

# **ASIC Consultation Paper 303 – Credit Cards: Responsible Lending Assessments**

Submission by Legal Aid Queensland



# Credit Cards: Responsible Lending Assessments

## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to ASIC Consultation Paper 303 – Credit Cards: Responsible Lending Assessments. LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation to vulnerable clients with large and unaffordable credit card debts that are having significant impacts on their physical and mental well-being. The unit provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to insurance, mortgage stress, housing repossession, debt, contracts, loans, telecommunications and unsolicited consumer agreements.

LAQ regularly assists and represents clients with complaints about responsible lending on credit cards. This submission is informed by that knowledge and experience.

## Proposal

**B1 We propose to use our power under s160F of the National Credit Act to prescribe a period of three years for responsible lending assessments for new credit card contracts or credit limit increases. Under our proposal:**

**(a) assessments would be based on the consumer’s ability to repay the credit limit within three years; and**

**(b) this period would apply to all classes of credit card contracts. Note: See ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/XX (draft legislative instrument) in the attachment to this consultation paper.**

## Your feedback

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

LAQ agrees with the proposal to prescribe a three year period. It is important that credit and extensions of credit are still accessible in circumstances where it is affordable for consumers and does not impose a long term repayment obligation on them that may take many years to pay off.

In LAQ's submission, a three year period strikes an appropriate balance between:

- (a) Ensuring consumers have a reasonable opportunity to access credit; and
- (b) Ensuring that the credit accessed will be paid off in a reasonable time without undue hardship.

It is also consistent with the approach used by the Financial Conduct Authority when it is dealing with similar issues in the UK.

### **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)?**

LAQ does not support the alternative proposal to B1Q1 of prescribing a period of two years for consistency with other requirements such as the minimum repayment warning under reg 79B of the National Credit Regulations.

In LAQ's submission the minimum repayment warning and the prescribed period are designed to perform different roles. The minimum repayment warning is designed to encourage people to pay off credit earlier once the credit has been granted. The prescribed period is designed to be used before credit is granted in order to prevent long term unaffordable credit being irresponsibly lent to consumers.

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

LAQ supports the proposal to apply the prescribed period to all classes of credit card contracts. Applying different rules to different classes of credit card contracts would:

- (a) Create unnecessary confusion for consumers seeking to access their legal rights; and
- (b) Impose unnecessary compliance costs on businesses.

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

LAQ has no submissions in response to this question.

**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 (see paragraphs 48–51)? If not, why not? Should any other assumptions be made?**

LAQ agrees with the assumptions that should be made when assessing whether a consumer can repay the credit limit within three years. The assumptions are consistent with the intent of the legislation to ensure that consumers are not burdened with large credit card debts that they are unable to afford to pay off, even over a long period of time.