ASIC Consultation Paper 355: Product intervention orders: Short term credit and continuing credit contracts

Submissions by Consumer Credit Legal Service (WA) Inc.

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1. Introduction

The Consumer Credit Legal Service (WA) Inc. (**CCLSWA**) takes the opportunity to provide submissions to ASIC Consultation Paper 355: Product intervention orders: Short term credit and continuing credit contracts (CP 355).

The following organisations have contributed to and endorsed this submission:

- Financial Counsellors' Association, Western Australia (**FCAWA**)
- Financial Counselling Network (**FCN**)

Details about each contributing organisation are contained in Appendix A.

During the currency of the 2019 Order and since its expiry CCLSWA has continued to provide advice to clients who obtained a continuing credit contract or short-term credit contract from Cigno. The majority of the clients we assisted we identified as financially disadvantaged and in receipt of a Centrelink payment as their sole source of income.

More generally, CCLSWA often provides advice to consumers who are under financial stress and have sought short-term relief to cover basic living expenses and then suffered long-term adverse consequences as a result of this short-term relief. It is also our experience that consumers are reluctant to complain about these short-term credit products because they are dependent upon them. They often only seek our legal advice as a last resort, when they have exhausted all other options and are already trapped in a debt spiral.

Our experience makes us well placed to respond to ASIC's proposed Product Intervention Orders (**PIO**) in CP 355.

In these submissions we have incorporated case studies of both CCLSWA's and FCN's experience. We have not used client's real names to protect client's confidentiality. If ASIC would like further details on any particular case study, CCLSWA or FCN can approach the relevant client and seek his or her permission for those details to be provided.

We have however, included the names of the providers in our case students as CP 355 specifically identifies and asks questions regarding the conduct of particular providers of the types of credit affected by the proposed PIOs.

2. Overview

2.1 CCLSWA supports ASIC's proposal to make, under Part 7.9A of the *Corporations Act 2001* (Cth), a product intervention order in substantially the same terms as *ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917* (the **2019 Order**) and a product intervention order as set out in Consultation Paper 330 *Using the product intervention power: Continuing credit contracts (CP 330)* and the *Addendum to CP 330* (continuing credit contracts product intervention order).

2.2 CCLSWA considers that both short term credit and continuing credit contract lending models have resulted in significant consumer detriment and will continue to do so if intervention steps are not taken. CCLSWA supports ASIC's view in paragraph 31 and 52 of CP355 that the relevant credit facilities result in, or will or are likely to result in, significant detriment to clients.

2.3 Businesses providing or associated with providing credit outside of *the National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and the National Credit Code (**NCC**) means that consumers lack the important protections such as:

(1) Caps on fees
(2) Hardship protections
(3) Responsible lending obligations (**RLO**)
(4) Effective internal dispute resolution (**IDR**) processes, and
(5) Access to external dispute resolution (**EDR**) schemes.

2.4 The rationale behind the provisions of the NCC is to ensure better consumer outcomes. However, the consequence of these unregulated lending models is that the most vulnerable consumers may not avail of these vital protections in circumstances where they need to be protected. Therefore, CCLSWA supports ASIC's proposal to take immediate action to protect these vulnerable consumers through the making of the PIOs as set out in CP 355.

2.5 In CCLSWA's experience the type of consumers who enter short-term and continuing credit arrangements are often vulnerable and experiencing financial distress. Often these consumers have been unable to obtain other forms of regulated credit, and therefore turn to the high-cost unregulated providers as a last resort.

2.6 In CCLSWA's experience vulnerable consumers who enter short-term loans and continuing credit contracts suffer detriment as a result of:

(1) being charged significant upfront, ongoing and default fees, in excess of the provisions of the NCC and disproportionately high for the amount borrowed.
(2) not understanding that they are entering into a separate service agreement with the "intermediary".
(3) not differentiating between a short-term loan and a continuing credit contract. Consumers often also cannot distinguish these unregulated credit products from regulated credit products such as a small amount credit contract or payday loan and presume the usual protections apply.
(4) rapidly growing debt if they cannot make the scheduled repayments.
(5) no effective way for consumers to escalate complaints or have their complaint properly addressed. This means that consumers with a legitimate complaint or dispute end up paying the disputed amount to avoid further default charges and the debt rapidly escalating.
(6) not having access to the statutory protections under the NCC.

2.7 For these further reasons CCLSWA supports ASIC's proposed PIOs.

2.8 Consistency in regulatory arrangements around credit products which provide a similar outcome to consumers is important both for the consumer and for creating a level playing field to credit providers and operators. We consider that any loopholes that business may be able to exploit to circumvent consumer protections, serves to disadvantage the broader financial services system, as well as causing consumer detriment.

2.9 While we support the proposed orders, we are disappointed that they are necessary. We submit that longer-term solutions to deal with these predatory forms of credit are necessary. While the 2019 Order operated to restrict immediate harm, we consider the failure to regulate this predatory form of lending during the currency of the 2019 Order an opportunity lost and hope that the opportunity afforded by the new proposed orders will be used to remedy the lack of regulation and bring these credit products within the scope of the NCCPA and the NCC.

3. Proposal to make short term credit product intervention order

D1Q1 Do you consider that short term credit facilities, when issued to retail clients in the way described in paragraph 23, have resulted in, or will or are likely to result in, significant detriment to retail clients? Please provide any relevant case studies and evidence (including qualitative and quantitative data) which support your response

3.1 Yes, CCLSWA considers that short term credit facilities, when issued to retail clients in the way described in paragraph 23 of CP 355, have resulted in, or will or are likely to result in, significant detriment to retail clients.

3.2 CCLSWA concurs with ASIC's consideration of following factors which amplify the significant consumer detriment resultant from the short-term lending model [1]:

(1) The model targets vulnerable clients who are in financial difficulty, who often require the short-term loans to cover basic living expenses;
(2) Often consumers have been declined for more traditional forms of regulated credit;
(3) The short-term nature of the credit gives consumers limited time to raise funds to make the required repayments;
(4) Overall fees and charges are significantly higher than regulated products, as well as what is permitted under the short-term credit exemption;
(5) The product has an overall high default rate, which results in large amounts of default-related fees being charged, and;
(6) Many consumers could not afford to repay the short-term loan or could not do so without suffering substantial hardship.

3.3 Mary's story below is illustrative of the types of consumers who in CCLSWA's experience turn to short term credit products.

[1] Part B, Significant detriment resulting from short term credit facilities, ASIC Consultation Paper 355, *Product intervention orders: Short term credit and continuing credit contracts* at para 27.

Mary's story

Mary's only source of income is a Centrelink single parenting payment. She took out a $350 loan through Cigno in January 2019. Mary temporarily defaulted on her repayments but was then able to catch up.

Mary was continuing to make repayments and had paid about $1,200 towards the loan when she contacted CCLSWA in September 2020.

Mary had downloaded her account statement which showed she still owed about $400.

Even though Mary was making repayments of $30 per fortnight, $20 of this was going towards paying off an administration fee.

Mary was unable to afford to pay out the debt in a lump sum but could not see a way out of the repayments, with the high fees.

Cigno had also threatened to get a debt collector involved.

Source: CCLSWA

3.4 While CCLSWA advised Mary before the 2019 Order was made, the following case studies evidence that consumers like Mary continue to suffer detriment as a result of businesses providing loans under exceptions to the NCC – including the short-term credit exemption.

3.5 The case study below from FCN clearly illustrates how the short-term credit model and uncapped fees causes significant financial hardship for consumers.

Jenny's Story

Jenny is a 39-year-old woman who had exited a domestic violence situation and had two dependents. She took out a loan through Cigno for $250 in early 2019 for the purpose of.

Jenny wanted to repay the loan in four fortnightly instalments. of around $130.

As part of her original agreement with Cigno, Jenny was charged:

- A financial supply fee of 75% of the original loan amount
- A same day deposit fee
- Lender fee
- A weekly account keeping fee of $5.95

Jenny was not able to keep up with her repayments resulting in Cigno applying additional charges including:

- Change of payment date and amount fee of $20 per occasion
- Dishonour fee
- Dishonour letter fee ($30 for a first letter, $50 for a second letter)
- Collections tracking fee of $50

As a result of her missed repayments and additional fees, Jenny's debt with Cigno increased significantly.

Jenny then came to an arrangement with Cigno (Cigno did not charge a fee for this arrangement) where she started to make repayments of $30 per fortnight. Each fortnight only $18.10 goes towards repaying the principal amount, the remainder is attributed to the account keeping fees.

After only a couple of months of making repayments under the arrangement, Jenny missed another repayment. As a result, she incurred a further dishonour fee and dishonour letter fee. The effect of these fees effectively put the Jenny back in the same position she had been in before the new repayment arrangement had come into effect.

With the assistance of a financial counsellor, Jenny was able to negotiate a compassionate waiver of the default fees. However, even with that reduction in the debt, the $30 per fortnight arrangement meant Jenny would be making repayments for over a year.

For the benefit of obtaining a $250 loan, Jenny had agreed to pay back, at a minimum, approximately $520. However, due to her financial difficulty and the fees charged by Cigno, the Jenny ended up paying over $1,000.

Source: Financial Counselling Network

3.6 Apart from the excessive fees, Jenny's financial difficulty was compounded by the absence of effective IDR and hardship processes which businesses operating in this regulatory void are not bound to provide.

3.7 Steve's case study below is another example of the types of fees that were being charged to consumers in financial difficulty by short term credit providers prior to the 2019 Order being made.

Steve's story

Steve obtained a loan through Cigno in early 2019 for $500. Steve was receiving a disability support pension. Steve was experiencing financial hardship. Steve's account linked to his direct debits was continually overdrawn. Steve contacted Cigno to see what assistance was available but was told that there was not much they could do even though he was experiencing financial hardship.

Upon review of his account statement Steve could see he had been charged:

- Change of payment day fees
- Account keeping fees
- Same day deposit fees
- Financial supply fees
- Lender fees
- Dishonour fees
- Cancellation fees

Steve had already paid Cigno around $850, with approximately $700 still due. (i.e., in addition to repaying the $500 loan.Steve was being asked to pay was over $1,000 in fees).

Source: CCLSWA

3.8 As ASIC is aware, during the operation of the 2019 Order, businesses modified their model so as not to technically contravene the 2019 Order and continued to operate. For the consumer of the modified product, there was little to no practical difference.

3.9 It is evident in the following case studies that that regardless of the credit model, the same detriment prevails as consumers continue to be charged numerous high fees as a result of entering into either a short term or continuing credit contract and the consequences of these high fees is that the amount the consumers owe can rapidly spiral out of control.

3.10 It is CCLSWA's view that this consumer detriment has not been effectively reduced. CCLSWA considers that consumers are still being given loans that exacerbate their already stressed financial position, causing their debts to spiral out of control. Consumers either do not appreciate the risks of these arrangements, or feel they have no option but to accept the risks regardless – making them extremely vulnerable.

D1Q2 Do you consider that ASIC should make the order, which is in substantially the same terms as the 2019 order (i.e. ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/117)? Please give reasons to support your response, including whether you consider that there have been any significant changes in matters relevant to ASIC's decision (such as the financial circumstances of retail clients) since 14 September 2019.

3.11 CCLSWA supports ASIC's proposal to make the order which is in substantially the same terms as the 2019 Order.

3.12 Significant detriment continues to be experienced by consumers who obtain loans from businesses operating outside of the remit of the NCC as illustrated by the case studies in this submission.

3.13 CCLSWA considers that the factors that ASIC took into account in determining to make the 2019 Order are still applicable. More particularly, it is our view that the impact of the COVID-19 pandemic has increased the vulnerability of retail clients. The willingness of unregulated short term credit providers to capitalise on consumer vulnerabilities is illustrated by the unsolicited text messages from CIGNO targeting vulnerable consumers which gained media attention at the beginning of the pandemic.

D1Q3 Are you aware of entities, including BSF Solutions and Cigno Australia, that are currently issuing, or likely to issue, short term credit facilities in the way described in paragraph 23? If so, please provide any relevant evidence to support your response.

3.14 CCLSWA consistency provides advice to WA consumers in relation to Cigno via our free telephone advice line. As a telephone advice lined service, advice is predominantly provided based on client instructions over the phone, rather than upon extensive document review.

3.15 Callers to our telephone advice line are often unaware of the precise nature of the agreements they have entered or the applicable credit model. As noted at 3.8 above, there is little practical difference to consumers between the short term and continuing credit contracts.

3.16 Callers to our telephone advice line usually cite Cigno is the lender, often not understanding that they have entered into a separate agreement with Cigno and unaware or unable to identify the actual lender.

3.17 Callers to CCLSWA's telephone advice line seeking assistance in relation to Cigno contracts continue to fall into the same disadvantage categories identified by ASIC prior to the 2019 Order and continue to experience detriment as a result of Cigno's Conduct. Tony's story highlights this disadvantage and detriment.

Tony's story

In around May 2021 Tony took out a $100 loan through Cigno to pay for food. Tony's sole income is a Centrelink benefit.

Tony receives his Centrelink payment the day after his repayments to Cigno are due. Tony missed a number of repayments. Each time Cigno added additional fees of around $50. In just three weeks, Tony believes he has now paid more than double the original amount borrowed.

Tony contacted Cigno to try and change the direct debit date, so it aligned with his Centrelink repayments to give him a chance to get on top of the debt. However, Cigno did not action Tony's request and Tony found it difficult to contact Cigno.

Tony tried to contact the Australian Financial Complaints Authority (**AFCA**) about his issues with Cigno, but was told that it was not within their jurisdiction, as Cigno are not a member organisation.

Source: CCLSWA

3.18 Tony's story also identifies another issue with providers operating outside of the protections of the NCC and NCCPA, that is the lack of IDR and hardship processes and their associated protections.

3.19 Cigno is not required to provide hardship assistance as set out in the NCC, and they are not required to have an IDR process as set out in ASIC Regulatory Guide 271 and follow the requirements to engage appropriately with complaints.

3.20 Moreover, as Cigno are not required to be a member AFCA, consumers do not have the ability to escalate their complaints to a free EDR.

3.21 For consumers such as Tony who are trying to resolve issues with Cigno it is particularly difficult reach a resolution when they are not responsive to communication and there is no ability to escalate to AFCA.

3.22 This significantly impacts on consumers access to justice. The delays and difficulties in contacting Cigno forces consumers to acquiesce in the disputed conduct causing the debt to further escalate. Additionally, the inability to escalate unsatisfactory responses or no response from Cigno to AFCA often causes consumers to disengage from the dispute, again to their further detriment. Nancy's story is illustrative.

Nancy's story

On 12 March 2018 Nancy took out a loan with Cigno for $350.

The terms of the loan required Nancy to make 4 fortnightly repayments of approximately $172.00.

Soon after she took out the loan Nancy needed to have surgery and had to take two weeks of unpaid leave. Nancy didn't have sufficient funds in her account when repayments became due.

Nancy took Cigno up on their offer to delay repayments for two weeks – incurring a $20 fee. Nancy delayed her repayments on 4 separate occasions.

Nancy received a default notice in early June 2018. Nancy managed to negotiate an alternative payment arrangement to repay $100 per fortnight but she couldn't keep up with repayments so she was issued a second default notice in middle of June 2018.

At the end of June Nancy received a third and final default notice. In the notice Cigno told Nancy that

(1) her account was on hold for 7 days and that she had to contact Cigno. If she failed to contact Cigno then they would investigate whether she had provided correct and accurate information in her application and that any misrepresentation would be regarded as extremely serious

(2) as Nancy had requested a payment amount of $30 Cigno would continue to debit this amount until the loan was settled

(3) If Nancy didn't contact Cigno within 14 days they would complete an internal investigation and consider whether information provided was fraudulent and needed to be reported to the police or AUSTRAC; Nancy would be sued for the total amount owing; and seeking judgement and pursuing Nancy for the amount by way of a means examination or garnishee of income or bank account.

Nancy then received a notice from Cigno that her account had been referred to an external debt collection agency. Nancy made an arrangement with the debt collector to repay $150 per fortnight, which was again unaffordable to her.

Nancy was finding it increasing difficult to make her repayments and to communicate with Cigno and the debt collector. Frustrated, contacted CCLSWA. We requested information from Cigno on multiple occasions, only to be provided with incomplete and duplicate standard template responses that did not address our queries. CCLSWA tried to contact Cigno over the phone, but we were unable to get through.

Because CCLSWA was also unable to correspond effectively with Cigno, Nancy disengaged with the dispute and our service.

Source: CCLSWA

3.23 Rudy's story is also typical of vulnerable consumers who turn to short term loans when they require fast cash.

Rudy's story

Rudy is unemployed due to difficulties finding work as a result of the COVID-19 pandemic. He is in receipt of receives a Centrelink benefit. In September 2021 Rudy took out a loan for $250 through Cigno to pay his rent.

Rudy had been making weekly repayments to Cigno for 2 months but ultimately managed to repay the outstanding balance in two lump sum repayments, with some assistance from family. However, despite his online client area showing that he had repaid the loan("pending confirmation"), after a few days the account statement still showed around $60 owing.

Rudy knew he has missed one payment, but couldn't understand how he still owed so much, and what this additional fee could be for.

Source: CCLSWA

3.24 Rudy's story is also illustrative of the lack of awareness amongst consumers regarding the risks associated with these kind of products and the numerous and high fees associated with them.

3.25 Short term credit, or arrangements very similar to those provided before the 2019 Order continue to be extended to vulnerable consumers and continue to cause detriment.

3.26 Therefore, CCLSWA considers that, in the absence of statutory amendment to regulate these products under the NCCPA and NCC, the making of further orders is required to protect consumers from such predatory lending.

D1Q4 What alternative approaches could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

3.27 CCLSWA considers that, despite the use of ASIC's PIP, providers will continue to find ways to adapt their business and lending models to circumnavigate the orders and the legislated exemptions.

3.28 Therefore, while we support the short-term product intervention orders, we consider that they should be seen to simply hold the forte pending the arrival of reinforcement in the form of legislative change.

3.29 Whilst we appreciate that ASIC does not have the power to legislative, we encourage ASIC to use its role as regulator and litigator to investigate and highlight consumer detriment and ensure a fair financial service for consumers.

3.30 We commend ASIC for commencing action in the Federal Court against Cigno and pursuing the appeal against the original decision. We encourage ASIC to maintain the mantra espoused following the Banking Royal Commission of "why not litigate" when it comes to providers of short-term credit and continuing credit contracts causing significant consumer detriment.

3.31 We note that AFCA has updated its policy to ensure that financial firms are named in their determinations. ASIC could consider taking a similar approach to reporting firms it has received complaints about.

3.32 The ability of ASIC to name any non-compliant or problematic providers of credit products may increase public interest and awareness in the businesses and therefore act dually as a deterrent to consumers engaging with the businesses and a stronger motivator for the businesses to improve their conduct.

3.33 Whilst ASIC publishing the names of particularly problematic providers may go some way in preventing consumer detriment, more community focused education is required to raise consumer awareness to the risks of these products and suitable alternatives.

3.34 As our submissions have noted, consumers are often unaware of the nature of the loan they have entered into and are generally not aware of their rights and obligations until they contact a community legal centre or financial counsellor. Increased resourcing and awareness of these services is also required.

3.35 With early intervention and increased awareness of the costs and the alternatives to short-term and continuing credit contracts, the detriment suffered by consumers as a result of these products may be reduced.

4. Proposal to make continuing credit contracts product intervention order

D2Q1 Do you consider that continuing credit contracts, when issued to retail clients in the way described in paragraph 48, have resulted in, or will or are likely to result in, significant detriment to retail clients? Please provide any relevant case studies and evidence (including qualitative and quantitative data) which support your response.

4.1 CCLSWA considers that continuing credit contracts, when issued to retail clients in the way described in paragraph 48 of CP 355, have resulted in, or will or are likely to result in, significant detriment to consumers.

4.2 In CCLSWA's experience, these continuing credit contracts have similar issues and cause detriment in the same way as short-term credit – in particular by: targeting vulnerable consumers who are using the loans to pay for basic living expenses; high overall fees and charges; high default rates; and the inability of consumers to make repayments without substantial hardship.

4.3 During the currency of the 2019 Order CCLSWA provided telephone advice to 6 clients specifically about Cigno loans. As noted above, telephone advice is provided based on client instruction (rather than document review) and often clients are uncertain of, or unable to distinguish between, the different models of credit offered by Cigno. However, based on the timing of the loans, we assume these calls related to Cigno's continuing credit contracts.

4.4 Of the 6 clients we advised, four were unemployed, receiving Centrelink income and were identified as in financial difficulty.

D2Q2 Are you aware of entities, including Cigno and BHFS, that are issuing, or likely to issue, continuing credit contracts in the way described in paragraph 48? If so, please provide any relevant evidence to support your response.

4.5 Yes. We refer to the assumptions set out in paragraph 4.3 and provide the following case studies to show that during the operation of the 2019 Order the same issues identified above in connection with Cigno's short term lending model, arose also in connection with continuing credit contracts and the type of consumers targeted and effected remained unchanged.

Jane's story

Jane's sole income is through Centrelink. Jane experiences a number of vulnerabilities as she is unemployed and has a psychological disability.

Jane was not aware that she had applied for a loan through Cigno in January 2020 until she saw a number of emails in her inbox.

Jane had also applied for two other loans with different lenders which she does not remember taking out.

Jane did not have the capacity to make the repayments due to her limited Centrelink income.

Jane was seeking advice on how to get information on the loans and to negotiate more affordable repayments with the loans.

Source: CCLSWA

4.6 Jane's story illustrates just how easy it is to get a loan with Cigno.

4.7 If Cigno were captured by the provisions of the NCC, particularly in relation to RLO, then Cigno would be required to complete a suitability assessment. It would logically follow that if Cigno had conducted any kind of assessment of Jane's ability to repay the debt they would have discovered her limited income.

4.8 Similarly, Julie's story demonstrates how the lack of assessment of consumer's capacity to repay causes significant detriment.

Julie's story

Julie was on a Centrelink allowance when she took out a loan through Cigno in December 2019 to cover day to day expenses over the Christmas period. The loan was for $200 and Julie was to repay this over 4 payments.

Julie defaulted on her repayments. Julie called CCLSWA as she could not afford to make the repayments as she was unemployed and a single parent.

Source: CCLSWA

4.9 Maddison's story is illustrative of how just one missed repayment can cause the debt spiral.

Maddison's story

Maddison took out two loans through Cigno in January and February 2020. The two loans were for around $200 each.

Maddison missed one repayment but believes she made up by paying an additional fee.

Maddison thought that she had repaid both the loans and sent an email to Cigno to confirm the loans were repaid.

Maddison then received an URGENT email from Cigno informing her that she still had an outstanding amount to pay on the second loan.

Maddison has found it hard to communicate with Cigno.

Source: CCLSWA

4.10 Maddison's story also shows how poor or non-existent IDR and complaints processes can cause consumer detriment.

4.11 Candy's story is further evidence of the type of vulnerable consumers trapped in a debt spiral and unable to resolve her issues due to poor communication and the lack of appropriate IDR processes and inability to escalate her matter to AFCA.

Candy's story

Candy has been diagnosed with autism, is unemployed and receives a Centrelink benefit.

Candy applied online for a loan through Cigno in December 2019. When she signed up Candy informed Cigno of her low income.

Cigno approved Candy for a loan of $200. Candy had agreed to repay the loan back over 4 instalments which totalled just over $400.

After making her final repayment Candy did not receive any confirmation from Cigno that the account was closed. Cigno then took further payments from Candy's account. Candy logged into her account to find that she still owed over $600 to Cigno. There appeared to have been a payment arrangement agreed, however, Candy hadn't taken out a further loan with Cigno.

Candy contacted Cigno who were going to investigate whether she had made her repayments.

Candy continued to receive automated text messages from Cigno reminding her to make her scheduled repayment. When Candy tried to contact Cigno to clarify she was directed to an automated voicemail message.

Source: CCLSWA

4.12 The continued lack of communication and transparency demonstrated by Cigno is particularly concerning considering its vulnerable client base.

Edwina's story

Edwina took out a loan through Cigno in December 2019 to pay bills. At the time Edwina was pregnant and neither herself nor her husband were working. Edwina was on Centrelink. The loan was for $350.

The total repayments for the loan were meant to be around $900. However, the total amount taken from her account was over $1,100.

Edwina missed some repayments at the start of the loan due to her husband being out of work. Edwina was charged 5 default fees. Cigno then lowered her repayments and she started making the fortnightly repayments about 3 months after taking out the loan. Edwina has managed to keep on top of her repayments since then. However, she was surprised to see that she hadn't repaid the loan in full.

Edwina was also confused as to why she had been charged an account keeping fee twice per month, but was unable to effectively communicate with Cigno to resolve her matter.

Source: CCLSWA

4.13 Consumers continue to present as unaware that they are entering into a separate services agreement with the 'intermediary' and that those businesses – such as Cigno – are not in fact the lender. Further, generally, consumers are not aware of the difference between a short-term credit contract and a continuing credit contract. Further again, and most concerningly, they are often also not aware of how these unregulated products differ from regulated credit, presuming they will have the same protections.

4.14 The fact that consumers did not notice any difference in the operating model of Cigno supports the need for both short term credit and continuing credit contracts to be the subject of ASIC's PIO.

4.15 Travis contacted CCLSWA in November 2021 about a loan he had taken out in September 2021. However, he instructed us that this was not his first loan with Cigno and he had taken out "3 or 4 loans over the past few years". Travis did not differentiate between the types of loans that he had taken out. From his perspective, they were the same, applying the same repayment arrangements and imposing the same fees.

Travis's story

Travis has used Cigno on multiple occasions. The largest amount Travis had borrowed was around $1,000.

Travis took out another loan in September 2021 for around $200. The repayments were direct debited from his bank account. Travis made the first two repayments, but the next repayment was missed due to insufficient funds in his account. Travis was charged a missed payment fee.

The next payment was made, which Travis thought was the final repayment. However, due to the missed payment fee (and changed payment date fee), Travis still owed Cigno some money. Travis thought that he would still owe around $20.

Cigno then tried to direct debit the amount 2-3 times more with the account having insufficient funds. At the time Travis was working away so he was not aware of the transactions. Travis was charged dishonour fees by his bank for the transactions.

Travis then checked how much was owing and could see that his account stated that more than $400 was now owing on the account. Travis attempted to contact Cigno by email, phone and text to try and talk to them about what was owing. However, he was not able to get through. Travis said he felt like he was being charged for not being able to get into contact with Cigno.

Travis contacted his bank to cancel the direct debit authority so Cigno could not attempt to recover any more funds.

Travis was finally able to contact Cigno and negotiated to waive the remaining debt.

Source: CCLSWA

4.16 The charging of a fee for a change in repayment date, which is often required due to the consumer's inability to make a repayment on time due to financial difficulty, further compounds consumer's financial hardship.

4.17 Travis's story, shows how vulnerable consumers have continued to be charged numerous high fees when taking out short term and continuing credit contracts causing significant detriment and how the fees may continue to compound due to difficulties and delays experienced by consumers trying to contact Cigno.

D2Q3 Are you aware of any changes in the continuing credit contracts market – including changes to the continuing credit contracts that were issues in the way described in paragraph 48 – since the publication of CP 330 (July 2020) and the Addendum to CP 330 (November 2020), which may be relevant to ASIC's proposal to make a continuing credit contracts production intervention order? If so, please provide any relevant evidence to support your response.

4.18 CCLSWA is not aware of any changes in the continuing contracts market as described above.

D2Q4 Do you agree with our proposal to make a continuing credit contracts product intervention order by legislative instrument as set out in the draft product intervention order in Attachment 2 to this paper?

4.19 CCLSWA supports ASIC's proposal to make a continuing credit contracts product intervention order, acknowledging again, that this is an urgent response to a changing business model and immediate short term action is required to prevent further consumer detriment, we maintain that long term legislative change is required to ensure enduring consumer protection from this type of predatory lending.

4.20 CLSWA understands ASIC does not want to capture Buy Now Pay Later providers under the terms of the order. However, CCLSWA continues to advocate for the regulation of Buy Now Pay Later products to ensure consumers are protected.

D2Q5 What alternative approaches could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

4.21 We consider that ASIC's DaDO and PIPs a positive step towards preventing significant detriment and implore ASIC to employ its powers broadly to prevent further consumer detriment.

4.22 We acknowledge that the DaDO's only came into effect on 5 October 2021, therefore we look froward to seeing the impact that the DaDO's have on these kinds of products targeted at vulnerable consumers in the future.

4.23 We reiterate our comments at paras 3.31-3.35 above and call for improved community education about the nature of credit products, increased awareness of alternate services and community assistance including community legal centres and financial counsellors, increased funding for those services, and ultimately appropriate law reform to prevent consumer detriment.

5. General comments

5.1 CCLSWA was a signatory of a joint submission in 2019 responding to Consultation Paper 313: Product intervention power (CP 313)[2].

5.2 As part of that submission advocates raised the issue of what happens after an intervention order expires.

5.3 In that submission we recommended that there be a presumption of continuance and an intervention be renewed after 18 months if there is a risk that consumer detriment will occur again.

5.4 The submission also recommended that there should be a clear process for getting the issue on the Government agenda and resolving the source of the consumer detriment that prompted the product intervention. In advocate's experience, 18 months is not enough time to implement reforms in the financial industry.

5.5 It is clear that the short-term credit model, despite being subject to a previous PIO is continuing to cause consumer detriment. Whilst the introduction of a PIO targeting both short term and continuing credit may circumvent the tactics of unscrupulous providers who try to operate outside of regulation, another short-term intervention is unlikely to stop providers morphing the products to avoid the order or popping up after the end of any order.

5.6 Therefore, we encourage ASIC to develop a clear process for getting the issue onto the government agenda to ensure long-term reform that will protect consumers.

6. Conclusion

6.1 CCLSWA supports ASIC's proposed product intervention orders relating to short term credit and continuing credit contracts. In CCLSWA's experience these products cause significant harm to consumers.

[2] ASIC Consultation: Product Intervention Power (CP 313) available at https://cclswa.org.au/asic-consultation-product-intervention-power-cp313/

We thank ASIC for the consideration of our submission and would be pleased to consult further on our position.

If you have any questions or would like to discuss these submissions further, please contact [redacted], Principal Solicitor on [redacted].

Yours faithfully,

[redacted]

[redacted]
Principal Solicitor
Consumer Credit Legal Service (WA) Inc.

Appendix A

CCLSWA

CCLSWA is a not-for-profit specialist community legal centre based in Perth. CCLSWA operates a free telephone advice line service which allows consumers across Western Australia to obtain information and legal advice in the areas of banking and finance, and consumer, law. CCLSWA also provides ongoing legal assistance to consumers by opening case files when the legal issues are complex, clients are particularly vulnerable, and CCLSWA has capacity to do so.

CCLSWA's mission is to strengthen the consumer voice in Western Australia by advocating for, and educating people about, consumer and financial, rights and responsibilities.

CCLSWA also provides community legal education programmes relating to credit and debt issues.

FCAWA

Financial Counsellors' Association of WA (FCAWA) is a respected peak body with well-developed links and networks to services and organisations in the public, not for profit, and private realm.

The peak body represents all financial counselling services within Western Australia. Financial counsellors must hold FCAWA membership and meet all compliance requirements to practice as a financial counsellor and for the agency to hold the ASIC financial counselling exemption.

FCAWA are considered an expert in financial hardship. They focus on identifying emerging systemic issues and advocating to State and Federal government and industry.

FCAWA provide their members with professional development, vital news, insights and support. They draw on more than 30 years' experience as a leading membership peak professional body and trainer. They deliver a variety of workshops to a range of audiences, including financial counsellors, stakeholders, community service workers and industry dealing with debt and hardship

FCN

The Financial Counselling Network (FCN) is a unique collaboration of 14 member organisations across 25 metropolitan locations that provide a range of integrated and person-centred services with the aim of reducing the drivers and impacts of financial hardship in the WA community.

The collaboration between community legal centres, large not for profits, community service organisations and local government provides access to comprehensive referral pathways and expert knowledge whilst leveraging local expertise and relationships. With a focus on building communities of practice, the collaboration has also allowed for the sharing of good practice and identification and collective lobbying around systemic issues