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NCPA response to Consultation Paper 313 – Product Intervention Power

The National Credit Providers Association (NCPA) welcomes the opportunity to comment on ASIC’s consultation paper – Product Intervention Power.

The NCPA supports a strong and robust financial system built around the principles of responsible lending obligations and importantly, believes this should be reflected in the powers conferred on the regulator, the Australian Securities Investment Commission (ASIC).

In turn, the community expects that financial credit related products should be fit for purpose and comply with responsible lending obligations and do not cause detriment to the consumer or breach the laws in the Corporations Act, the National Consumer Credit Protection Act (NCCP Act) or the National Credit Act (NCA Act). If a product is found to not comply and cause consumer detriment, then it’s fair and reasonable for the regulator to take the necessary and appropriate action, after consultation and review, to prevent the ongoing sale or distribution of that product.

The NCPA supports this view and is the basis for this submission on behalf of members in the small and medium amount credit contract sector. This is a sector that is highly regulated and monitored, and like other parts of the financial services sector, expects all participants to fully comply with the NCCP Act, NCA Act and other regulations (i.e. in regards to compliant legal products) as well all relevant responsible lending obligations.

However, where it is identified that an operator providing a credit product that may be similar to a small amount credit contract (SACC) product but designed to avoid obligations under the NCCP Act and is likely to cause a detriment to consumers, then this product should be prevented from being distributed. ASIC should have the powers to take action to prevent the product from being distributed provided due process is taken, review and the right of appeal (which we note is not specified as a requirement under the legislation).

It should also be noted as to what is defined as “consumer detriment” given the enormous powers given to ASIC for intervention.

B Proposed guidance on when and how ASIC may exercise the product intervention power

The NCPA supports the principle that financial products should not cause consumer detriment and believes that an approach by the regulator that assesses on a case-by-case basis the merits and circumstances of when it may be required to use product intervention powers to prevent consumer detriment or a market-wide product intervention order for a class of products.

B1 Q1 Clarification and guidance as to the legality of the product or what ASIC intends to do if the product is deemed legal and compliant but ASIC simply does not feel comfortable with the product offered.

B2 Q1 Clarification and guidance on what ASIC deems the difference between “consumer detriment (B1(a) & (b)) and “significant consumer detriment” (B2 (a) (b) (i) (ii))

C Proposed guidance on engagement and consultation on a product intervention order

The NCPA is supportive of an approach that requires the regulator to consult with persons who are likely to be affected by any intervention order and provide the opportunity for public comment on any proposed order prior to making a product intervention order.

C1 Q1 Industry specific data, facts and relevant information are the basis of sound decision making and it would be expected that the regulator use the most current data and information available for use in any intervention power investigation. The NCPA notes that there continues to be a reliance on historic or pre-regulatory change reports and surveys that in some cases are many years superseded by contemporary data and current facts.

C1 Q2 ASIC to make available details of an intervention order and allow an alternative approach or modified features to a product to prevent consumer detriment.

C2 Q1 The proposed guidance as referenced in C2 is considered comprehensive, however as stated above relevant and contemporary data must be used in making decisions and during investigations.

C3 Q1 A delayed commencement of an intervention order on a case by case basis is considered appropriate.

C3 Q2 Providing appropriate rigour and data integrity is evident and that a provider will not gain uncompetitive market advantage or entrench further consumer detriment by any delayed commencement.

C3 Q3 No