ASIC Consultation Paper 316 – Using the Product Intervention Power: Short Term Credit

Submission by Legal Aid Queensland

TRIM no 2019/0631863

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Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission in response to ASIC Consultation Paper 316 – Using Product Intervention Power: Short Term Credit.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. 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.

LAQ's Civil Justice Services Unit lawyers provide advice and representation in relation to insurance, mortgage stress, housing repossession, banking, financial hardship, debt, contracts, loans, telecommunications and unsolicited consumer agreements. LAQ assists clients who experience significant detriment as a result of specific products in a market, or the market itself.

LAQ welcomes the introduction of a Product Intervention Power (PIP) for ASIC to address products that cause or are likely cause significant detriment for consumers. In our experience short term credit provided through the short term lending model outlined in the Consultation paper has caused widespread and significant detriment to vulnerable consumers.

Our recent experience includes advising clients who have had dealings with Gold-Silver Standard Finance (GSSF) and Cigno Pty Ltd (Cigno) who are currently using the short term lending model which avoids the consumer protections set out in the *National Consumer Credit Protection Act 2009* and the *National Credit Code.* LAQ also works with financial counsellors, some of whom have been assisting clients who are experiencing problems with lenders such as GSSF and Cigno.

The detriment caused by this model is reflected in paragraph 43, page 15 of the Consultation Paper. Of the significant consumer detriments set out on page 15, the most significant issue is the model targets vulnerable consumers experiencing financial stress and then exacerbates that financial stress through the use of a high cost, high fee model that does not assist a consumer to resolve their difficult financial circumstances and is likely to result in further deterioration of those financial circumstances.

Other features of the short term credit model include:

(a) lack of protections available to consumers under the model which is structured to avoid the regulation of the National Consumer Credit Protection Act and National Credit Code;

(b) difficulties faced by consumers accessing financial hardship assistance and then trying to work their way out of financial hardship;

(c) high fees making it difficult for consumers to repay the debt and meet basic expenses;

(d) failure of companies to responsibly assess a consumer's ability to meet repayments on a short term credit loan.

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Case Study 1 below is an example of type of case that LAQ has provided assistance on in the short term credit area.

> LAQ's client was being pursued for a debt of over $900 by Cigno Pty Ltd resulting from an original loan of $200. The client applied for the original loan over the phone and believed that it would be paid off after four fortnightly payments of approximately $50 plus a small fee.
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> The day before the first repayment, the client had a fall and was hospitalised. He was in and out of hospital for about a month with complications. He believed his bank account had been debited and the loan paid off during the period of his ill health.
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> After being discharged from hospital, the client was contacted by debt collectors who informed him he now owed over $900. The fees accrued as a result of late fees and charges. He had attempted to negotiate with Cigno but was unsuccessful. With LAQ's assistance an appropriate repayment arrangement of the principal amount borrowed was negotiated.

PROPOSAL

C1 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: see the draft product intervention order in the attachment to this paper Note: For the definition of 'collateral services', see 'Key terms'.

YOUR FEED BACK

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

> Yes.

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?

And

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.

> The short term lending model causes significant consumer detriment. LAQ supports the use of the Product Intervention Order (PIO) and the condition set out in Section 5 (3) of the draft PIO as a first step towards addressing the significant consumer detriment that is caused by the short term credit lending model.

However, the impact of the short term credit model on the financial and general well-being of consumers is assessed, the significant detriment caused by this short term lending model is considerable and greater than what has been recognised by ASIC.

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?

Option 2 Encourage consumers to use alternative through an education campaign

As a general principal LAQ is supportive of campaigns which raise consumer awareness of alternatives to high cost credit products. However, LAQ does not believe this option provides a better alternative to the use of a PIO under Option 1. Option 2 could be used to complement Option1 but on its own it will not address the significant consumer detriment caused by short term credit products.

The reason for this is that consumers who use this type of product typically have the following characteristics:

(a) they are experiencing vulnerability, for example mental or physical illness, loss of employment, family and domestic violence,
(b) they have poor credit reports,
(c) they are excluded from most mainstream credit options,
(d) this type of credit product is their only option for obtaining credit,
(e) low cost alternatives such as the No Interest Loans Scheme are not available for the type of loans they are seeking.

Encouraging consumers with these characteristics to use alternatives will not address the significant detriment caused by these products because there are no alternatives or cannot be reasonably accessed by the consumer.

It would be more effective for ASIC to have the power to issue PIO's, which addresses detriment caused by the product, and to address issues of community financial literacy through an education campaign

Option 3 Do Nothing

In LAQ's submission, it is important that when ASIC is presenting a range of options for intervening that each potential option must have meaningful outcome for consumers.

If ASIC is exercising its PIP because it has identified a product or market that is causing a significant detriment to consumers, it would not be reasonable for ASIC to have an option of doing nothing or retaining the status quo. Retaining the status quo would not address the identified consumer detriment being caused to consumers or meet the community's expectations that ASIC act in relation to products which cause or are likely to cause significant detriment, and ensure that financial products available and on the market comply with the *National Consumer Credit Protection Act 2009* and *National Credit Code.*