



ASIC
Australian Securities &
Investments Commission

REPORT 590

Response to submissions on CP 303 Credit cards: Responsible lending assessments

September 2018

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 303](#) *Credit cards: Responsible lending assessments* (CP 303) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the National Credit Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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A Overview/Consultation process

- 1 Following recent reforms to the regulation of credit card lending, ASIC has been given the power to set a ‘prescribed period’ for assessing whether a credit card contract or credit limit increase is unsuitable.
- 2 From 1 January 2019, under the revised responsible lending obligations, a credit card contract or credit limit increase must be assessed as unsuitable if it is likely the consumer would be unable to repay the credit limit within this period.
- 3 The purpose of the reform is to make sure that consumers only enter into credit card contracts, or a higher credit limit, if they can afford to repay the full balance that could be owed under the contract within a reasonable period. Consumers will still retain the flexibility to make low minimum repayments on credit cards.
- 4 In [Consultation Paper 303](#) *Credit cards: Responsible lending assessments* (CP 303), we consulted on our proposal to use our power under s160F of the *National Consumer Credit Protection Act 2009* (National Credit Act) to prescribe that:
- (a) responsible lending assessments for credit card contracts or credit limit increases be based on whether the consumer can repay the credit limit within three years; and
 - (b) the three-year period will apply to all classes of credit card contracts.
- 5 This report highlights the key issues that arose out of the submissions received on CP 303 and our responses to those issues.
- 6 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 303. We have limited this report to the key issues.

Responses to consultation

- 7 We received 15 non-confidential responses to CP 303 from Australian credit licensees (credit licensees), industry associations, professional bodies, community legal centres, consumer groups and an individual. We are grateful to respondents for taking the time to send us their comments.
- 8 The main issues raised by respondents related to:
- (a) whether the length of the period should be two or three years;
 - (b) our expectations about the assumptions made when assessing whether a consumer can repay the credit limit within the prescribed period; and
 - (c) the commencement date of the reform.
- These issues are discussed in more detail in Sections B–C.
- 9 For a list of the non-confidential respondents to CP 303, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 303.

B Response to submissions on CP 303

Key points

This section outlines the responses we received on the following aspects of our proposal in CP 303 and our approach to those responses:

- whether the length of the prescribed period should be two or three years (see questions B1Q1–B1Q2 in CP 303);
- whether the prescribed period should apply to all classes of credit card contracts (see question B1Q3); and
- our expectations about the assumptions that should be made when assessing whether a consumer can repay the credit limit within the prescribed period (see question B1Q4).

Length of period

- 10 In CP 303, we proposed that responsible lending assessments for credit card contracts or credit limit increases should be based on whether the consumer can repay the credit limit within three years.
- 11 We also sought feedback on whether, instead of a three-year period, we should prescribe a two-year period 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).
- 12 While there were some divergent views about whether the period should be three years or two years, most respondents supported our proposal for a three-year period. Some submissions from industry associations indicated that their members had differing views, with some supporting a period of three years and some favouring a period longer than three years.
- 13 Several respondents submitted that the three-year period strikes the appropriate balance between ensuring consumers can afford to repay their credit card and ensuring reasonable access to credit. Some respondents expressed the view that a two-year period would likely have the effect of unreasonably restricting access to credit cards.
- 14 Two of these respondents submitted that the period should not be aligned with the minimum repayment warning obligation under the National Credit Regulations on the basis that they are designed to perform different roles.
- 15 Three respondents preferred a two-year period. The reasons for this included preventing low-income consumers from acquiring excessive debt and discouraging the use of credit cards as long-term debt facilities. These respondents were also in favour of the period being aligned with the minimum repayment warning obligation under the National Credit Regulations.

- 16 The respondents in favour of a two-year period expressed concern that a three-year period is too close to current industry practices and that while a two-year period would have a greater effect on access to credit card contracts, that is what the reform is intended to do.

ASIC's response

We have considered the feedback received and, on balance, think that a three-year period strikes the most appropriate balance between:

- preventing consumers from being in unsuitable credit card contracts; and
- ensuring that consumers continue to have reasonable access to credit through credit card contracts.

We acknowledge concerns that the three-year period is too long. However, we consider that the three-year period, together with our expected assumptions (see paragraphs 21–22), provides a significant improvement on current credit card lending practices and is consistent with preventing consumers from being in unsuitable credit card contracts.

At this stage, we think that a two-year period could unreasonably restrict access to credit through credit card contracts. We do not think that the risks of this occurring are outweighed by any consistency benefits from aligning the prescribed period with the minimum repayment warning under reg 79B of the National Credit Regulations.

A single prescribed period

- 17 In CP 303, we proposed that the three-year period would apply to all classes of credit card contracts, rather than prescribing different periods for different classes of credit card contracts, credit limits or interest rates.
- 18 Most respondents supported the proposal that one period apply to all classes of credit card contracts.
- 19 Many respondents expressed that view that a single period would benefit both industry and consumers by reducing the complexity of implementation and making the obligation easier to understand.
- 20 Two respondents were uncertain about whether the period should apply to all classes of credit card contracts. A further two respondents did not support the implementation of any prescribed period. These respondents suggested that if a period must be prescribed, it would be preferable to assign a longer repayment period (five years) to lower rate cards and a shorter repayment period (three years) to higher rate cards.

ASIC's response

We do not think there is a need at this stage to set different periods for different classes of credit card contracts, credit limit amounts or rates of interest to tailor the requirements to different circumstances.

Based on the submissions received, we continue to think that prescribing one period for all classes of credit card contracts, credit limit amounts and rates of interest will help to minimise the costs of changes to credit providers' systems and processes while being consistent with the intent of the reform.

We note that the effect of prescribing a single period for all credit card contracts is that the repayments needed to repay the credit limit on a lower rate card within the period will be smaller than those needed to repay a higher rate card with the same limit.

Assumptions for responsible lending assessments

- 21 In paragraphs 48–51 of CP 303, we set out our expectations about the assumptions that should be made when assessing whether a consumer can repay the full amount of the credit limit within three years.
- 22 In summary, when assessing whether a credit card is ‘not unsuitable’ for a consumer, we expect that:
- (a) the credit provider will assume the consumer is being charged interest over the three-year period and that the highest rate of interest applicable under that contract be applied in the calculations; and
 - (b) where a consumer has existing credit card contracts with other credit providers, the credit provider will assume that the consumer is making repayments on those existing contracts sufficient to repay the limit—including interest—within three years (rather than the minimum repayment amount required under those contracts).

Fees on credit card accounts

- 23 Several respondents noted that in setting out these assumptions, we have not included account-related fees (such as annual fees) and asked for clarification on whether we expect such fees to be considered. Clarification was sought on fees for new credit card contracts, as well as fees for existing credit card contracts with other credit providers.
- 24 Some respondents noted that fee amounts can be difficult to determine, and their inclusion would substantially increase the complexity of credit card responsible lending assessments.

ASIC's response

Our recent credit card review found that accounts with low or no annual fees were more typical than those with more substantial fees: see [Report 580](#) *Credit card lending in Australia* (REP 580).

As a result, we do not think it is necessary to propose that account-related fees always be included in the assessments. We have, however, recommended that credit providers assume that interest is accruing at the highest rate that applies under the contract.

While we do not propose to impose a requirement that account-related fees be included in the assumptions for assessments at this stage, where credit providers are aware of fees that would significantly affect the amount of time required to repay the limit, it would be good practice to include them in the assessment.

We will be monitoring the practical application of these expectations to avoid unintended consequences and ensure that the policy objectives are being achieved. For instance, we may revise our expectations if we find that credit providers are increasing these fees to levels that would have a material effect on the amount of time it would take consumers to repay their credit limits.

Interest rates charged on credit card contracts held with other credit providers

- 25 We received several requests for further guidance on the approach that credit providers should take to interest rates charged on existing credit card contracts held by consumers with other credit providers.
- 26 Respondents provided feedback that it is not typical practice to ask consumers for the interest rates that apply to these contracts, and that they do not have a practical way of obtaining rate-specific information about other providers' rates. Submissions suggested that obtaining rate-specific information would significantly increase the complexity of the assessments and that implementation by 1 January 2019 would be difficult.
- 27 Some respondents asked whether it would be acceptable to apply a standard assumed payment percentage (e.g. 3.8% per month) or a proxy interest rate (e.g. 22%) in the absence of access to actual rates.

ASIC's response

We acknowledge concerns about obtaining interest-rate information for a consumer's existing credit card contracts with other credit providers.

We support a consistent approach being taken by industry. When calculating the repayments made under existing credit card contracts, we think it is reasonable for a credit card provider to make assumptions that reflect the highest rate that is reasonably likely to apply on that other card, given the state of the market at that time.

The calculations in CP 303 assumed interest rates of 22%, which reflected the highest interest rates that may apply under many credit card contracts at the time we collected data for REP 580.

Effect of reform on responsible lending assessments for other credit products

- 28 Two respondents asked for clarification about whether the assumptions about the level of repayments on existing credit card contracts held with other credit providers would also apply to other credit products.
- 29 An example might be whether, when conducting a responsible lending assessment for a credit product such as a home loan or car loan, credit licensees are required to assume the consumer is repaying their credit card contract at a rate that would repay the limit, with interest, within three years.
- 30 Feedback we received from these respondents suggested that if the three-year period also affects responsible lending assessments for other kinds of consumer credit products, implementation by 1 January 2019 may be difficult because of additional systems changes that will be needed.

ASIC's response

We consider that it is consistent with the intent of the reform for credit licensees to assess applications for new consumer credit products on the basis that the consumer continues to have the capacity to repay their full financial obligations under an existing credit card contract within a reasonable time.

Accordingly, we think credit licensees should consider assuming a higher amount of repayments consistent with repaying the full balance of the credit card within three years, and not merely their contractual minimum repayments.

We acknowledge that this approach may require changes to credit providers' systems that may take additional time to implement. We expect that implementation on this aspect of the reform will be complete by all credit providers by 1 July 2019.

C Other issues

Key points

This section outlines other issues that respondents raised in their submissions and our approach to these issues, including:

- the commencement date of the reform; and
- potential effects of the reform on a consumer's ability to switch credit card products.

Commencement date

- 31 The power given to ASIC by Parliament under s160F of the National Credit Act commences on 1 January 2019. This means that from 1 January 2019, credit licensees will be required to assess whether a credit card contract or credit limit increase is unsuitable for a consumer based on whether the consumer could repay the full amount of the credit limit within the period prescribed by ASIC.
- 32 The revised obligations apply to licensees that provide credit assistance and licensees that are credit providers for both new credit card contracts and credit limit increases under existing credit card contracts.
- 33 Existing civil and criminal penalties that currently apply to breaches of the responsible lending obligations will apply to breaches of the revised obligations. Existing infringement notice powers will also apply.
- 34 Some respondents have asked for additional time (approximately six to nine months) to implement the reform, primarily due to IT system constraints in the lead-up to the Christmas/New Year period.
- 35 We have also received feedback from some credit providers that the implementation date of 1 January 2019 is achievable given we have proposed a single prescribed period.

ASIC's response

Although we acknowledge the implementation challenges faced by credit providers, we have decided to retain the 1 January 2019 commencement date set by Parliament. The consumer protections that the reform provides are highly important and we consider that an extension of the implementation date would be inconsistent with the intention of Parliament.

We consider that our final proposal, as well as our views on assumptions set out in this report should reduce the complexity of implementing the reform. We also note that the reform received Royal Assent in March 2018, meaning that credit providers have had some time to prepare for system changes.

ASIC's response (cont.)

As outlined in paragraphs 28–30, we acknowledge that flow-on changes to responsible lending assessments on other credit products (i.e. relating to repayments on existing credit cards) may take some additional time for some credit providers to implement. We expect that implementation on this aspect of the reform will be complete by all credit providers by 1 July 2019.

Effect of reform on switching

- 36 Two respondents expressed concern that the reform could potentially prevent consumers from switching to lower rate credit cards because they could not pass the ‘tightened’ responsible lending test.
- 37 Some credit providers indicated that if the consumer is switching to a different credit card provided by the same credit card provider, this can often be treated as a contractual variation. In such cases, the requirement to assess whether the contract be repaid within the three-year period may not be triggered.

ASIC's response

We do not expect that our prescribed period will have a substantial effect on the ability of consumers to ensure their credit card has features that suit their needs.

As noted in CP 303, while our proposal might reduce the credit limits available to low-income consumers who might have otherwise accessed higher limits that they could repay over a very long timeframe, we think that credit cards will still be accessible to these consumers.

We expect there will be only a small proportion of consumers who either cannot access a credit card at all due to the prescribed period, or who cannot reduce their existing credit card debt to a level below which they could switch to a different provider if they chose.

Note: One of the indicators of problematic debt in REP 580 was high credit limit use; the proportion of consumers that satisfied that indicator in June 2017 was 10.8%.

We also note that the reform will not prevent credit providers from amending the terms of a credit card contract to ensure that a consumer has a credit card that is well-suited to their needs.

More generally, a period of three years might appropriately segment the market so that those consumers needing larger loans with longer repayment options could move into lower-cost products, such as some types of personal loans.

This is an issue that we will continue to monitor to minimise unintended consequences of the implementation of the reform.

Appendix: List of non-confidential respondents

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- Australia and New Zealand Banking Group Limited
 - Australian Banking Association
 - Australian Finance Industry Association
 - Australian Retail Credit Association
 - Australian Retailers Association
 - Care Inc. Financial Counselling Service
 - CHOICE, Consumer Action Law Centre, Financial Counselling Australia and Financial Rights Legal Centre (joint submission)
 - Consumer Credit Legal Service (WA) Inc.
 - Customer Owned Banking Association
 - Finance Brokers Association of Australia Limited
 - Legal Aid Queensland
 - LW (submission from an individual)
 - Queensland Law Society
 - Redfern Legal Centre
 - Westpac Banking Group
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