

20 January 2021

Senior Manager
Financial Services Group
Australian Securities and Investments Commission
Level 7, 120 Collins Street
MELBOURNE VIC 3000

By email only: product.regulation@asic.gov.au

Dear Sir/Madam

Product intervention order: short term credit and continuing credit contracts.

Thank you for the opportunity to provide this submission to the Australian Securities and Investment Commission's consultation paper 355 (the consultation paper) on its product intervention power in Pt 7.9A of the Corporations Act 2001.

Background

LawRight is a not-for-profit, community-based legal organisation, which coordinates the provision of pro bono legal services to disadvantaged Queenslanders.

The Community Health Justice Partnerships program (**CHJP**) was established in 2002 by LawRight to provide free legal assistance and representation to people experiencing or at risk of homelessness, refugees, and other vulnerabilities.

In the 2020/2021 financial year, LawRight provided:

- legal assistance in 1329 matters for CHJP clients; and
- met with 548 clients attending a community or health service in Brisbane or Cairns.

Many CHJP clients experience several forms of disadvantage including mental illness, experiences of domestic violence, severe financial hardship, addiction, physical or intellectual disabilities and complex family backgrounds.

Our experience in assisting clients with credit provided by Gold-Silver Standard Finance, BHF Solutions Pty Ltd and its associate Cigno Loans Pty Ltd (**Cigno**) demonstrates the need to restrict the operation of a short-term credit and continuing credit lending models.

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Proposal D1 - Make the short-term credit product intervention order

On 30 July 2019, we provided the **enclosed** submissions to in response to Consultation Paper 316.

We continue to assist clients through our services who have experienced significant detriment because of loans offered prior to 14 September 2019 under the short-term lending model.

For the reasons discussed in our 2019 submissions, we continue to support ASIC's proposal to make an intervention order by 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.

Proposal D2 – Make the continuing credit product intervention order

After the making of the product intervention order on 14 September 2019, we have continued to assist clients who have been impacted by credit facilities offered through Cigno, which are now being described as continuing credit contracts.

We understand that Cigno amended its business model by offering continuing credit contracts after 14 September 2019 to ensure the services it provided were not prohibited by the product intervention order that had been made. In an email received from Cigno on 22 July 2020, Cigno stated *"All loan[sic] under the FUA model which is our new model are as per the new Continuing Credit Contract and is not affected by the ban. ... All loans done before and after September 14, 2019 does not apply the ban either, so it only applies to new loan done under our old model after the said date.* In our experience, the loans offered through Cigno after 14 September 2019, although now continuing credit contracts, in practice, were not materially different to how our clients had previously received credit through Cigno.

Since our previous submissions provide to ASIC on 30 July 2019, we have assisted 56 people who have sought assistance with a combined total pursued debt from Cigno of \$22, 903.79. All these clients connected with us through specialist homelessness services and were relying on incomes from Centrelink benefits.

Of the 56 clients we assisted, 17 sought assistance with a debt for a loan they had obtained through Cigno after 14 September 2019 or for a loan described as a continuing credit contract by BHF Solutions Pty Ltd or Gold Silver Finance Pty Ltd. These clients were alleged to owe a combined amount of \$13, 538.45, with the average alleged debt when a client sought assistance from our service being \$796.40. The average amount advanced to our clients was between \$200 and \$250.

Case study 1

Natalie sought assistance to resolve a debt after she entered contracts with BHF Solutions Pty Ltd and Cigno Pty Ltd in October 2020. Although the contract was stated to be a continuing credit contract, Natalie received a single advance of \$200.

In September 2021, we met with Natalie at a specialist homelessness service in Brisbane. Natalie sought our help as Cigno was trying to collect over \$900 under the contract. Of the sum alleged to be owed, \$879.10 was attributed to fees. Natalie was not aware the contract she had entered was a continuing credit contract.

Case study 2

Maddy sought assistance to resolve a debt after she entered contracts with BHF Solutions Pty Ltd and Cigno Pty Ltd in June 2020. Although the contract was stated to be a continuing credit contract, Maddy received a single advance of \$200.

On 17 May 2021, we met with Maddy at a specialist youth homelessness service. At the time we met her, Maddy was pregnant, at risk of homelessness and relied on homelessness support services for her meal and laundry needs. She had recently left a violent relationship and her income was derived from Youth Allowance.

By May 2021, Cigno were asserting that she owed over \$1200, of which \$1090.10 was attributed to fees. Maddy told us that when she applied to Cigno it was very easy to access the money which she needed for her car registration and she only had to be receiving a Centrelink income to be eligible. When we discussed the terms of the contract with Maddy, she informed us that she had not been aware that she was entering a continuing credit contract, nor had she understood the relationship between Cigno and BHF Solutions Pty Ltd.

In preparing this submission, we also sought feedback from community services we work with about the impact these loans have on the wellbeing of the vulnerable communities that they work with. Ariyan Jadidi, a youth worker at the Brisbane Youth Service (BYS) explains:

... While working with BYS, I have supported countless young people who have been impacted by the predatory practices offered by Cigno. Unfortunately, their processes allow those who are already at risk of exploitation to receive inappropriate financial assistance without assessments as to whether the young people would be able to repay the principal, let alone the massive fees associated. Furthermore, Cigno have demonstrated repeatedly that they will continue to withdraw money from young people's accounts, even after instructions provided to banking organisation to cease withdrawal, and legal negotiations with Cigno directly. This predatory practice places young people further into financial distress. ... I do not believe how Cigno operates is ethical, and I have witnessed firsthand the detriment it has caused the young people I support...

As evidenced by the above case studies and the comments from Mr Jadidi, the continuing credit contracts offered to our clients has had the same detriment as the contracts offered by Cigno and BHF Solutions prior to 14 September 2019.

Clients have reported to us that the loans were easy to access, no apparent assessment of their ability to repay the loans was done and they were not aware of the relationship between Cigno and BHF Solutions Pty Ltd or other lenders used by Cigno when entering the contracts. As explained in Maddy's (Case study 2) circumstances, many clients did not understand or were not aware, that the contracts offered by Cigno and BHF Solutions Pty Ltd were continuing credit contracts.

The change in the type of credit contracts offered by Cigno and BHF Solutions Pty Ltd have provided no practical difference to our clients.


For the reasons provided above, our response to the questions posed in the Consultation paper is that:

- **D2Q1** – *We consider that continuing credit contracts, when issued to retail clients in the way described in paragraph 48, have significant detriment to retail clients.*
- **D2Q2** – *We are aware that Cigno and BHFS are issuing continuing credit contracts in the way described in paragraph 48 of the Consultation paper.*
- **D2Q4** – *We agree with the proposal to make a continuing credit contracts product intervention order by legislative instrument as set out in the draft product intervention order*

Thank you for considering these submissions.

Yours faithfully

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Managing Lawyer
Community Health Justice Partnerships