Product Intervention Power

Using the power: Continuing Credit Contracts

Submission to ASIC in response to Consultation Paper 330

Contents

Executive Summary

1. ASIC's Consultation Paper 330

1.1. In its consultation paper 330 (CP330), ASIC proposes, at the stroke of a pen, to prevent Cigno Pty Ltd ('Cigno') from assisting its customers with regards to continuing credit contracts. Cigno writes this submission in response to CP330.

1.2. CP330 has all the hallmarks of a document produced by a regulator who is going through the mandatory motions of public consultation in relation to the proposed exercise of a power which it has already made up its mind to use. CP330 adopts case studies which are unrepresentative, makes comparisons and infers incorrect conclusions. This incorrectly represents Cigno in a manner designed to suit ASIC's narrative in support of ASIC's proposed product intervention order.

1.3. ASIC has chosen case studies which are entirely unrepresentative of the true experience of the majority of Cigno's customers thereby producing a distorted view of Cigno's services.

1.4. Cigno customers enjoy protections under Cigno's responsible lending, financial hardship, and other policies. Cigno also maintains a responsible and responsive internal dispute resolution mechanism whereby customers in need of assistance can reach out and are helped through difficult times by suspending repayments, forgiving fees and interest, and forgiving the debt. In fact, Cigno's business practice regarding the mentioned policies is at least equal to and generally leads the market in terms of fairness and good practice.

1.5. The threshold issue for the proposed use of the product intervention power is whether significant detriment has resulted or will result or is likely to result to consumers.

1.6. ASIC has determined that significant detriment has or will or is likely to result to consumers due to:

   a. The overall high cost of both the continuing credit contract and the services agreement, relative to the loan amount, which many retail clients cannot afford;
   b. The significant number of retail clients who have been issued this product; and
   c. The particular target group of retail clients the product is issued to, many of whom are vulnerable and suffering from financial instability and hardship.

1.7. For the reasons detailed in this Submission, Cigno rejects ASIC's determination. It is wrong, is based on selected "facts" to manipulate an outcome by painting an incorrect picture and demonstrates that the implementation of ASIC's proposed product intervention order would, rather than prevent "significant detriment" to consumers who use the service, actually cause far more detriment to an entire segment of the

Australian population by depriving them of an option to obtain credit when they need it.

1.8. ASIC is assuming the role of “protection” by assuming that consumers are ignorant.
1.9. .

Response to CP330

2. The concept of significant consumer detriment

2.1. Section 1023E of the *Corporations Act* provides the definition of significant consumer detriment. It relevantly provides as follows:

1023E Significant detriment to retail clients

(1) In considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients for the purposes of this Part, the following must be taken into account:

(a) the nature and extent of the detriment;

(b) without limiting paragraph (a), the actual or potential financial loss to retail clients resulting from the product;

(c) the impact that the detriment has had, or will or is likely to have, on retail clients;

(d) any other matter prescribed by regulations made for the purposes of this paragraph.

(2) Subsection (1) does not limit the matters to be taken into account in considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients for the purposes of this Part.

2.2. Accordingly, the concept of 'significant consumer detriment' is utilitarian: the question is framed (and the answer provided) by reference to the nature and extent of detriment to retail clients as a class.

2.3. Every credit product has the potential to cause significant hardship in a particular case. Even the most reasonable mortgage is always pregnant with the potential to deprive the customer of the family home. But hardship in a particular case is not the focus of s.1023E. Rather, in order to properly invoke the power, ASIC must take into account the full nature and extent of the detriment to the class of retail clients likely to be affected. Ultimately the percentage of clients that have allegedly suffered significant detriment is important and then to properly ascertain the actual detriment and actual cause that leads to the detriment is important.

3. The use of case studies

3.1. In Cigno's submission in response to CP316, Cigno highlighted the deficiencies of the use of case studies. While, they can be useful tools to identify issues in particular cases, unless carefully chosen to represent the median experience, they will be more apt to mislead than inform.

3.2. As in CP316, ASIC has again used case studies in CP330 as its focal point in its assessment of detriment. Cigno submits that these case studies are entirely unrepresentative of the true experience of the majority of Cigno's customers. Cigno submits that use of these unrepresentative case studies are tendentious and specifically selected by ASIC to be consistent with ASIC's proposed intervention order and ASIC's agenda.

3.3. Cigno submits that a statistical analysis of the data surrounding continuing credit contracts as well as independent accredited research is a far more accurate way of representing the actual customer experience. No conclusions ought to be drawn from case studies that stem from a miniscule and unrepresentative portion of customer experiences.

The conclusion of 'significant detriment' is flawed

4. Basis of the conclusion.

4.1. CP330 at paragraph 23 provides the basis for ASIC's opinion that the continuing credit contracts when issued with the use of Cigno services cause significant detriment due to (a) the overall high cost relative to the loan amount, (b) the significant number of retail clients (customers) who have been issued a continuing credit contract with the use of Cigno services and, (c) the particular target group of which many are "vulnerable and suffering from financial instability and hardship" . Each of these assertions are flawed. Cigno submits that the statistics do not support ASIC's opinion and proper investigation has not been carried out by ASIC to determine the statistics.

5. The cost to the consumer

5.1. ASIC states that there is an overall high cost "relative to the loan amount". However, a proportionate analysis (by way of percentages applied to the principal sum borrowed) is flawed and bound to produce higher ratio of repayments where the principal sum is small. Cigno's fee amounts are relative to the costs incurred by Cigno to carry out its service for the customer. Provision of Cigno's services for a loan of $1,000 would result in a smaller cost proportionate to the principle but the same service. Cigno submits that use of such a flawed analysis implies that ASIC believes the potential significant detriment lies in the size of the principle – an implication that is not supported by any evidence in CP330.

5.2. In any event, the fees charged relative to the amount borrowed is only one relevant economic consideration when assessing how to properly characterise the "cost" of a service to a consumer as "high".

5.3. It is stating the obvious to note that small amount, unsecured credit will generally be provided at a much higher price than more conventional and secured credit products. The price of a loan considers several factors including the cost of acquisition, the risk of default and the risk of non-recoverable amounts.

5.4. Furthermore, whether the ‘cost’ is “high” can be determined by reference to the fair market price that a rational seller of substantially the same product would be willing to offer that product to the consumer. The consumer is best positioned to determine whether alternative sources of lending in the marketplace are available at a lower price.

5.5. Additionally, the “cost” to the consumer cannot be characterised as “high” until the cost of using the service is compared to the cost to the consumer of the next-best option, which might involve no credit at all thereby leaving customers unable to pay for basic living expenses and utilities. Again, the consumer is best positioned to make his or her own assessments about whether the cost of securing financing by way of a continuing credit contract are too “high” (see survey data in 6.11 below).

5.6. Notwithstanding ASIC’s flawed analysis, in the case studies, the maximum amount actually paid by any of the customers is $380 on an amount of $250 – 52% of the loan amount. Furthermore, two of the customers in the case studies are yet to have paid the principle amount thereby materially benefitting from the continuing credit contract – contrary to ASIC’s assertion there is no significant detriment. Cigno therefore submits that it would be unreasonable to consider any of the customers in the case studies to have suffered detriment.

Costs of Default

5.7. ASIC implies that significant consumer detriment results or will or is likely to result from alleged “high fees payable on default” and what ASIC considers is a financial incentive to target consumers who cannot meet their repayments. Cigno submits that this is a simply absurd notion for the reasons following.

5.8. Firstly, targeting consumers who cannot meet repayments in an industry that relies on customers making repayments is clearly unviable. Any fee charged, whether it be a minimal account keeping fee or fees of hundreds of dollars result in the same net income to the business charging the fee where the customer does not meet the repayment – that being zero.

5.9. Secondly, ASIC has not identified where the alleged “high fees payable on default” has resulted or will or likely to result in significant detriment. Cigno submits that where customers are not making payments, these customers have actually benefitted without suffering any cost, let alone detriment.

5.10. Cigno has an extensive customer retention program which includes collections activity that is compliant with the ACCC debt collection guidelines. Every customer who misses a payment is contacted by various contact methods. Cigno works with these customers to assist them to meet their obligations without incurring significant default charges or financial harm. This is evidenced by the many arrangements Cigno enters into with customers every week.

5.11. Cigno submits that most often when a customer incurs significant fees due to default is where that customer refuses Cigno's assistance or is uncontactable. These customers typically fall into the category of customer who has benefitted without cost as referred to in paragraph 4.9 above and therefore have not and will not suffer detriment.

5.12. Cigno submits that it is impossible for ASIC to determine the possibility of future detriment based on the information presented in CP330. In addition to the measures referred to above, Cigno has a robust, industry leading financial hardship policy. Furthermore, Cigno also has a proven track record of voluntary cancellation of fees. In the July quarter alone Cigno cancelled fees totalling an extremely large amount. Cigno's financial hardship and other relevant policies are considered later in the submission (See 9 below)

6. The significant number of consumers

6.1. ASIC states the view that the significant number of consumers who have been issued a continuing credit contract with the use of Cigno services demonstrates consumer detriment or will likely result in consumer detriment. However, ASIC has not particularised or provided any information to demonstrate where such detriment has or could occur. More importantly, ASIC has not quantified how many files were examined to determine a "significant number" - 10 could be a large number if 12 services were performed but is not significant if 10,000 were performed.

6.2. Cigno submits that contrary to demonstrating any detriment or potential detriment, the significant uptake of continuing credit contracts using Cigno services is a demonstration the genuine need for alternative forms of credit in the market.

6.3. The introduction of ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917 on 12 September 2019, resulted in a significant hole in the market that was previously filled by Short Term Credit provided by Gold-Silver Standard Finance with the use of Cigno Services. ASIC's statement in CP316 at paragraph 75 that the impact of Instrument 2019/917on consumers would be (a) the increase in the use of small amount credit contracts and (b) Reduced access to credit. Instead of seeking small amount credit contracts, consumers chose to seek relief of their emergency cash shortfall by way of the continuing credit contract.

6.4. Cigno submits that ASIC's proposed interventions in CP330 will again not result in an increased use of small amount credit contracts. Instead, such interventions will likely result in consumers being denied access to legitimate credit and therefore they will suffer detriment.

Detriment Because of ASIC's Intervention

6.5. As part of its submissions in response to CP316, Cigno commissioned two economic reports on short term lending by Synergies Economic Consulting and [redacted] (Ph.D.) of Competition Economists Group.

6.6. Both reports considered the impacts of Short-Term lending, and the impacts of a potential intervention order. However, Cigno submits that given the fact that continuing credit contracts have filled the hole left in the market because of the intervention order, much of the data is relevant to continuing credit contracts.

6.7. Both reports found consumers who are denied access to credit are at risk of detriment. Reasons included:

d. seeking riskier credit sources;
e. defaulting on bills;
f. going without essential goods and services;
g. intergenerational joblessness;
h. mental health issues;
i. homelessness;
j. drug abuse'
k. other criminal activity as an attempt to alleviate financial hardship.

Further analysis is provided in sections 8 and 12below.

6.8. The need for alternative forms of credit is exacerbated further by the current economic situation because of COVID-19 and the likely continued increase in unemployment. Cigno submits that the potentially serious detriment that may be caused because of the denial of credit far outweighs any potential detriment that ASIC alleges may be caused by the granting of such credit.

6.9. Cigno submits that ASIC should take note of what other countries are currently doing regarding access to small amounts of credit – they are reversing the draconian and detrimental laws they previously imposed due to that the evidence now showing a detriment to consumers who cannot access credit.

Consumer Survey Data

6.10. As part of it's submissions to CP316, Cigno commissioned internal surveys of its customer database and an independent general population survey carried out by Enhance Research, an accredited research company. Although the survey data is referring to short-term credit, as with paragraph 6.6 above Cigno submits that the answers are equally relevant to continuing credit contracts.

6.11. The results of the Enhance Research survey paints a telling picture as to the actual need and benefit of Cigno's services in a more empirical manner than that of three unrepresentative case studies. It is also clear that not having the option of Cigno would have resulted in significant detriment to these customers – ASIC's proposed product intervention order is thus likely to be the cause of the significant detriment rather than the alleviator thereof. The following is a summary of the results:

Which do you think is the best way for ASIC to protect consumers?	
Enforce clear product disclosure statements and educate consumers so that they can make informed decisions for themselves based on their own individual circumstances	77%
Abolish certain products and thus prohibit all consumers from accessing a financial product if there is a significant risk that some consumers might choose the product when it is not the best choice for them	23%
What is your opinion?	
Short-term loans should be banned because people who cannot access conventional loans should not be able to get credit at all	7%
In an emergency people should have the option to access short-term loans so long as they are fully informed about the loan and consequences	93%
Did Cigno assist you in a time of financial difficulty?	
Yes	95%
No	5%
Were you declined by other short-term lenders before being approved through Cigno?	
Yes	67%
No	33%
Do you believe you could have obtained credit without the assistance of Cigno?	
Yes	36%
No	64%
Given your situation at the time, do you believe Cigno's assistance was of overall benefit to you?	
Yes	92%
No	8%
If Cigno had not assisted you would you have suffered detriment?	
Yes	69%
No	31%
Given that your situation was an emergency and you needed a loan fast, what options would you have considered if Cigno had not helped you?	
Friend	45%
Relative	50%
Black market	2%
Theft	3%
Pawn broker	23%
Gambling	8%
Other (specify)	11%

7. "Vulnerable and suffering from financial instability and hardship"

7.1. ASIC states that of Cigno's target group of consumers many are "vulnerable and suffering from financial instability and hardship".

7.2. First, at paragraph 19 of CP330, ASIC points to Cigno's website where various options are advertised. It is submitted that ASIC has incorrectly inferred that these so-called advertisements are indicative of Cigno targeting specific groups of consumers.

7.3. Cigno does not have a target group of consumers and has assisted customers from a wide range of demographics. The dominate purpose of the so-called advertisements in paragraph 19 of CP330 are to enhance Cigno's search engine presence. This is very common in most industries where competition for search engine positions is pivotal. It does not target any particular group, but merely allows Cigno to be easier to find by consumers.

7.4. The so-called "advertisements" are positioned towards the bottom of the Cigno homepage. It is well accepted that the majority of website traffic responds to what is immediately visible on screen when visiting a website. The likelihood that website visitors will see content below the screen line of a website decreases the further down the visitor is required to scroll.

7.5. Notwithstanding the fact that Cigno does not target a group of consumers, it is reasonable to assume that the services offered by Cigno do attract consumers that could be described as "vulnerable". This, however, is not unique to Cigno's customers. There are many financial products that are marketed to consumers that could be described as "vulnerable" including Small Amount Credit Contracts. Nonetheless, ASIC's focus should not be to foreclose options to such people. Rather, ASIC should simply be concerned that: (a) the prospective consumers are adequately informed about the terms of the product and the impact of their decision to enter into the contract; and (b) the consumer's potential vulnerability is not unfairly exploited.

7.6. Secondly, it is obvious that there are consumers in the finance space that are suffering from financial instability or hardship. This clearly is not unique to Cigno. However, the issue is not whether such consumers exist, the issue is whether there is an adequate assessment procedure in place to assess the consumers' capacity to meet the repayments without sustaining hardship. ASIC, by its statements, implies that Cigno does not have an adequate assessment. As evidenced by the fact that the vast majority of Cigno's customer base are returning customers that have used and continue to find value in Cigno's service, ASIC's statement is simply wrong. Cigno's assessment procedure is outlined in section 9.2 to 9.3 below.

7.7. There are no allegations that Cigno is maintaining its customers by way of any deception or fraud. Cigno's customers are choosing to re-use Cigno's services as and when they require them. Therefore, Cigno submits that ASIC is acting on the incorrect assumption that customers are not intelligent enough to make their own decisions regarding their finances.

The true picture

8. There is a community need

8.1. Forty-six percent of all Australians live pay-cheque to pay-cheque: Australia today report (10 February 2016) conducted by Ipsos for MLC.

8.2. Over the past decade, an average of 19% of Australians say that, in a time of emergency, they would not be able to raise $3000 in a week. An average of 12% of respondents say that in order to raise that money they would need to do “something drastic such as selling an important possession”: ME Bank’s 15th Household Financial Comfort Report (February 2019).

8.3. Those people who are unable to raise money in an emergency are not necessarily eligible for regulated lending. When those emergencies arise, many of those people apply for SACCs and other loans without success. This is not simply because these customers do not meet the regulatory criteria. Even when they do meet the regulatory criteria, often licensed lenders refuse to provide loans because they assess the loans as being too risky or insufficiently profitable.

8.4. The continuing credit contracts in conjunction with Cigno’s services provides a critical service to those people. Those people, as a class, are not irrational, gullible, or foolhardy. They are regular Australians who do not deserve to be patronised. ASIC’s proposed use of the product intervention power will not have the effect of pushing customers into regulated credit contracts, rather, it will simply deny emergency credit to a whole class of ordinary Australians who need emergency funds resulting in the likely detriment to those Australians.

8.5. Cigno submits that the results of both the independent survey and the economic reports demonstrated the serious detriment of not having access to credit including resorting to theft and gambling.

8.6. Cigno is aware of more than 750 of its past customers who lodged submissions to ASIC providing feedback on CP330. Overwhelmingly the sentiment of customers is in full support of Cigno and against ASIC’s proposed product intervention order. Cigno submits that this demonstrates the importance of the service it offers in conjunction with a continuing credit contract provider. Furthermore, it demonstrates that consumers can make their own financial decisions regarding the use of Cigno’s services. These consumers do not require a regulator such as ASIC to impose a decision based on a small minority of arbitrary case studies and a certain political agenda thereby depriving them of their freedom to make their own decisions based on their personal circumstances.

9. Policies and Procedures

9.1. One of ASIC's bases for asserting significant consumer detriment is that Cigno does not hold an Australian Credit Licence and the services it offers in conjunction with a continuing credit contract provider do not have the same protections as are afforded to Small Amount Credit Contract (SACC) customers. Whilst, as a matter of legislative application, this is true, it is also true that policies adopted and applied mean that customers are provided with similar, and, in some cases, enhanced, protections as demonstrated below.

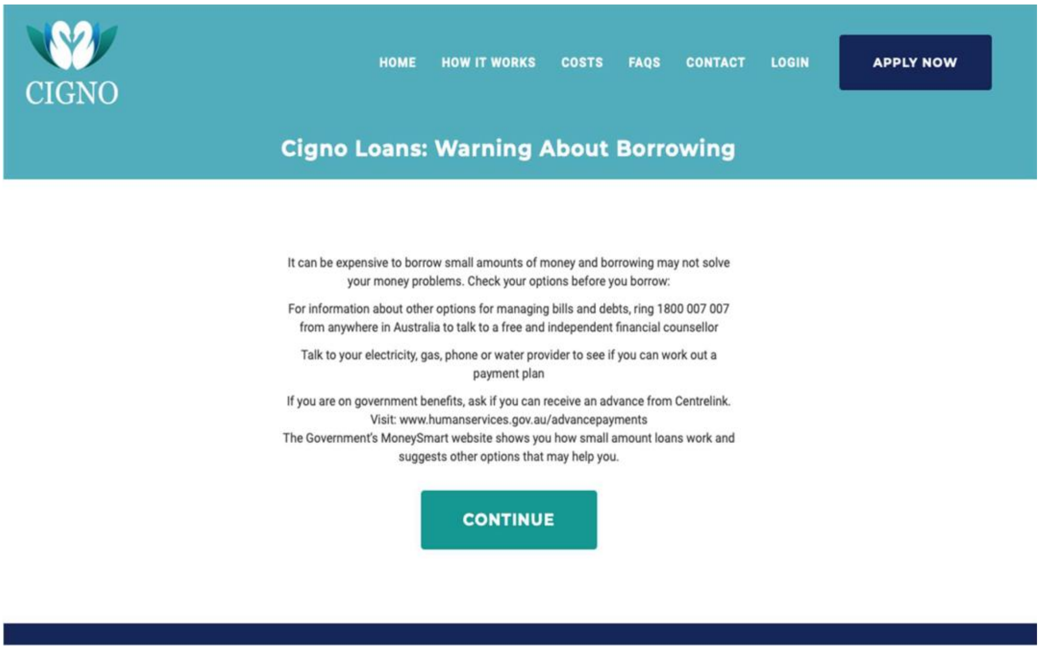
Cigno's Affordability Assessment

9.2. Cigno's affordability assessment uses ASIC guidelines of 20% of a client's income for repayment of all fees, interest and principal repayments. The assessment criteria are at least as stringent as a SACC lender.

9.3. Cigno requires the client's most recent three months' bank statements and only performs its assessment on the client's primary income source. All secondary forms of income such as direct cash deposit, regular family assistance and tax refunds are excluded from the affordability assessment.

Cigno's Disclosure to Consumers

9.4. In various places on Cigno's website and during the application process, Cigno provides disclosure to its customers that it is offering a relatively expensive service which is designed for emergencies. For example, during the application process, the following screen appears:



9.5. Cigno's customers receive multiple warnings via text and email when Direct Debit payments are due to be taken. Cigno's customers have ample opportunity to reschedule their repayment if there is going to be any difficulty.

9.6. Cigno's customers are also repeatedly told that Cigno is there to help them and that, if they get into trouble and cannot make a repayment, they need to get in touch so suitable arrangements can be made. Fees and charges only accelerate when the customer does not communicate and Cigno is forced to continue to escalate its response.

9.7. Cigno staff field thousands of calls from customers and online requests per. That is, in any view, a significant volume of customer engagement and is proof that Cigno's warnings and notices, which it habitually sends to its customers, ensure that there are clear lines of communication and a good understanding of options and obligations.

Direct Debit

9.8. The majority of repayments occur by direct debit.

9.9. There is nothing wrong or unusual with direct debit payments being utilised for repayment of the relevant loans. It is standard practice with most loan arrangements and, indeed, with most modern businesses, utilities, and service providers.

9.10. The use of the affordability criteria attempts to ensure that there will be sufficient funds when payments are to be made and reminders are sent to customers in the lead-up to payments being drawn. Facilities are in place for re-scheduling payments when there are insufficient funds, but it is incumbent on the customer to make new, suitable arrangements.

9.11. Given the relatively small credit limits, any other form of repayment would be highly impractical. The costs associated with debt recovery of these amounts makes any other method uncommercial.

Financial Hardship

9.12. Cigno's financial hardship policy is superior to those required under National Consumer Credit Protection Act.

9.13. The same warnings are offered as would be required under the Act. Direct links to charities, financial aid centres, government budgeting tools and low or no-cost lenders are also voluntarily offered. These disclosures mean that consumers are well informed as to other options that might be suitable in the customer's circumstances.

9.14. Furthermore, Cigno explains multiple times in the application process that its clients are not afforded the protections under the Act and should they wish to have them then the loan and service is not suitable.

9.15. In cases of financial hardship, there is a discretion to;

a. arrange for suitable alternative payment plans with the customer;
b. offer payment freezes (moratoriums);
c. waive fees and interest to offer a reduced settlement sum; and
d. write off the owed balance altogether.

9.16. ASIC has received information through use of multiple section 33 notices, which includes the internal dispute resolution and hardship policies as well as narratives which demonstrate engagement with customers in circumstances where financial accommodations have been regularly made. Yet in CP330, ASIC has not considered any of this information and as a result has not allowed stakeholders to give feedback on the complete circumstances. This highlights the deception and a skewed picture towards the service offered by Cigno in relation to continuing credit contracts.

Regular File Review

9.17. Cigno also has a regular internal reviewal process of all accounts where more than the original contract has been paid. Customers are then contacted, and adjustments are made where required to ensure no financial hardship occurs. Fees and charges are often written off and overall debt is reduced.

10. The (lack of) alternatives

10.1. ASIC should be very circumspect when entertaining the possibility of reducing the availability of emergency credit. The effects of cutting off the last resort for credit for a substantial portion of the community will be significantly detrimental.

10.2. When grappling with the concept of “significant consumer detriment”, ASIC must recognise that ‘high cost’ is not to be equated with “significant detriment”. In order to properly appreciate whether consumers suffer “significant detriment”, ASIC must appreciate that if emergency credit is not available, people who are in need will resort to behaviours which may be significantly more detrimental than any risk of detriment associated with a continuing credit contract with Cigno Services.

10.3. For example, a person who has immediate need for $500 but only has access to $300 and who is not eligible for regulated credit may attempt to gamble their last $300 in the hope that they can turn it into the required $500. Other possibilities, more detrimental to the person in need of cash (and the community generally) include the sale of valuable heirlooms, stealing or the sale of items needed to earn future income.

10.4. If a person has been given a disconnection notice for a utility and knows that a direct deposit will be attempted from his or her account tomorrow but will not receive funds for a week, that situation already raises the spectre of detriment being suffered: the customer may be charged a dishonour fee of $40 by his or her bank and the utility will be cut off. If, in those circumstances, the customer chooses to borrow the $265 needed to pay the utility bill, knowing that it will cost him $430 over the next six weeks, that is a decision that he or she should be entitled to make for himself or herself. There is nothing inherently irrational about that choice. It is a choice that ordinary, well-informed Australians, currently make on their own behalf. The balance of competing detriments poses an unattractive choice, but it is a choice which the customer, when properly informed, is capable of making.

10.5. The hypothetical given in the above paragraph is much more honest, realistic and typical of the situations in which Cigno's customers approach it for assistance. It accords with the statistics which are representative of the standard customer experience. It is the yardstick by which 'significant consumer detriment' should be measured.

A less drastic measure appropriate

11. Work with ASIC

11.1. Cigno's submission above has demonstrated that ASIC is proposing to act on very limited and wrong information.

11.2. Cigno is happy to work with ASIC to provide whatever information and assistance it can in order to improve its product, improve its customers' experience and reach a sensible resolution from a regulatory perspective.

11.3. Cigno offers to provide ASIC with a tour of its business. All of the errors and misconceptions disclosed in CP330 (some, but by no means all, of which are pointed out in this submission) and which presently infect ASIC's thinking in relation to its proposed use of the product intervention power can be demonstrated.

11.4. Cigno would also be happy to provide any additional information and detailed statistics about Cigno's business, its processes, and its clients.

12. Independent Research

12.1. As part of its submission to ASIC providing feedback in response to CP316:

a. Cigno commissioned independent research from Enhance, in which a random sampling of the general public and Cigno customers have been canvassed for their views about matters relevant to CP316.
b. undertook an internal survey of its customers.
c. commissioned two independent economic analyses:
    i. an economics analysis and report prepared by [redacted] (Ph.D) of the Competition Economists Group, entitled Benefits and detriments of short term lending model; and

ii. an economic analysis and report prepared by Synergies Economic Consulting.

12.2. For the same reasons as given in 6.6 above, these reports are all relevant to this submission by Cigno in response to CP330. Relevant extracts are of the Synergies research are provided in the Appendix. The Enhance Research and Report by [redacted] (Ph.D) are included as attachments.

13. Alternatives

13.1. Cigno submits there are alternative measures which may warrant exploration. For example, Cigno would be happy to work with ASIC to find ways in which it can subscribe to external dispute resolution services. If subscription to an existing EDR service is not feasible, Cigno would be willing to discuss with ASIC options for funding an independent ombudsman, appointed by ASIC and who would report to ASIC.

Conclusion

15.1 Last resorts are, by their very nature, unattractive. But the consequences of removing a last resort is likely to be more unattractive.

15.2 Historical experience accords with orthodox economic modelling of credit markets: where there is a need for emergency funds, people will find a way to satisfy that need. Cigno presently services a vital gap in the regulated credit market. Were customers deprived of that option, their behaviours are likely, in many cases, to be more desperate and more detrimental: both personally to them and their families and also to the community as a whole.

15.3 Cigno rejects ASIC's assertion that it targets vulnerable customers and customers who are suffering from financial instability and hardship and are likely to default. Defaults are costly and Cigno continually strives to reduce the levels of default. The empirical evidence demonstrates that the vast majority of customers keep their commitments. Were it otherwise, Cigno would not remain a viable business.

15.4 ASIC has no rational basis to promulgate the proposed product intervention order. In support of its conclusion of significant consumer detriment, ASIC simply relies on anecdotal, atypical and extreme examples which are entirely unrepresentative of the broader experience of customers. Such material is not apt to permit a reasonably based conclusion of significant consumer detriment. ASIC should adopt a properly informed empirical approach to the proposed exercise of the power.

15.5 Further, Cigno submits that ASIC's proposed use of the legislative instrument is inappropriate in circumstances where it is clearly targeting the continuing credit contracts offered by BHF Solutions Pty Ltd with Cigno Services. As ASIC notes in paragraph 30 of CP330 only BHF Solutions Pty Ltd issues continuing credit contracts in these circumstances.

15.6 Cigno invites ASIC to engage with it to properly understand its business and its customers and their needs. Only through such proper engagement can ASIC be reasonably informed about whether the threshold of significant consumer detriment is met.

Appendix

The pages following (PP 20 to 34) are relevant extracts of Synergies economic report prepared August 2019.

Synergies
ECONOMIC CONSULTING

Executive Summary

The Australian Securities and Investments Commission's (ASIC) released a consultation paper (CP316) on 9 July 2019, proposing to use a new product intervention power under Part 7.9A of the *Corporations Act 2001* to either prohibit or impose centrally-determined price caps on the short-term lending model based on a perceived 'significant consumer detriment' arising from its use.

Cigno Pty Ltd (Cigno) and Gold-Silver Standard Finance (GSSF), who operate a business model under which Cigno assists consumers with obtaining access to short term credit offered by GSSF, engaged Synergies to prepare a report addressing several matters arising out of CP316. Synergies' key findings and response to the questions asked by Elliot May Lawyers, on behalf of Cigno, are as follows.

1. What are the benefits of access to credit for consumers? What are the detriments to consumers who are denied access to credit?

- There is strong evidence that access to financial services improves investment and wealth outcomes for individual and firms. For consumers, access to finance enables them to enhance their long-term economic status, including by enabling consumers to smooth out major costs over time and avoid short term financial hardship or loss of wellbeing.
- Without access to credit, consumers can end up in detrimental situations such as seeking our riskier credit sources, default on bills or go without essential goods and services (food and electricity). Particularly for low-income consumers, detrimental social impacts such as health problems, incidence of illegal activity, intergenerational joblessness and mental health issues are correlated with lack of financial access.

3. Do you consider that the use of the short term lending model without centrally-determined price caps will cause, or is likely to cause, significant detriment to consumers? If so, what features of the short term lending model contribute to significant detriment to consumers?

- Our analysis shows that a significant proportion of consumers, who would otherwise not have access to credit or alternative sources of funds, are reliant upon the short term lending model to alleviate short term financial emergencies.
- In the absence of the short term lending model, these consumers will be denied access to short term credit and hence exposed to the adverse consequences associated with failing to alleviate short term financial distress. In the majority of cases, these consequences are likely to be associated with poorer outcomes relative to the scenario in which they are able to access short term loans.
- It is reasonable to conclude that the short term lending model represents a 'last resort' for a significant proportion of consumers seeking to alleviate short term financial distress. As such, under the scenario in which the short term lending model is no longer available, these consumers would not be provided with access to a mechanism to alleviate their short term financial distress.

4. **Do you consider that a legislative prohibition on the use of the short term lending model (or the imposition of centrally-determined price caps below market-determined prices for credit offered under the short term lending model) will cause, or is likely to cause, significant detriment to consumers? If so, what is that detriment and how is it measured?**

- We expect that in the case of legislative prohibition (or the implementation of centrally-administered price caps) a significant proportion of the consumers currently reliant upon the short term lending model would no longer have access to credit and some of the consumer surplus currently generated by the market would no longer be generated, causing a reduction in overall consumer surplus and exposing these consumers to the adverse consequences of not being able to alleviate short term financial distress.

5. **What alternatives to prohibition (or price caps) can be taken to prevent significant detriment to consumers from the use of the short term lending model? Are those alternatives superior to prohibition and price caps? Why or why not?**

- Government should investigate ways to better enable consumers to make informed decisions in the short term credit market, including consumer counselling, education programs and greater transparency to consumers in terms of their options available in the market.
- This will be effective in ensuring that those consumers that use products supplied under the short term lending model do not have access to a more appropriate form of credit or funds, as it is these consumers who may experience detriment under the short term lending model relative to the counterfactual.
- Effective policies should target underlying drivers of demand for short term credit, including improving short term financial assistance programs for households experiencing financial distress and strengthening the safety nets for households at risk of financial distress.
- These approaches will be more effective in improving consumer outcomes than a policy designed to restrict these consumers from accessing the only credit option available to meet short term financial distress.

6. **What, if any, indirect or secondary effects will result, or will likely result, to other persons in the community, if a consumer who would otherwise get credit offered through the short term lending model cannot source price-capped or cheaper sources of credit in the market?**

- In addition to the direct impact on consumers, the restriction of access to short term loans will have a wide range of negative social impacts such as unemployment leading to increased reliance on welfare services and health consequences (mental illness) adding strain to the pressured health system; homelessness leaving people vulnerable to violence, criminal activity, victimisation, long term unemployment and chronic ill-health; and drug abuse and other criminal activity (as an attempt to alleviate financial hardship).

2 Access to credit and the short term lending market

This section provides an overview of the credit industry and the short term lending market, in addition to identifying the key benefits of access to credit.

2.1 Overview of the credit market

The Australian credit market is comprised of a wide range of service providers, including banks, specialised finance companies, credit cooperatives, short term loan companies, retail outlets and after pay services. In recent years, the market share held by traditional lending institutions (i.e. banks) has decreased as an increasing proportion of finance is sourced from alternative providers.[1]

In 2015, the personal loans market accounted for around $100 billion, according to the RAB. The personal loan market services a range of consumer needs, including mortgages (making up 56.3% of all personal debt), investments (such as rental properties), personal debt (cars, consumer items, holidays), student debt and credit card debt. These loans vary significantly in what purpose they serve and in terms of value and duration. Data from the Australia Bureau of Statistics (ABS) shows:

- The average mortgage amount was $388,100 in 2018, with an average rate of 4.44% and terms being anywhere from 10 to 40 years. That year, a total of $247.7 billion was borrowed to buy properties.
- The average financed car sells for $35,797, with an average new car loan interest rate of around 6.3 per cent and terms ranging from 36 to 84 months. In 2018, Australians borrowed $16 billion for car purchases.
- The average personal loan is $12,643, with an average personal loan interest rate of 10.91% and varying terms.

As shown, the credit market services a range of consumer's financial needs however mostly for high-value, long-term loans such as for buying residential property. Most financial needs covered by the current credit market are financial investments that are planned investment, such a buying a house. Even if unplanned in nature, such as buying a new car due to a breakdown, that particular line of credit for $35,000 may not be accessible by consumers who are financially stressed and have a poor credit history. The regulations and restrictions under which the typical credit market operate does not allow

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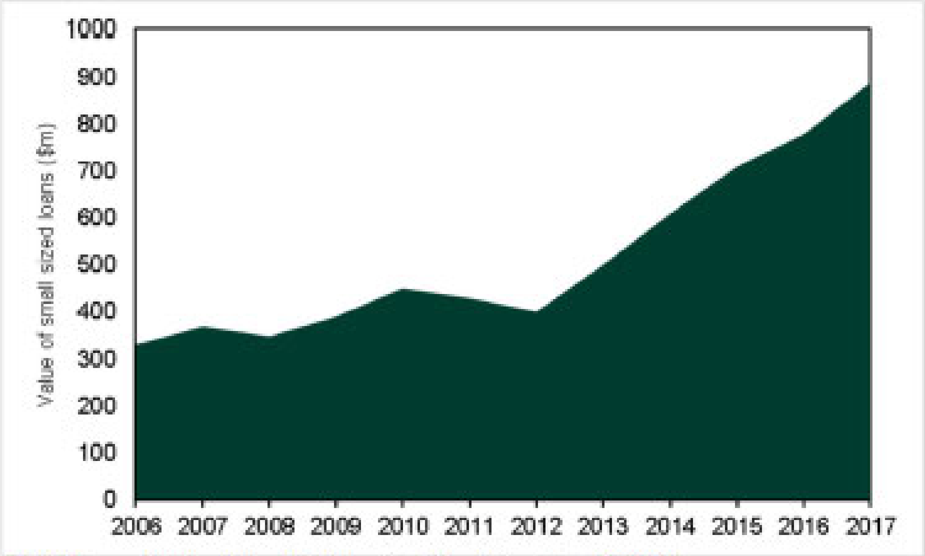
1 Kane, A. Non-banks 'chipping away' at major bank share, November 2018. Available at: https://www.mortgagebusiness.com.au/breaking-news/12830-non-banks-chipping-away-at-major-bank-share

those financial entities to offer credit to high-risk, low-income borrowers, leaving a gap in meeting loan demand.

2.2 Short term lending market

Since 2016, around three million short term loans totalling $1.85 billion have been provided to around 1.6 million Australian households.[2] As shown in the figure below, this represents a tripling of the value of short term small sized loans since 2006.

Figure 1 The value ($m) of small sized loans over the last decade



Data source: Digital Finance Analytics, *Value of total loan stock of small loans from 2006-2017*

The following sections provide an overview of the supply and demand side of the short term lending market.

Supply of short term lending products

Short term lenders primarily operate to provide services and products to meet the needs of lower socioeconomic households experiencing short term financial stress. These households typically struggle to access credit from other financial outlets. Over the past ten years, the sector has seen significant growth in the market share held by non-bank lenders, which now make up almost 35 per cent of the market. The table below provides an overview of the supply side of the short term lending market and the key services offered.

2 Digital Finance Analytics, 'Growth in non-bank lenders'.

Table 1 Service providers in the short term lending market

Company	Loan amount	Loan term	Turnaround time	Establishment fee	Monthly fee	Arrears fee
Cash Converters	$50 to $2000	Up to 12 months	48 hours	20%	4%	$33
Cash Train	$200 to $2000	10 weeks-3 months	1 day	20%	4%	$25
Credit24	$500 to $2000	6-12 months	Same day	20%	4%	$7
Fair Go Finance	$500 to $2000	3-12 months	30 minutes	20%	4%	
Ferratum	$500 to $1,900	Up to 6 months	Same day	20%	4%	$38.50
Money Me	$500 to $2000	1-2 months	1 hour	11-20%	4%	$25
Money Spot	$200 to $2000	Up to 90 days	1 hour	20%	4%	$35
Perfect Payday	$100 to $2000	16 days-12 months	Same day	20%	4%	$35
Speckle	$200 to $2000	3-12 months	2 days	10%	2%	$5 + $1/day default
Sunshine Loans	$150 to $2000	9-12 weeks	30 minutes	20%	4%	$30
Wallet Wizard	$500 to $5000	Up to 2 years	1 day	47.8% fixed p.a.	$10	-
Cash Australia	$100 to $2000	16 days-12 months	24 hours	20%	4%	-

Source: https://www.finder.com.au/payday-loans/view-more-payday-loans

Research conducted in preparing this report indicates there are limited alternatives available to consumers seeking funds to deal with short term financial distress. There are no Australian financial institutions regulated by the Australian Prudential Regulation Authority (APRA) that offer sub-$1,000 personal loans and none of the major Australian banks offer sub-$2,000 personal loans (although certain customers may be approved for personal overdrafts of $100 or more).[3] The table below provides a summary of the limited alternatives available to consumers seeking access to short term credit or financial assistance.

Table 2 Short-term credit alternatives to payday lending

Credit option	Advantage	Disadvantage
Credit Unions and Building Societies	• A small number offer loans starting at $1,000	• Loans are only available to members. • Loans are not readily and speedily accessible. • Applicant must show evidence of employment, regular income and 'worthwhile' purpose for the loan.

[3] Australian Centre for Financial Studies, Trends in the Australian small loan market, October 2015. Available at: https://australiancentre.com.au/wp-content/uploads/2015/10/Commissioned-paper-Trends-in-the-Australian-small-loan-market.pdf

Credit option	Advantage	Disadvantage
Centrelink	• Most Centrelink customers can elect to receive a proportion of their future payments in advance. • Advance payments come in cash form • Payments are readily and speedily available • Repayment amounts and periods are fairly and clearly defined.	• There is a low amount available for Centrelink recipients without dependent children. • For higher advance amounts, the standard Centrelink Advance recovery period of six months may make the fortnightly reduction of Centrelink payments quite large.
Social microfinance organisations	• Offer up to $1,000 loans • Cost less that commercial small loans	• There are only three in Australia, with only one with significant coverage – No Interest Loan Scheme (NILS). • Cash is not provided as the loan is tied to a product or service • The loan process is complicated and slow • Applicants often perceive that the welfare aspects of the application process may expose them to a higher emotional cost than commercial loan procedures.
Large retailers for some home goods	• Offer interest free options. • Provides access to household appliances and furniture.	• Options are attached to credit card which is against the general issue of low-income and cash-poor households' relationships with credit cards. • Household appliances and furniture are not a key reason why people seek short-term lending, such as to pay a bill, buy food or pay back another loan.
Pawnbroking	• Provides cash in exchange for a pawned item • Loans are readily and speedily available.	• Applicant must give up their belongings, assuming they have something of value • Payment period can be severely disrupted by a missed payment. • End dates are unclear, especially when or whether the pawned item will be returned.

Source: Australian Centre for Financial Studies, Trends in the Australian small loan market, October 2015.

Demand of short term lending products

The short term lending market has experienced significant growth over the past two decades, driven by increased demand for short term funds. Between 2004 and 2014, it is estimated that demand for short term, small amount loans increased by 20 times.[4] This demand has been driven by several demographic and economic trends, including:

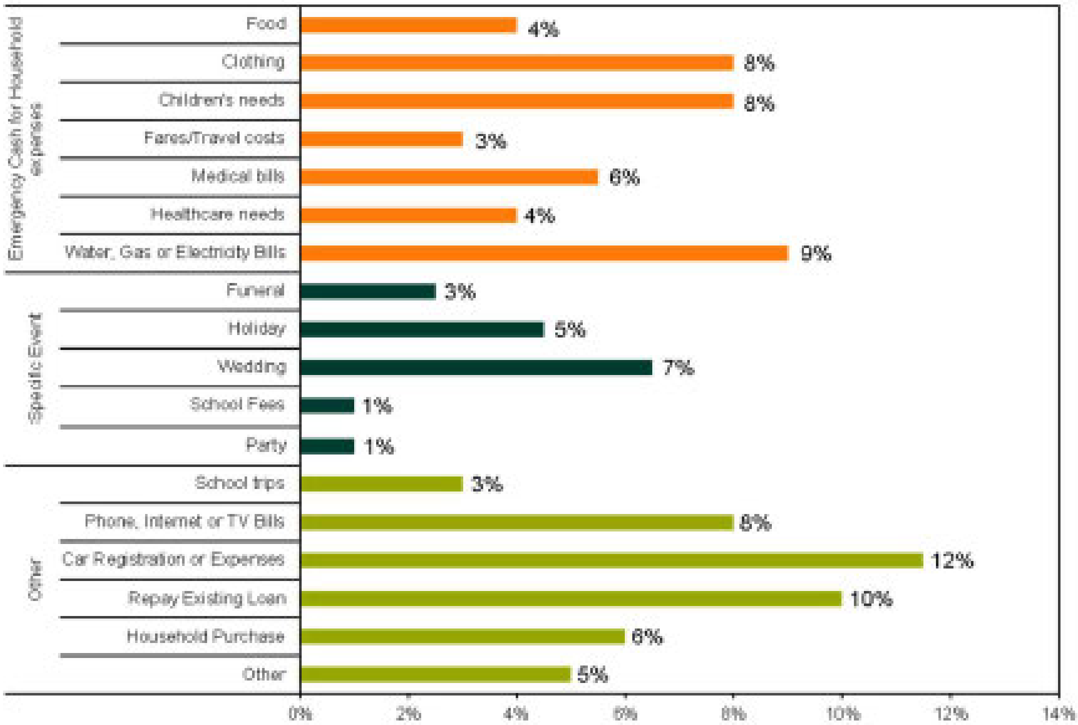
- increasing costs of living;
- increased income inequality;
- casualisation of the labour force and stagnant wage growth;
- difficulties encountered by some borrowers to access credit from traditional providers; and

[4] Australian Centre for Financial Studies, Trends in the Australian small loan market, October 2015. Available at: https://australiancentre.com.au/wp-content/uploads/2015/10/Commissioned-paper-Trends-in-the-Australian-small-loan-market.pdf

- rising levels of mortgage stress.

These trends have resulted in an increasing proportion of households requiring access to short term funds to alleviate short-term financial stress, as shown in Figure 2 below. The figure shows that 72 per cent of short term credit is accessed to meet essential expenses including food, clothing, medical expenses, utility bills, child-related expenses, and car-related expenses.[5]

Figure 2 Specific purpose for the use of SACC loan in 2015



Note: Based on 26,000 household surveys conducted by Digital Finance Analytics in 2015
Data source: Digital Finance Analytics and Gill North (2015) 'Small Amount Credit Contract Reforms in Australia: Household Survey Evidence and Analysis'.

A significant proportion of demand for short term lending is accounted for by people working in secondary markets or reliant on Centrelink payments and with average incomes of around $36,000 to $47,000. Short term borrowers are also more likely to be single parents, have a history of financial difficulty, and have no or limited alternative options for addressing short term financial stress.[6] Lending restrictions mean that this demand is largely unmet by traditional financial institutions.

[5] Noting that motor vehicles are often essential for households to maintain income generating potential.

[6] Policis, 'Payday lending in Australia'. Available at: http://www.policis.com/pdf/Old/Australia_Payday_borrowers_FINAL.pdf

An ABS study found that around 13 per cent of households were not able to raise $2,000 in a week for something important and around 19 per cent had at least one cash flow problem in the last 12 months.[7] Without access to savings or other funds, people rely on credit for unexpected expenses. However, it has been estimated that over three million adults in Australia are severely or fully financially excluded, meaning they do not have access to appropriate and affordable financial products and services[8] and 60 per cent are hampered by a bad credit history. Given the limited alternatives, short term loans are likely to be the only viable option for low income households to address short term financial stress.

The survey also assessed the reason for households accessing short term credit as opposed to alternative sources of funds. Among 'distressed households', 79 per cent identified short term credit as their only option, with 17 per cent stating that they accessed short term credit out of desperation. This compared to 'stressed households', for which convenience identified by 60 per cent of households, with only 32 per cent of households identifying short term credit as their only option.[9]

In summary, a significant proportion of the demand side of the short term lending market is comprised of low-income households experiencing significant financial distress, which require short term credit to meet essential household expenses and have limited access to alternative forms of credit or funds.

2.3 Benefits of access to credit and short term lending

Short term loans are beneficial to low income consumers as they are often unable to access alternative sources of credit due to failing to meet the minimum requirements for receiving loans. In many cases, the money is received instantly from over-the-counter providers or within a few hours or days from online providers making them highly convenient with these consumers often requiring the money to meet immediate needs.

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[7] ABS, 'General Social Survey: Summary Results 2014'. Available at: https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/C6BF68E57D3A308CCA256E21007686F8?opendocument

[8] Centre for Social Impact, 'Measuring Financial Exclusion in Australia', April 2014. Available at: https://www.nab.com.au/content/dam/nabrwd/documents/reports/financial/2014-measuring-financial-exclusion-in-australia.pdf

[9] Digital Finance Analytics and Gill North (2015). Small Amount Credit Contract Reforms in Australia: Household Survey Evidence and Analysis.

Access to short-term credit can support financial well-being in several ways:

- consumers can benefit from access to short-term credit to cover unexpected expenses or make ends meet when facing a temporary income shortfall;
- availability of formal short-term credit can reinforce effective financial inclusion and prevent the most vulnerable from having recourse to illegal lenders, or to family/friends thus preserving their privacy over their financial matters; and
- in effectively regulated and supervised short-term credit markets, some users report positive financial experiences and highlight the convenience of the short-term credit products they have used.[10]

When consumers are denied access to this form of credit, they are forced to source alternatives which can often be far riskier, such as, loans from family and friends, defaulting on bill payments or bouncing cheques. There is evidence that in areas where some short term loan products are banned, consumers typically have lower credit scores, indicating they may have defaulted on loans or fallen behind on bills in the absence of access to short term credit.[11]

Particularly for low-income households, a range of social issues are strongly correlated with lack of financial access, including health problems, intergeneration joblessness, increased incidence of crime, inadequate housing and adverse responses to financial stress such as relationship breakdown and mental health issues. There are discussed further in Section 0.

[10] OECD (2019), Short-Term Consumer Credit: provision, regulatory coverage and policy responses. Available at: http://www.oecd.org/daf/fin/financial-education/Short-term-consumer-credit-report.pdf

[11] Russell, K, Do Payday Lending Bans Harm Consumers? Evidence from the Pawn Market, April 2017. Available at: https://pdfs.semanticscholar.org/b3f3/a7f75f2d914dcb1de3949dc78f68f67a5cb4.pdf

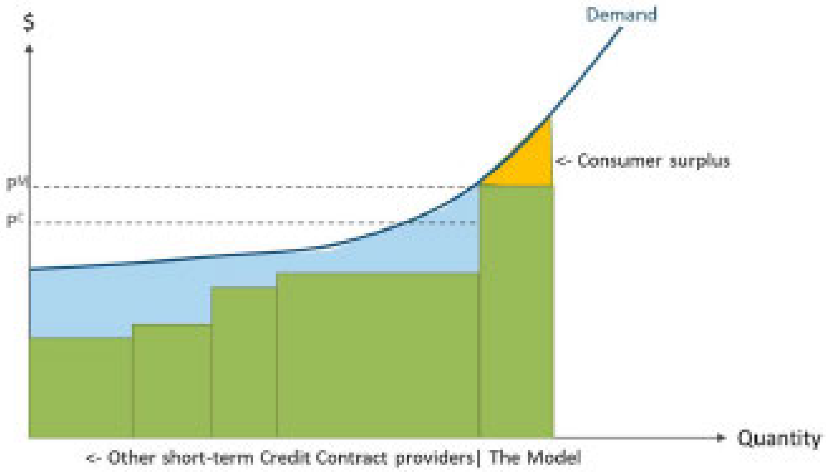
4.3 Regulatory impact on the short-term lending market

The market clearing process in credit markets differs to that for normal goods and services. In a typical market, demand follows a downward sloping curve (i.e. as prices increase, demand falls), such that those consumers with the highest willingness to pay are able to access the good or service. In such a market, willingness and capacity to pay are effectively the same. That is, if a consumer is constrained by their capacity to pay for a good or service, they are not able to access the product.

The market for loans works differently. Borrowers in most urgent need of the funds with no access to cheaper sources of finance tend to have the highest willingness to pay in terms of the fees and charges levied on credit, despite often having the lowest capacity to pay (as a result of being low on funds, hence desiring access to credit). As such, borrowers willing to pay the highest fees and charges typically have the highest default risk. Since lenders attempt to minimise their risk exposure, borrowers with the lowest willingness to pay (who also represent those borrowers with the lowest default risk) are supplied with access to credit (in priority to those with high default risk). As such, rather than sloping downward, the market demand curve for credit can be considered upward sloping as demonstrated in the figure below.

In terms of the supply side of the loan market, the key factor that differentiates between lenders in terms of their cost of supply, and hence the price (fees and charges) at which credit is provided, is the lender's risk exposure. As per the above discussion, lower cost lenders service the lower risk (lower willingness to pay) borrowers. Supply can therefore be illustrated by a cost of supply curve similar to those used to describe commodity markets or electricity generation. Here, the lowest risk lenders sit on the left of the supply curve. Since it services the very high risk segment of the market (see above) providers operating under the short term lending model are at the right end of the supply curve.

Figure 5 Loan market clearing mechanism



Source: Synergies Illustration.

The diagram illustrates that P^M is the price at which supply is cleared. Importantly, this is not the price charged by all lenders as it is above the willingness to pay of the majority of the demand. From this observation, the consumer surplus realised in this market can be derived as the area between the demand curve and the supply blocks. It is illustrated by the light blue and orange areas between the supply and demand curves.

The orange triangle highlights the consumer surplus generated by the supply provided by the short term lending model. If a price cap was introduced, such as P^C, supply provided by this model would no longer be financially viable and the corresponding bar would drop out of the supply curve. This means that consumers in the above diagram serviced by the final green block (representing the short term lending model) would no longer have access to credit and the orange triangle of consumer surplus would no longer be generated, causing a reduction in overall consumer surplus.

5 Short-term lending and consumer detriment and adverse impacts

5.1 Short term lending model and consumer detriment

Part 7.9A of the *Corporations Act 2001* provides ASIC with powers to make product intervention orders to reduce the risk of significant detriment to retail clients resulting from financial products. The Act identifies that the following must be considered in assessing whether a financial product has, or is likely to, resulted in significant detriment to retail clients:

- the nature and extent of the detriment;
- without limiting the first point, the actual or potential financial loss to retail clients resulting from the product; and
- the impact that the detriment has had, or will or is likely to have, on retail clients.[22]

Assessing the extent to which a financial product results in significant consumer detriment and the impact the detriment has on consumers requires consideration of consumer outcomes under the counterfactual scenario. That is, the consequences for consumers under the scenario in which the short term lending model was no longer available.

As noted in section 3, the short term lending model enables consumers to access a mechanism to alleviate short term financial distress through the provision of short term credit to consumers who would otherwise not have access to credit or alternative sources of funds, with 67.5 per cent of consumers reporting that they had previously been rejected by alternative credit providers (indicating these consumers are unlikely to have access to alternative sources of credit or financial assistance) and 73.6 per cent of consumers stating they would have received significant detriment if not able to access credit under the short term lending model.[23] The analysis of loan portfolio data also shows that 65 per cent per cent of consumers that access loans under the short term lending model repay their loans, with the average consumer accessing 2.6 short term loans per annum. This indicates that a significant proportion of consumers are reliant upon the short term lending model to alleviate short term financial emergencies.

Based on the above, it is reasonable to conclude that the short term lending model represents a 'last resort' for a significant proportion of consumers seeking to alleviate

[22] Corporations Act 2001, Part 7.9A.

[23] Based on survey results provided by Cigno.

short term financial distress. As such, under the scenario in which the short term lending model was no longer available, these consumers would not be provided with access to a mechanism to alleviate their short term financial distress.

This scenario is likely to result in significant adverse consequences for consumers. Given the purpose of the majority of short term loans obtained by consumers (see section 0), the removal of this model and subsequent inability of consumers to access credit is likely to expose these consumers to significant adverse consequences that are less attractive to these consumers than the costs incurred under the short term lending model, including:

- reliance on illegal lending;
- failure to meet basic expenses such as rent, utility bills, etc., resulting in a loss of essential services (e.g. electricity), housing, etc.;
- pawnbroking of assets, including assets critical to future income generation such as motor vehicles; and
- adverse social consequences from failure to meet financial commitments, including relationship breakdown, domestic violence, drug use and homelessness.

Hence, whilst the costs under the short term lending model are higher relative to other forms of short term credit (attributable to the risk profile faced by short term lending providers), as the last resort access to credit for many consumers, the model provides an important mechanism for consumers to alleviate short term financial distress that have no viable alternative and would hence otherwise be exposed to the adverse consequences identified above. Assessment of consumer outcomes against this counterfactual indicates that rather than imposing significant detriment on consumers, the short term lending model provides a mechanism that enables consumers to avoid significant adverse consequences.

It is acknowledged that a proportion of consumers who access credit under the short-term lending model may have viable alternatives to managing their short-term financial distress and hence may experience detrimental impacts under the short-term model. However, given the significant majority of consumers under the short term lending model that have been rejected from accessing other sources of credit, combined with the essential nature of the expenses for which short term loans are acquired, it is reasonable to conclude that these consumers are a minority and that the majority of consumers currently using the short term lending model are doing so as a result of having no viable alternatives for managing their short term financial distress.

As demonstrated in section 3, these characteristics are applicable to a significant proportion of the consumers currently serviced under the short term lending model, for which the model represents a last resort. As shown in section 4, the implementation of a centrally-administered price cap on short term loans will make the short term lending model non-viable, meaning that these consumers will be denied access to short term loans and exposed to the adverse consequences identified above.

5.3 Adverse social impacts of reduced access to credit

The inability to access credit for low-income consumers results in not only significant adverse consequences for the consumer and their dependents (as discussed in section 5.1) but also for the wider community.

Adverse consequences from failure to meet financial commitments, such as losing employment, developing health problems and becoming homeless can cause significant stress on the wider community and government social services and programs. For example, a person who loses their job due to being unable to meet short term financial requirements will result in an increased reliance on income support and other welfare services. It may also have a detrimental impact on the individual's capacity to obtain employment over the long term. The health consequences of unemployment, such as mental illness, can also add greater strain on the pressured health system.

Homelessness results in significant social and economic costs to the community. It is one of the most severe forms of disadvantage and social exclusion that a person can experience. Homelessness makes it difficult to engage in education and training and can leave people vulnerable to violence, criminal activity, victimisation, long term unemployment and chronic ill-health. People who are homeless impose a disproportionate demand on publicly funded medical facilities.

It is also not uncommon for those experiencing prolonged financial distress to resort to drug abuse and engage in theft as an attempt to alleviate this hardship. Crime causes stress on the community, law enforcement resources and adds further stress to the prison system. The cost of crime (policing, prisons and security) is a significant cost to the nation as a whole. Another adverse consequence may be the impact of students facing financial hardship with no means of credit. According to a study, around 25 per cent of students reported experiencing financial hardship and their studies being impacted.[25] These students may drop out of university and not find the means to return or would rather avoid return to financial hardship, in turn, reducing the human capital of the population.

5.4 Alternatives to addressing detrimental impacts on consumers

The imposition of a centrally-administered price cap on short term loan products, while potentially removing products provided under the short term lending model from the market, will not alleviate consumers' needs for short term lending. As discussed in section 2.2, demand for short term credit is driven by factors related to financial hardship

[25] Longitudinal Surveys of Australian Youth, 'Does financial stress impact on young people in tertiary study?' 2014.

(e.g. increasing cost of living, casualisation of the labour force) that will not be affected by changes to the regulation of the short term credit market.

Hence, the outcome from the imposition of price caps will be to simply distort the short term credit market and reduce access to short term loans for those consumers with the greatest need. Rather than using distortionary regulatory interventions in an attempt to improve outcomes for these consumers, a more effective approach would involve a combination of:

- measures designed to better enable consumers to make informed decisions in the short term credit market, including consumer counselling and education programs and measures designed to provide greater transparency to consumers in terms of their options available in the market; and
- policies that target the underlying drivers of demand for short term credit, including improving short term financial assistance programs for households experiencing financial distress and strengthening the safety nets for households at risk of financial distress.

The first of these measures will be effective in ensuring that those consumers that use products supplied under the short term lending model do not have access to a more appropriate form of credit or funds, as it is these consumers who may experience detriment under the short term lending model relative to the counterfactual.[26] Meanwhile, policies that target the underlying drivers of the need for short term credit will be more effective in improving consumer outcomes than a policy designed to restrict these consumers from accessing the only credit option available to meet short term financial distress.

[26] That is, if consumers are not aware of the full range of short term credit options available and have access to other, lower cost short term credit products, failure to pursue these alternative options will result in a detriment to these consumers (noting that this scenario accounts for a small proportion of consumers that use the short term lending model).