This means statements we make to you (in writing or otherwise) can form part of our agreement.
General indemnity clauses	<p>If something goes wrong, we're limiting the kinds of loss we'll ask you to cover. We'll:</p> <ul style="list-style-type: none"> • only seek to recover losses that are a direct result of the matters covered by your general indemnity, and • not rely on the general indemnity to claim losses which arise from fraud, negligence or wilful misconduct of: <ul style="list-style-type: none"> – any of our or our related entities' employees, contractors or agents – any receiver or receiver and manager we appoint when exercising our rights as a holder of a security.
Unilateral variation clauses	<p>We'll reduce our reliance on unilateral variation clauses. These are clauses that allow us to make changes to your finance contract at any time, without your agreement. Invoice finance contracts are an exception – see Part B for details.</p> <p>Changes we can make.</p> <p>Sometimes we need to make changes for reasons outside our control (see below). We can also still make changes to financial terms such as margins, interest rates, payments, repayments, fees and charges (including introducing new ones), how we calculate financial terms and when we charge them. We need to be able to do this at any time in the normal course of our business.</p> <p>We used to have broad rights to change other terms for any reason. However, we'll now only make changes to your other terms if:</p> <ul style="list-style-type: none"> • the change is for security reasons • we reasonably consider you'll benefit from it • it's administrative or minor, or corrects a mistake or omission • it reflects changes to our business or technological systems • it's not specific to you but is reasonable and made generally to similar products, product features or customers – this may include changes to reflect current industry or market products or conditions. <p>When we make changes, we'll always act fairly and reasonably towards you in a consistent and ethical manner.</p> <p>Notice of changes.</p> <p>We'll generally give you at least 30 days' notice of changes. Exceptions are:</p> <ul style="list-style-type: none"> • Changes that are out of our control. These are: <ul style="list-style-type: none"> – changes to interest rates which incorporate an external variable reference rate (we can't give you prior notice of these because we don't set the external variable rate) – changes to government charges that are published by the government (we won't provide notice of these) – changes required to comply with law, a code of practice, a regulator's requirements or guidance or decisions of courts or other dispute resolution processes (you'll receive less than 30 days' notice if the law requires this, or we consider an immediate change is required for security reasons or the change is covered elsewhere in this part and we've said you'll get less than 30 days' notice) • Changes to pricing. These include changes to interest rates and margins. You'll get notice no later than the day the change takes effect unless: <ul style="list-style-type: none"> – the rate incorporates an external variable reference rate (we can't give you prior notice of these because we don't set the external variable rate) – the change is a margin change that's only made to your terms and we consider it will be unfavourable to you at the time the change is made (you'll get at least 30 days' notice) • Changes made only to your terms. If a change is specific to you (other than the kinds of changes referred to above), you'll get less than 30 days' notice, or no notice, where it's reasonable for us to manage a material and immediate risk.

What's changing?

Financial indicator covenants	<p>We won't require you to comply with any financial indicator covenants in your finance contract. Some examples of financial indicator covenants we won't rely on include, maintaining a particular loan to security value ratio (LVR) or maintaining a particular interest cover ratio (ICR).</p> <p>However, there are some exceptions for certain specialised finance contracts – see Part B for details.</p>
What can trigger default	<p>We'll only require early repayment of facilities provided for an agreed term or take enforcement action against you if one or more of the following occurs (standard defaults). However, if you have a specialised finance contract, some additional defaults will apply – see Part B for details.</p> <ul style="list-style-type: none"> • you or a guarantor don't pay any amount payable under your finance contract within 2 business days after its due date • you or a guarantor don't comply with the law or any requirement of an authority (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree) • any of the following happen to you or a guarantor: <ul style="list-style-type: none"> – you or a guarantor become insolvent – another creditor takes enforcement proceedings against you or a guarantor • you or a guarantor give us incorrect, incomplete or misleading information or make misleading or incorrect declarations or representations to us in connection with your finance contract or another arrangement with us and we consider this materially increases our security risk • you use your facility for a purpose which we haven't approved unless: <ul style="list-style-type: none"> – the breach can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree, and – we consider that the breach could not result in us failing to comply with a law or any requirement of an authority • you or a guarantor are subject to a change in management (which we reasonably consider to be material) or a change in control (except, in each case, where the change can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree) • you don't give us copies of your or a guarantor's financial statements, accounts or other financial information in the form we reasonably require within 30 days of the date you are required to give them to us • you or a guarantor don't maintain or comply with any licence which we reasonably consider is necessary to carry on your or the guarantor's business (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree) • you or a guarantor don't maintain the insurance we require (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree) • you or a guarantor don't comply with an obligation not to create or allow another interest in, or dispose, or part with possession of, any property over which we have a security interest (or attempt to do so) • we: <ul style="list-style-type: none"> – call for early repayment of money owing under a separate financing arrangement you or a guarantor have with us; or – otherwise enforce a security interest we hold over your or a guarantor's assets because of an event of default (however described) under that arrangement (but only if the event of default is of a type that would be permitted if unfair contract terms laws applied to that arrangement). <p>Of course, if your current arrangements give you more time to rectify something than what is described above, we'll ensure you're given that extra time.</p>

How does this notice affect “at call” facilities?

Some facilities such as overdrafts or lines of credit are repayable “at call” or “on demand” which means we can ask you to repay them at any time. Other arrangements, including an *invoice finance contract*, can be terminated at any time by providing the agreed period of notice. This will continue to be the case.

Bailment contracts are also “at call” facilities. Under a *bailment contract* we can do a number of things at any time, including ask for repayment, require you to return bailed goods or take possession of bailed goods and otherwise act to protect our interest in bailed goods. This will also continue to be the case.

If we’ve issued bank guarantees, letters of credit or similar instruments (or endorsed bills of exchange or similar) at your request, our rights in respect of those instruments, including rights to terminate our liability, stop issuing instruments or require reimbursement from you, are not affected by this notice.

How does this notice affect security documents?

If we need to enforce our rights under any securities (eg guarantees or mortgages) given to us for your finance contract, we’ll exercise our rights under those securities in a way that is consistent with our commitments described above. However, some securities may secure other arrangements we’ve entered into with you or your guarantors. Our rights under those other arrangements and corresponding supporting securities are not affected by this notice.

Meaning of terms

bailment contract	an agreement under which we bail goods (such as motor vehicles) to you, to be sold by you to your customers
enforcement proceedings	means a person: <ul style="list-style-type: none">• commences proceedings in a court to recover a debt or to recover possession of property subject to a security interest• otherwise enforces a security interest by taking possession of property (or taking steps to do so) or exercising a power of sale• applies to a court to appoint a provisional liquidator• enforces a judgment against another person or their assets
finance contract	is our agreement with you under: <ul style="list-style-type: none">• a Westpac “Business Finance Agreement” (BFA)• a St.George, Bank of Melbourne or BankSA Facility Agreement (FA), where total facilities are \$1,000,000 or less (based on facility limits at the date of the agreement, renewal or variation). It does not include derivatives (such as currency and rate swaps), credit card facilities or asset finance facilities (other than bailment). This definition does not cover margin loans
insolvent	a person is insolvent if: <ul style="list-style-type: none">• they’re unable, or state they’re unable, to pay their debts when they fall due, they enter into any assignment, arrangement or composition with any creditors or are otherwise taken to have committed an act of bankruptcy• they’re in liquidation, in provisional liquidation, under administration or wound up or have had a controller (as defined in the Corporations Act 2001 (Cth)) appointed to their assets• they’re subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (except to carry out a solvent reconstruction or amalgamation)• they’re taken to have failed to comply with a statutory demand• an authority has appointed an administrator or investigator to them or their assets• something having a substantially similar effect to any of the things described above happens to that person

Meaning of terms (continued)

invoice finance contract	<p>is our agreement with you under:</p> <ul style="list-style-type: none">• a Westpac Invoice Finance Agreement (IFA) and the terms of the 'pricing agreement' (as defined in the IFA) which relate to the IFA• a St.George Invoice Discounting Agreement (IDA) and the terms of the 'pricing letter' (as defined in the IDA) which relate to the IDA• where a finance contract includes all of the terms of an <i>invoice finance</i> facility, invoice discounting facility or invoice discounting plus facility, the terms of the finance contract which govern the <i>invoice finance</i>, invoice discounting or invoice discounting plus facility, in each case, where the total facilities under the 'pricing agreement', 'pricing letter' or <i>finance contract</i> (as applicable) are \$1,000,000 or less (based on facility limits at the date of the agreement, renewal or variation)
specialised finance contract	<p>is an <i>invoice finance contract</i>, a <i>trade finance contract</i>, any <i>finance contract</i> for property development and any <i>finance contract</i> with an aged care service provider</p>
trade finance contract	<p>is any <i>finance contract</i> which includes:</p> <ul style="list-style-type: none">• a facility which may be drawn in a foreign currency, or• a requirement for the borrower to hold a guarantee from Efic (Australia's export credit agency)

PART B – changes affecting only specialised finance contracts.

This Part explains how the changes in Part A affect particular kinds of facilities.

Invoice finance contracts	
Financial indicator covenants	<p>We won't require you to comply with financial indicator covenants in your finance contract. However, this doesn't affect terms of your <i>invoice finance</i> contract which:</p> <ul style="list-style-type: none"> • give us rights to classify debts, inventory or other property without notice (including to reclassify debts as disapproved debts) • allow us to impose limits on debtor concentration levels (and change them) • relate to our calculation of the amount we pay for any debt (including the acceleration or purchase percentages) or the amount available for drawing under any cash advance component of the <i>invoice finance</i> contract • require you to maintain any reserves or allow us to hold reserves.
Unilateral variation clauses	<p>Our rights to vary your <i>invoice finance</i> contract are not affected by this notice. Please see your <i>invoice finance</i> contract for details of things we can change and the notice you'll receive.</p>
What can trigger default	<p>If a right we have under your <i>invoice finance</i> contract can only be exercised following a default (such as a right to terminate the <i>invoice finance</i> contract immediately), we'll only exercise that right if one or more of the following occurs:</p> <ul style="list-style-type: none"> • any standard default (these are described in Part A under "What can trigger default") • you don't comply with: <ul style="list-style-type: none"> – an obligation to give us information or documents relating to debts (including any debt reconciliation, report or declaration) – any obligation to deposit proceeds of debts to a nominated account or to ensure they are deposited to such an account or you don't comply with any other obligation in respect of those accounts, and we reasonably consider this materially increases our security risk or will do so (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree). <p>These obligations (other than the standard defaults) are more fully described in your <i>invoice finance</i> contract and you should refer to that agreement for details.</p>
Finance contracts for property development	
Financial indicator covenants	<p>We won't require you to comply with financial indicator covenants in your finance contract. However, this doesn't affect your obligations to pay cost overruns (however described) if we determine that the cost to complete the works is more than your remaining available loan funds.</p>
What can trigger default	<p>We'll only require early repayment of facilities provided for an agreed term or take enforcement action against you if one or more of the following occurs:</p> <ul style="list-style-type: none"> • any standard default (these are described in Part A under "What can trigger default") • you don't: <ul style="list-style-type: none"> – comply with an obligation to pay cost overruns; – comply with obligations to tell us about key milestones for the project or to meet key milestones – comply with obligations relating to sale contracts, sales quotas or application of sale proceeds, for any part of the project – comply with obligations relating to changes to the project documents or contracts, including financial projections and budgets for the project – comply with obligations under the project documents or contracts or fail to tell us about a material breach of those documents – comply with any requirement to give us a satisfactory report by a structural engineer (however described) – give us information or declarations we require relating to payment of the builder's employees or subcontractors, <p>and we reasonably consider this materially increases our security risk or will do so (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree).</p> <p>These obligations (other than the standard defaults) are more fully described in your finance contract and you should refer to that agreement for details.</p>

Finance contracts for an aged care service provider

What can trigger default	<p>We'll only require early repayment of facilities provided for an agreed term or take enforcement action against you if one or more of the following occurs:</p> <ul style="list-style-type: none">• any standard default (these are described in Part A under "What can trigger default")• you don't comply with:<ul style="list-style-type: none">– an obligation to apply proceeds from any accommodation bond (however described) to reduce the amount outstanding under the facility– any requirement to give us details of accommodation bonds,and we reasonably consider this materially increases our security risk or will do so (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree). <p>These obligations (other than the standard defaults) are more fully described in your finance contract and you should refer to that agreement for details.</p>
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Trade finance contracts

Financial indicator covenants	<p>We won't require you to comply with financial indicator covenants in your finance contract. However, if a facility under your trade finance contract may be drawn in a foreign currency, this doesn't affect rights we can exercise if your total liabilities under the facilities exceed your facility limit as a result of currency fluctuations.</p>
What can trigger default	<p>We'll only require early repayment of a facility provided for an agreed term or take enforcement action against you if one or more of the following occurs:</p> <ul style="list-style-type: none">• any standard default (these are described in Part A under "What can trigger default")• you cease to hold any guarantee we require from Efic (Australia's export credit agency) and we reasonably consider this materially increases our security risk or will do so (unless the failure can be rectified and it's rectified within 30 days after we ask you to do so or any longer period we agree).