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Submission to the Australian Securities Investment Commission

CONSULTATION PAPER 371

Product intervention orders: Short term credit and continuing credit contracts

Released 10 August 2023. Comments close 31 August 2023.

1. Background to Consumer Credit Law Centre SA (CCLCSA)

This submission is in response to Consultation Paper 371 (CP 371) seeking feedback on ASIC's proposals to extend the product intervention orders relating to short term credit facilities and continuing credit contracts, which were made under Pt 7.9A of the *Corporations Act 2001* (Corporations Act), so that they remain in force until they are revoked or sunset.

Consumer Credit Law Centre SA

The CCLCSA was established in 2014 to provide free legal advice, representation, legal education, advocacy and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The CCLCSA is managed by Uniting Communities who also provide general and state-wide specialist community legal services specialising in Social Security, disability advocacy and elder abuse, as well as a range of services to low income and disadvantaged people including mental health, drug and alcohol, and disability services.

Uniting Communities

Uniting Communities (UC) is an inclusive not-for-profit organisation that works alongside more than 80,000 South Australians every year. We seek to reduce inequality and improve wellbeing for those who are striving to overcome disadvantage. Our service delivery, advocacy, and community building activities are central to achieving this goal. We offer more than 90 services to support the needs of both individuals and our community, across a range of areas. These include mental health and counselling, residential aged care and support for independent living, housing crisis and emergency support, disability services, services for the Aboriginal and Torres Strait Island people, financial and legal, drug and alcohol counselling, family relationships, and respite and carer support.

Our position

Uniting Communities, through the CCLCSA, supports ASIC extending the existing product intervention orders. We believe that significant financial harm would result if the existing product intervention orders are not extended to prevent a reoccurrence of short term credit facilities and continuing credit contract models designed to circumvent the consumer protections found in the *National Consumer Credit Protection Act 2009* (Cth) (the NCCPA) and the National Credit Code (the Code).

2. Feedback on list of proposals and questions

The CCLCSA provides the following feedback on questions outlined on pages 17 – 24 of CP 371.

We refer to our previous submissions on CP 355 and CP 330 in regards to the significant detriment caused to consumers by contracts subject to the short term contract and continuing credit contract orders and our reasons for supporting the exercise and extension of these Product Intervention Orders.

Proposal to extend the 2022 short term credit product intervention order

B1Q1 Do you agree with our proposal to extend the 2022 short term credit order? Please explain the reasons for your views.

We agree with ASIC's proposal to extend the 2022 short term credit order. Based on the previous behaviour of the entities that use this model (in adapting to the previous product intervention order by moving to a continuing credit exemption model) it appears necessary to extend the 2022 short term credit order.

The CCLCSA has seen a dramatic decrease in the number of enquiries in relation to these short term credit and continuing credit exemption contracts with associated collateral contracts and this is attributed to the fact the Product Intervention Orders have been effective in preventing and reducing the risk of significant detriment to retail clients.

We note the cost of living crisis and express concerns that without an extension, consumers would be at even greater risk of significant detriment, given the intense pressures on family budgets (that may lead to increased demand for short term finance.)

B1Q2 Do you agree with our proposal that the 2022 short term credit order, if extended, should be extended so that it remains in force until it is revoked or sunsets? Please explain the reasons for your views.

As above, we agree with the proposal that the 2022 short term credit order should be extended and remain in force until it is revoked or sunsets.

We note that consumers are still contacting financial counsellors in relation to debts associated with collateral entities providing services to assist consumers enter continuing credit contracts at a time when similar short term credit contracts were subject to Product Intervention Orders, suggesting without a Product Intervention Order, products will continue to be offered to the market, notwithstanding harm to consumers.

B1Q3 Alternatively, do you consider that, if extended, the 2022 short term credit order should only be extended for a set period, such as three or five years? Please explain the reasons for your views.

We see no reason to limit the extension to a reduced set period. The short term credit order gives effect to what the legislation appears to intend to do; prevent entities from exploiting the exemptions in the Code.

B1Q4 In your view, has the 2022 short term credit order been effective to date in reducing the risk of significant detriment to retail clients in the short term credit market? Please provide evidence and data to support your view.

It is our view that the 2022 short term credit order has been effective in reducing the risk of significant detriment to retail clients in the short term credit market. While we haven't collated specific data points, we have seen a reduction in consumers seeking legal advice on these products.

Our previous submissions for CP 355 and CP 330 detailed examples of the significant detriment caused to retail clients from the use of short term credit.

B1Q5 What effects (if any) do you consider the 2022 short term credit order has had on competition in the financial system? What effects are likely if the order is extended?

We consider that if the 2022 short term credit order has had any effect on competition in the financial system, it would be to make a more level playing field for regulated credit providers. It has sent a clear message to entities who may have been considering exiting the regulated population and copying these models, that it is not a viable option. Extending the order confirms this position will remain over the long term.

B1Q6 What alternative approaches (if any) could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

While we would encourage additional enforcement action targeting credit providers as a means of specific & general deterrence, we don't consider there are any obvious alternative approaches available to ASIC to prevent the detriment identified. The extension of the 2022 short term credit order will achieve the objective of preventing the significant detriment identified in CP 371.

We note whilst these loans would otherwise appear to be subject to the anti-avoidance provisions effective for contracts entered after 12 December 2022, the best way to prevent detriment would be the extension of the product intervention orders rather than the alternative potential of exposing consumers to the risk of these products being re-introduced back into the market with ongoing further litigation with respect to recent legislative anti-avoidance amendments.

Whilst legislative amendments for an outright prohibition of these products would permanently prevent significant detriment to consumers, we fully support the proposal to extend the 2022 continuing credit and short term credit contract product intervention orders as the most appropriate course of action that should be taken by ASIC to achieve the objective of preventing the significant detriment identified in CP 371.

Proposal to extend the 2022 continuing credit product intervention order

C1Q1 Do you agree with our proposal to extend the 2022 continuing credit contracts order? Please explain the reasons for your views.

We agree with ASIC's proposal to extend the 2022 continuing credit order for all of the same reasons identified in our response to B1Q1; that without the continuing credit contracts order we risk new entities popping up with this model to inflict significant detriment on retail consumers.

C1Q2 Do you agree with our proposal that the 2022 continuing credit contracts order, if extended, should be extended so that it remains in force until it is revoked or sunsets? Please explain the reasons for your views.

As for B1Q2, we agree with the proposal that the 2022 continuing credit order should be extended and remain in force until it is revoked or sunsets.

C1Q3 Alternatively, do you consider that, if extended, the 2022 continuing credit contracts order should only be extended for a set period, such as three or five years? Please explain the reasons for your views.

As for B1Q3, we see no reason to limit the extension to a reduced set period. The continuing credit order gives effect to what the legislation appears to intend to do; prevent entities from exploiting the exemptions in the Code.

C1Q4 In your view, has the 2022 continuing credit contracts order been effective to date in reducing the risk of significant detriment to retail clients in the continuing credit contracts market? Please provide evidence and data to support of your view.

As for B1Q4, It is our view that the 2022 continuing credit order has been effective in reducing the risk of significant detriment to retail clients in this space. While we haven't collated specific data points, we have seen a reduction in consumers seeking legal advice on these products.

Our previous submissions for CP 355 and CP 330 detailed examples of the significant detriment caused to retail clients from the use of both continuing & short term credit.

C1Q5 What effects (if any) do you consider the 2022 continuing credit contracts order has had on competition in the financial system? What effects are likely if the order is extended?

As for B1Q5, we consider that if the 2022 continuing credit order has had any effect on competition in the financial system, it would be to make a more level playing field for regulated credit providers and provides a clarity that such an exploitative model is in breach of the NCCPA / NCC and should not be used.

C1Q6 What alternative approaches (if any) could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

As for B1Q6, we don't consider there are any obvious alternative approaches that would achieve the required objectives and we consider the extension of the continuing credit order to be an appropriate solution in the circumstances.

Thank you for your consideration.

The Consumer Credit Law Centre SA

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