

## Response to ASIC

### Using the product intervention power: Short Term Credit

#### CONSULTATION PAPER 316

Financial Counsellors' Association of WA (FCAWA) work and support financial counsellors across Western Australia. FCAWA is the peak body for Financial Counsellors in Western Australia. Together with WA's financial counsellors, we ensure Western Australians in financial hardship get the free, impartial support they need to regain control of their finances. To escape debt. To move on with clarity and confidence.

FCAWA advocate to government on behalf of our members and consumers. We work with business and industry to improve terms, conditions and outcomes for consumers. We provide our members with vital news, insights and support.

FCAWA draws on more than 30 years' experience as a leading membership peak.

#### **ASIC statement:**

***We propose to make a product intervention order by legislative instrument under s1023D (3) of the Corporations Act to prohibit credit providers and their associates from providing short term credit and collateral services except in accordance with a condition which limits the total fees that can be charged***

#### Your feedback:

**C1Q1 Do you consider that the short-term lending model causes detriment to consumers and that this detriment is significant?**

FCAWA state that option 1 is the only option to protect vulnerable consumers and supports the views of Financial Counselling Australia's CEO Fiona Guthrie, who said that ASIC's move to use its new powers "can't happen soon enough".

FCAWA believe that this short-term lending model causes financial detriment to those consumers most at risk.

Evidence collected by locals and advocacy groups has shown that hundreds of Indigenous people in remote WA communities are being signed up to loans by a "predatory" payday lender that they can neither afford nor understand. One example: People living in the Ngaanyatjarra Lands claim that Gold Coast-based Cigno Loans has charged borrowers — some of them teenagers — fees up to 10 times the original amount, withdrawn directly from their bank accounts.

Most of those affected rely on fortnightly Centrelink payments as their sole source of income and have very poor financial literacy.

**C1Q2 Do you consider that the short-term lending model does or might cause detriment other than that identified by ASIC, or to a greater or lesser extent? If additional or greater, how should the proposed product intervention order be expanded to address this significant detriment?**

The Government must strengthen consumer credit laws to better regulate payday lenders.

Financial distress can cause significant health issues for Australians. Mental health issues, domestic violence, alcohol and drug issues have been linked to those in financial difficulty. These are symptoms not seen in monetary terms but in the distress caused by those especially living in financial difficulty.

Studies have also shown that Poverty has a particularly adverse effect on the academic outcomes of children, especially during early childhood. Chronic stress associated with living in poverty has been shown to adversely affect children's concentration and memory which may impact their ability to learn.

A bill is currently before Federal Parliament to improve oversight of the industry, but until it becomes law, exploitative behaviour is likely to continue.

Compensation should be a consideration to be given to those consumers who have been the victim of the predatory lenders.

Case Study Example of further detriment caused:

A financial counsellor in WA advised CIGNO of the following;

*XXX is a new client to the service and has requested assistance with her debts which were fraudulently obtained by her ex-partner in her name.*

*I have attached a copy of the restraining order, and two support letters that acknowledge her experience.*

*The relationship between XXX and her ex-partner started in August 2017. During the period of 2018 he obtained credit online with Cash Converters and Cigno loans using XXX information. He then stole her car early 2019 and the police have not been able to recover it. In March 2019 he was finally arrested on charges of common assault, criminal damage and a concealed weapon during a very violent outburst at their home. XXX survived this and is currently staying at an undisclosed location. Her abuser will be standing trial in January 2020.*

*The first awareness she had of either loan was when she realised money was coming out of her account when it should not have been.*

*I contacted Cigno on behalf of my client.*

*CIGNO Replied:*

*Thank you for your contacting Cigno Loans.*

*If you are claiming a loan (Reference: ██████████) was not taken out by XXX and may be fraudulent, please contact your local police station to lodge a fraud report.*

*Once submitted, please provide Cigno Loans with the 'Incident Report' given to XXX by the police. If you are needing any relevant loan documentation, please request this from us before lodging the fraud report.*

*The police will then contact us regarding the investigation.*

*Please note: Cigno will not cancel the loan or refund any payments until a verdict has been made regarding the investigation. Should the police deem the loan fraudulent, we will be able to action the file accordingly.*

*Financial counsellor response to CIGNO:*

*As stated in my email XXX is not able to charge the perpetrator with theft of her car or identity theft due to the fact her wellbeing is at risk.*

*I would like to place a complaint and move this request to the complaints department.*

This case studies highlights the lack of support for those consumers not currently covered by legislation or access to AFCA for a complaint.

If CIGNO was regulated under the NCCCP Act and was a member of AFCA there would be remedies and protections for the client under legislation and AFCA's approach to joint loans and domestic violence.

**C1Q3 Do you agree with our proposal to make an intervention order by way of legislative intervention prohibiting credit providers and their associates from providing short term credit and collateral services except in accordance with a condition which limits the total fees that can be charged? Please provide details of why, or why not.**

FCAWA agrees with ASIC to make an intervention order as it will prohibit the use of short term lending models which allow credit providers and their associates to charge fees or other charges in excess of the cost restrictions under the short-term credit exemption; and protect vulnerable consumers from the significant detriment caused from the use of the short-term lending model.

It appears from research that the short-term lending models such as used by CIGNO prey on those who are dependent upon Centrelink payments, have little or no financial literacy skills and have little options to access help and services if required.

**C1Q4 What alternative approaches (including Options 2 and 3) could ASIC take that would achieve our objectives of preventing the consumer detriment identified in this paper?**

Changing or updating the NCCP act to include these types of lenders and other lenders currently not under the jurisdiction of the legislation.

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