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### **Consultation Paper 330**

#### **Using the product intervention power: Continuing credit contracts**

The National Credit Providers Association (NCPA) welcomes the opportunity to comment on ASIC's consultation paper - *CP 330, Using the product intervention power: continuing credit contracts*. 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).

As the peak organisation for the small loans sector, the NCPA has for many years sought intervention by the regulator to prevent businesses that structure their business arrangements or design financial products that evade the regulatory reach of the National Consumer Credit Protection Act or the National Credit Act, where the financial products provided by those businesses can be shown to cause consumer harm.

This is of particular concern to NCPA members and all the small and medium loans businesses that are subject to the regulatory controls and oversight (s5 of the National Credit Act defined as a short-term credit contract) of the very legislation enacted to protect consumers from harm caused by providers and their products. 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 consumers.

Where a product is found to not comply and cause consumer detriment, such as the product described in CP 330 that is defined as a continuing credit contract under s12BAA(7)(k) of the ASIC Act, as a credit facility within the meaning of Reg 2B of the Australian Securities and Investments Commission Regulations 2001, the regulator take the necessary and appropriate action, after consultation and review, to prevent the ongoing sale or distribution of that product.

The NCPA considers that presently, continuing credit contracts as described in CP 330 and issued by BHF Solutions Pty Ltd (BHFS) and their associate Cigno Pty Ltd via a service agreement, where the total fees charged exceed the maximum charges prescribed by the continuing credit exemption and reg 51 of the National Credit Regulations, should be banned.

The NCPA supports an industry wide product intervention order to prevent credit providers and their associates from issuing continuing credit contracts.

The NCPA also supports the requirement for BHFS and Cigno and any other provider of continuing credit products to hold an Australian Credit License and is a member of the Australian Financials Complaints Authority (AFCA).

The NCPA considers that all continuing credit products used by companies who provide loans of less than \$2000 so as to avoid consumer protections for small amount loans, be subject to the regulations under the National Consumer Credit Protection Act, as are small amount credit contracts.

The NCPA would encourage ASIC to use all tools at its disposal to monitor into the future the activities and business practices of providers of continuing credit contracts, including through the use of monitoring and external compliance orders to ensure the behavior ceases.