Redfern Legal Centre

2 August 2018

Australian Securities & Investments Commission
By Email: creditcards@asic.gov.au

Dear Sir / Madam,

Re: ASIC Consultation Paper 303
Credit cards: Responsible lending assessments

We are grateful for the opportunity to comment on ASIC Consultation Paper 303 in relation to credit cards and responsible lending assessments. Redfern Legal Centre's submission will focus on common issues arising from our casework experience of consumer credit law issues.

Redfern Legal Centre regularly assists vulnerable and disadvantaged people who fall victim to irresponsible lending practices. Our submission will focus on the ways in which the proposal will better protect all consumers, but particularly this demographic.

We would welcome the opportunity to meet with you to discuss our submission further.

Yours faithfully
REDFERN LEGAL CENTRE

Joanna Shulman
CEO

Laura Bianchi
Credit, Debt and Consumer Law Solicitor

73 Pitt Street Redfern NSW 2016 *ACN:* 31 001 442 039 *ph:* (02) 9698 7277 *fax:* (02) 9310 3586 *web:* www.rlc.org.au
General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm
Interviews by appointment: Monday to Thursday 6.30pm – 8pm

Redfern Legal Centre

Australian Securities & Investments Commission

Consultation Paper 303

Credit cards: Responsible lending assessments

Submission

AUTHOR:

Laura Bianchi, Solicitor

Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal centre with a particular focus on human rights and social justice. Our specialist areas of legal practice include domestic violence, tenancy, credit and consumer, employment and discrimination and complaints about police and other governmental agencies.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, prepare publications and submissions and advocate for law reform. RLC works towards reforming our legal system for the benefit of the community.

Since 1977, RLC has run a specialist practice to assist vulnerable and disadvantaged consumers address credit and consumer law problems. We regularly encounter vulnerable consumers who, for a range of reasons, are disproportionately affected by irresponsible lending practices.

RLC offers free legal advice on credit and consumer law matters arising under the credit law. We assist clients from all walks of life on a broad range of common legal problems that involve rights and remedies and navigating the dispute resolution process.

General Comments

In summary, RLC supports the proposal as it will assist in preventing vulnerable consumers from entering into unsuitable credit card contracts. We agree that it is important that the time period strike an appropriate balance between preventing consumers from entering into unsuitable contracts and ensuring that consumers still have access to credit contracts

In our experience, assessing the affordability of a credit limit based on the consumer's ability to meet only the minimum repayments, without taking into account the interest charges and the length of the repayment period, often results in a consumer suffering significant financial hardship. This can result in the loss of secure housing, an increase in health problems and exclude them from social and economic participation.

For example, recently we represented Thomas:

Thomas* first got a $1000 credit card when he was at University as part of a student promotion. He was on the Centrelink student allowance at the time. Shortly after, Thomas became very unwell and was unable to continue his studies or gain employment.

Over the next 10 years, the bank regularly made unsolicited offers to increase Thomas' credit limit until it reached almost $45,000. As a young man in his early thirties, Thomas was struggling to afford the minimum monthly credit card repayments which were subsuming most of his disability support pension. The crippling debt prevented Thomas from being able to live independently, despite medical advice recommending this would improve his mental health.

At this stage, Thomas sought advice from RLC. We investigated the credit limit increases and found that the bank had not complied with their responsible lending obligations when they approved each of the credit limit increases. The bank should not have given Thomas that amount of money when they could clearly see that his fortnightly Centrelink income payments were being deposited into his savings account held by that same bank. RLC assisted Thomas to make a complaint to the bank.

After lengthy negotiations and a number of escalations of the complaint through their internal dispute resolution scheme, the bank agreed to waive the outstanding debt and close the credit card account. This is just one example of egregious irresponsible lending and the devastating consequences for people's lives. Fortunately, Thomas can now move forward.

***Name changed to protect client's privacy**

Specific Feedback

B1Q1 ***Do you agree with our proposal to prescribe a three-year period? If not, why not?***

No, we submit the prescribed period should be two years. We generally represent low income consumers so we advocate for a system that is inclusive, but with appropriate safeguards to protect those most vulnerable.

We accept that if the assessment is based on the consumers ability to repay within two years, this will likely reduce the credit limits available to low income consumers, however this will prevent low income consumers from acquiring too much debt, and it would mean that people needing larger amounts may be required to obtain a personal loan, which have lower interest rates and would be better for the consumer.

We regularly advise consumers who fail to repay their outstanding balance in full at the end of the statement period. They use credit cards as a borrowing facility and find themselves trapped by increasingly unmanageable debt. We recently represented a consumer who was on the disability support pension but was assessed as not unsuitable for a credit limit increase to almost $45,000. He was able to maintain the minimum monthly repayments but only by forgoing other basic needs.

We are of the view, that a two-year period will strike a better balance between preventing consumers from being in unsuitable credit card contracts and ensuring that consumers continue to have reasonable access to an appropriate amount of credit. This will also achieve consistency with s79B of the NCCPA. We are concerned that a three-year period will have little impact compared to the current industry practice.

B1Q2 ***Should we prescribe a period of two years for consistency with other requirements, such as the minimum repayment warning under reg 79B of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations)?***

Yes, for the reasons explained in B1Q1.

B1Q3 ***Do you agree with our proposal that the prescribed period apply to all classes of credit card contracts? If not, why not?***

Yes, we agree that the prescribed period should apply to all classes of credit card contracts because it will simplify the system and process for consumers and credit providers.

B1Q4 ***What changes would need to be made to systems and processes to ensure compliance with the prescribed period by 1 January 2019?***

We are of the view this question is best addressed by credit providers.

B1Q5 ***Do you agree with our expectations about the assumptions that should be made when assessing whether a consumer can repay the credit limit within three years? If not, why not? Should any other assumptions be made?***

Yes, we strongly agree that it should be assumed that interest is accruing at the highest rate that applies under the contracts, and that providers should assume that the consumer is making repayments on their other credit card contracts based on these assumptions rather than the minimum monthly repayments.