



Promoting Responsible Consumer Lending

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NCPA response to CP 316 – Using the product intervention power: Short term credit

The National Credit Providers Association (NCPA) welcomes the opportunity to comment on ASIC's consultation paper – Using the product intervention power: short term credit. 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 these dodgy financial operators 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 316 that is defined as '*short term credit*' under *s6(1) of the National Credit Code*, the regulator take the necessary and appropriate action, after consultation and review, to prevent the ongoing sale or distribution of that product.

The NCPA has long held the view operators that are designing products that fall within the scope of *s6(1) of the National Credit Code* will continue to do so until prevented. The actions of the few including those identified in CP316, are becoming more prevalent with NCPA members providing evidence of other groups structuring their arrangements to get around current laws.

The NCPA commends ASIC for using the product intervention powers and urges the use of intervention in relation to 18(a): an individual product intervention order which applies to a person, or specified persons in relation to a class of products.

The NCPA would also urge ASIC, if an application for an Australian Credit License (ACL) is received by those persons or businesses that provide products designed to cause harm or detriment to consumers through the use of a services agreement with another provider as described in CP 316, (*Current use of the short term lending model*), to reject any application from any person or business that has conducted their business affairs in such a manner as to evade the responsible lending obligations that apply to small amount credit contracts.

C1Q1 As described in CP 316, yes it does and has been shown to do so and is outside of the responsible lending obligations required under the NCCP Act 2009.

C1Q2 The Product Intervention Order as defined in CP316 is applied on a market wide basis, only where persons or a specified person is applying the same or similar business model as described in CP 316, through the use of a service or collateral agreement, be applied.

C1Q3 Yes

C1Q4 The NCPA considers that any firm that provides a financial product as defined in the Australian Securities Investment Commission Act 2001, Section 12BAA be required to have an Australian Credit License and be subject to the regulatory requirements of the ASIC Act, the National Consumer Credit Protection Act and the National Credit Act.

The NCPA supports the use of a Product Intervention Order to prevent the continuing use of service agreements that provide financial products that extract significant fees that cause consumer harm. The NCPA would encourage the regulator to use all tools at its disposal to monitor into the future the activities and business practices of Cigno and GSSF or any other entity they may morph into in the future, including through the use of monitoring and external compliance orders to ensure the behaviour ceases.