



ASIC
Australian Securities &
Investments Commission

PRODUCT INTERVENTION ORDER NOTICE

ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2022/647

Introduction

1. The Australian Securities and Investments Commission (**ASIC**) issues this notice under subsection 1023L(3) of the *Corporations Act 2001* (the **Act**).
2. Subsection 1023L(3) of the Act requires ASIC to publish on its website, with each product intervention order made by ASIC, a notice that:
 - (a) describes the significant detriment to retail clients that has resulted from, or will or is likely to result from, the financial product or class of financial products to which the order relates, and sets out why the order is an appropriate way of reducing the detriment; and
 - (b) describes the consultation that ASIC undertook in relation to the order; and
 - (c) if the order comes into force after it is published—specifies the day it comes into force.
3. This notice accompanies *ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2022/647* (the **order**) dated 13 July 2022. The order relates to short term credit facilities as defined in the order and described in paragraphs 7-9 below.
4. The order is made with the written approval of the Minister under paragraph 1023M(b) of the Act, in substantially the same terms as *ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917* (the **2019 order**). The 2019 order was made on 12 September 2019, came into force on 14 September 2019 and expired on 13 March 2021.
5. The order comes into force on a day that is the second day after the order is registered on the Federal Register of Legislation.

A class of financial product

6. Under Pt 7.9A of the Act, ASIC can make a product intervention order in relation to a class of financial product as defined by the Act and the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**).
7. The order is made in respect of the class of financial products that consists of short term credit facilities where the short term credit facility is provided:
 - (a) by the short term credit provider to a retail client; and

- (b) in conjunction with a separate collateral contract between the retail client and an associate of the credit provider, pursuant to which the associate charges the retail client significant fees or other charges.

Note: The National Credit Code is Sch 1 to the *National Consumer Credit Protection Act 2009*.

- 8. A 'short term credit facility' is defined in the order as a contract, arrangement or understanding covered by both:
 - (a) paragraph 12BAA(7)(k) of the ASIC Act; and
 - (b) subsection 6(1) of the National Credit Code.
- 9. Under the short term credit exemption in subsection 6(1) of the National Credit Code (the **short term credit exemption**), the National Credit Code and the *National Consumer Credit Protection Act 2009* (the **National Credit Act**) do not apply if:
 - (a) under the contract, the provision of credit is limited to a total period that does not exceed 62 days; and
 - (b) the maximum amount of credit fees and charges that may be imposed or provided for does not exceed 5% of the amount of credit; and
 - (c) the maximum amount of interest charges that may be imposed or provided for does not exceed an amount (calculated as if the National Credit Code applied to the contract) equal to the amount payable if the annual percentage rate were 24% per annum.

Consultation

- 10. On 9 December 2021, ASIC released Consultation Paper 355: *Product intervention orders: Short term credit and continuing credit contracts* ([CP 355](#)), which sets out proposals under Pt 7.9A of the Act, including a proposal to make a short term credit product intervention order in substantially the same terms as the 2019 order (the **Proposed order**). ASIC requested submissions to be provided in response to CP 355 by 21 January 2022.
- 11. The proposal and questions set out in [CP 355](#), that relate to the order, were as follows:

Proposal

- D1. Subject to consultation and the Minister's written approval, we propose to make the industry-wide short term credit product intervention order by legislative instrument under s1023D(3) of the Corporations Act: see the draft product intervention order in Attachment 1 to this paper.

Your feedback

- D1Q1 Do you consider that short term credit facilities, when issued to retail clients in the way described in paragraph 23, have resulted in, or will or are likely to result in, significant detriment to retail clients? Please provide any relevant case studies and evidence (including qualitative and quantitative data) which support your response.

D1Q2	Do you consider that ASIC should make the order, which is in substantially the same terms as the 2019 order (i.e. ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2019/917)? Please give reasons to support your response, including whether you consider that there have been any significant changes in matters relevant to ASIC's decision (such as the financial circumstances of retail clients) since 14 September 2019.
D1Q3	Are you aware of entities, including BSF Solutions and Cigno Australia, that are currently issuing, or likely to issue, short term credit facilities in the way described in paragraph 23 ? If so, please provide any relevant evidence to support your response.
D1Q4	What alternative approaches could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

12. In response to [CP 355](#), ASIC received nine submissions from a broad cross-section of stakeholders including:
 - (a) consumer advocates and community legal centres;
 - (b) financial counselling organisations; and
 - (c) industry participants.
13. The submissions:
 - (a) generally supported ASIC's view of significant detriment resulting from the short term credit facilities issued in the manner described in paragraph 23 of CP 355; and
 - (b) either supported, or did not oppose, the making of the Proposed order.
14. ASIC also received further responses to CP 355 from industry participants unrelated to the Proposed order and which dealt with Proposal D2 (continuing credit contracts) in CP 355.
15. The submissions received in response to CP 355 are publicly available on ASIC's website, excluding confidential submissions.

Significant detriment to retail clients

16. This section describes the significant detriment to retail clients.
17. Subsection 1023E(1) of the Act requires that ASIC must take into account the following factors in considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients:
 - (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, will have or is likely to have, on retail clients; and

- (d) any other matter prescribed by regulations.

Note: As of the date of this notice, no matters are prescribed by regulations.

18. The significant detriment to retail clients is described below by reference to the matters referred to in paragraphs 1023E(1)(a)-(c) of the Act.
19. As outlined in CP 355, ASIC considers that short term credit facilities:
- (a) are available, and are likely to be available, for acquisition by issue to retail clients in the manner described in paragraph 7; and
 - (b) have resulted in, and are likely to result in, significant detriment to retail clients because of the combination of the following factors:
 - i. the target market includes vulnerable retail clients who are in financial difficulty and require loans generally to cover basic living expenses, many of whom have been declined for regulated credit;
 - ii. the short term nature of the short term credit facilities provides retail clients with a maximum period of 62 days to make the required repayments, increasing the amount of the repayments and the consequent risk of default than if a longer period was provided;
 - iii. the fees and charges charged under both the short term credit facility and the collateral contract were significant, and in aggregate higher than what is permitted under the short term credit exemption;
 - iv. short term credit facilities, when issued in the manner described in paragraph 7, have a high default rate, which results in large amounts of default-related fees being charged to retail clients; and
 - v. many retail clients cannot afford to repay the short term credit facilities or to repay them without suffering substantial hardship.

Nature and extent of the detriment, including actual financial loss to retail clients

20. Information available to ASIC indicates that short term credit facilities, when provided in the manner described in paragraph 7, have resulted in significant financial losses to retail clients. ASIC has also observed that the nature of the significant detriment also comprises non-financial losses.
21. The extent of the detriment to retail clients that has resulted from short term credit facilities provided in the manner as described in paragraph 7 is evidenced by the volume of retail clients who have been issued this product and the quantum of the financial losses to these retail clients.
22. ASIC has identified the following financial losses resulting from the short term credit facilities issued in the manner described in paragraph 7:
- (a) retail clients are being charged significant upfront, ongoing, and default fees in excess of what is permitted under the short term credit exemption;

- (b) additional fees from third parties are often incurred, including bank charges in relation to dishonoured direct debits and overdrawn fees; and
 - (c) as a result of the significant fees, charges and subsequent increase in overall debt, retail clients are often unable to meet other financial commitments and suffer financial hardship.
23. Retail clients do not have the following statutory protections under the National Credit Act and National Credit Code that would otherwise apply to regulated ‘small amount credit contracts’ including:
- (a) a cap on fees, being an establishment fee of up to 20% of the credit amount, and a monthly fee of up to 4% of the credit amount;
 - (b) a prohibition on charging an establishment fee to refinance the loan; and
 - (c) a cap on default fees and charges, limited to double the amount borrowed.
24. As outlined in Consultation paper 316: *Using the product intervention power: short term credit* ([CP 316](#)), retail clients can suffer significant detriment when they are charged credit fees and charges, and interest charges, which exceed the maximum permitted under the short term credit exemption, when short term credit facilities are provided in the manner described in paragraph 7 due to:
- (a) higher upfront costs compared to regulated credit products;
 - (b) high and uncapped default fees, and change of payment date/amount fees; and
 - (c) failure to assess the retail client’s capacity to meet repayments.
25. Paragraphs 50-57 of [CP 316](#) and Table 1 in the [Public Notice](#) to the 2019 order outline the significant fees that were charged to retail clients under the collateral contracts that were issued in conjunction with the short term credit facilities (in the manner described in paragraph 7), prior to the 2019 order coming into force, which included various:
- (a) financial supply fees;
 - (b) same day deposit/priority transfer fees;
 - (c) weekly account keeping fees;
 - (d) change of payment date/amount fees; and
 - (e) dishonoured payment/letter fees.
26. Following the expiry of the 2019 order, ASIC is aware that short term credit facilities currently available for acquisition by issue by BSF Solutions Pty Ltd (**BSF Solutions**), as the short term credit provider, and Cigno Australia Pty Ltd (**Cigno Australia**), as the associate, are being provided in an almost identical structure to the short term credit facilities targeted by the 2019 order. The fees charged by Cigno Australia under the collateral contracts that are issued in conjunction with the short term credit facilities (in the manner described in

paragraph 7) are of a similar nature and scale as the fees described above at paragraph 25, which include various:

- (a) financial supply fees;
- (b) weekly account keeping fees;
- (c) change of payment fees; and
- (d) default fees.

27. As explained in the [Public Notice](#) to the 2019 order, ASIC understood that when short term credit facilities were provided in the manner described in paragraph 7:
- (a) the lender fee, 5% of the amount of credit, was the only fee charged by the short term credit provider under the short term credit facility and this amounts to approximately 2% of the overall fees charged;
 - (b) the remaining fees were charged by the short term credit provider's associate under a separate collateral contract, which amount to approximately 98% of the overall fees charged;
 - (c) these fees charged by the associate under a collateral contract, comprising 98% of the overall fees charged, exceed the fees that can be charged under the short term credit exemption;
 - (d) the default rate was high; it was almost double the default rate of similar regulated products, such as small amount credit contracts, reported in an analysis published by the Digital Finance Analytics and Monash University Centre for Commercial Law and Regulatory Studies ([The Stressed Finance Landscape Data Analysis](#), October 2015);
 - (e) approximately 60% of the associate's total revenue earned in connection with the short term credit facilities was attributable to default related fees as a result of missed payments;
 - (f) approximately 30% of the associate's total revenue earned in connection with the short term credit facilities was attributable to the financial supply fees; and
 - (g) ASIC estimated that at least 270,000 retail clients had obtained short term credit in this manner from May 2016 to April 2019.
28. As evidenced by submissions received to CP 355, case studies and reports provided to ASIC, BSF Solutions and Cigno Australia use an almost identical structure to provide short term credit facilities to retail clients, compared to the short term credit facilities provided by Cigno Pty Ltd (**Cigno**), Gold Silver-Standard Finance Pty Ltd (**GSSF**) and others prior to the 2019 order coming into force. Given this, the nature and extent of the potential financial losses to retail clients are likely to be of the same nature and extent as those outlined in CP 316 as:
- (a) the maximum amount that can be borrowed is \$1,000;
 - (b) the facilities have a maximum term of 62 days;

- (c) BSF Solutions, as the short term credit provider, only charges an amount equal to 5% of the amount of credit;
- (d) Cigno Australia, as the associate, charges significant additional fees, including financial supply fees, weekly account keeping fees, change of payment fees and default fees, under a collateral contract, which exceed the maximum credit fees and charges and interest charges that are permitted under the short term credit exemption;
- (e) the short term credit facilities are promoted to retail clients who are likely to be on low incomes or in financial hardship; and
- (f) they are offered via the internet.

29. An example from a short term credit facility issued in July 2021 illustrates how short term credit facilities are currently made available to retail clients by BSF Solutions and Cigno Australia and the resulting financial losses:

- (a) a retail client was issued a short term credit facility from BSF Solutions of \$175 in July 2021 with a term of 48 days which was arranged by Cigno Australia;
- (b) the retail client was issued a collateral contract from Cigno Australia alongside the short term credit facility. Within 3 months the retail client owed over \$715 to Cigno Australia under the collateral contract (410% of the value originally extended);
- (c) fees charged by Cigno Australia during the statement period included:
 - i. \$144.25 financial supply fee;
 - ii. Four, \$79 default fees (\$316 in total);
 - iii. Two, \$22 change of payment schedule fees (\$44 in total);
 - iv. Ten, \$5.95 weekly account keeping fees (\$59.50 in total); and
 - v. \$8.75 lender fee; and
- (d) by comparison if the order was in force, the total fees and interest charges would have been limited to \$14.36, made up of:
 - i. maximum credit fees and charges of 5% of the amount of credit provided (approximately \$8.75); and
 - ii. maximum interest charges of 24% per annum for a loan term of 48 days (approximately \$5.61).

Note: In this calculation it is assumed that interest is compounded daily, and no repayments were made through the term.

30. This example illustrates a financial loss suffered by the retail client of just under \$560, comprising the fees charged in relation to the short term credit facility that exceeded the maximum credit fees and charges, and interest charges, that are permitted under the short term credit exemption.

31. Both the actual and potential financial losses to retail clients are likely to be exacerbated when short term credit facilities are provided in the manner described in paragraph 7, as:
- (a) retail clients are not given access to EDR schemes such as AFCA, which would make it possible for them to complain free of charge to the EDR scheme in the event of a dispute; and
 - (b) the short term credit facilities are not ‘small amount credit contracts’, retail clients do not have the various consumer protections under the National Credit Act and the National Credit Code, including:
 - (i) to have a proper responsible lending assessment by the credit provider about whether the credit amount is affordable and meets their requirements and objectives;
 - (ii) for Centrelink recipients who receive at least 50% of their gross income as payments under the *Social Security Act 1991*, to ensure that repayments do not exceed 20% of their gross income for that payment cycle;
 - (iii) to insist that credit providers have internal dispute resolution processes and are a member of an external dispute resolution (**EDR**) scheme, which would make it possible for them to complain free of charge to the EDR scheme in the event of a dispute;
 - (iv) to apply for hardship and be given the relevant protections under section 72 of the National Credit Code;
 - (v) to be provided with a warning statement before they enter the contract, which explains and outlines the costs payable and alternatives available to them; and
 - (vi) to rely on the various other protections and provisions of the National Credit Act and Code (e.g., the rebuttable presumption that if they were in default under a regulated small amount credit contract or had two or more such contracts at the time of a preliminary assessment, they could only comply with their financial obligations under the relevant contract with substantial hardship).

Potential financial loss to retail clients

32. Given the almost identical structure currently used by BSF Solutions and Cigno Australia to provide short term credit facilities, as compared with that used by Cigno, GSSF and others prior to the 2019 order coming into force, the nature and extent of the potential financial losses to retail clients under either arrangement are likely to be of the same nature and effect. This finding is supported by case studies, reports provided to ASIC and submissions received to CP 355.

Case studies

33. In response to [CP 355](#), financial counselling organisations, consumer advocates and community legal centres provided 33 retail client case studies regarding short term credit facilities provided in the manner described in paragraph 7, to support their submissions. These case studies highlighted common themes of:

- (a) the charging of excessive fees;
 - (b) a lack of understanding by retail clients of the fees and charges;
 - (c) irresponsible lending with no adequate affordability assessments, resulting in high levels of default-related fees;
 - (d) the targeting and exploitation of vulnerable retail clients, particularly Indigenous clients; and
 - (e) high costs, which significantly reduce retail clients' ability to meet basic living expenses.
34. ASIC has observed similar themes arising from reports received by ASIC in relation to short term credit facilities issued in the manner described in paragraph 7.

Reports

35. From 1 July 2016 to 14 September 2019, ASIC received 225 reports against Cigno, regarding short term credit facilities issued in the manner described in paragraph 7.
36. These reports have raised similar themes that were raised by the case studies discussed above, with the majority of complaints regarding excessive fees, charges and interest rates.
37. Reports have been submitted to ASIC by consumers, government agencies (e.g., ACMA), financial counsellors (e.g., Anglicare, Uniting Wodonga and EACH Social & Community Health) and community legal centres (e.g., Consumer Action Law Centre, Financial Rights Legal Centre and Legal Aid NSW).
38. After the commencement of the 2019 order in September 2019, ASIC received approximately 70 reports regarding Cigno and Cigno Australia that, on ASIC's analysis, relate to short term credit facilities which were provided in the manner described in paragraph 7. Nine of the reports relate to short term credit facilities and collateral contracts issued by BSF Solutions and Cigno Australia, since the 2019 order expired on 13 March 2021.

Non-financial losses

39. Retail clients have also been reported to suffer physical and mental hardship due to the financial stress, distress and anxiety caused by the short term credit facilities issued in the manner described in paragraph 7. These impacts are discussed in the section below.

The impact the detriment has had, or will or is likely to have on retail clients

40. In determining whether a class of financial products has resulted in, or will or is likely to result in significant detriment, ASIC must take into account the impact that the detriment has had, or will or is likely to have on retail clients: paragraph 1023E(1)(c) of the Act.

Types of retail clients impacted

41. Information available to ASIC, including CP 355 submissions and reports provided to ASIC, indicate that the types of retail clients affected by the significant detriment include:

- (a) vulnerable retail clients from low socio-economic groups, including unemployed retail clients, sole parents, retail clients with intellectual disabilities, mental or physical illness, Centrelink recipients, retail clients with substance or addiction issues, Indigenous retail clients, including those with low levels of financial and English literacy, young and elderly retail clients; and
 - (b) retail clients in financial difficulty requiring credit to pay for basic living expenses including rent, food, accommodation, and clothing.
42. Data which ASIC has received on a confidential basis indicates that:
- (a) the demand for short term credit facilities issued in the manner described in paragraph 7 is driven mostly by low-income households experiencing significant financial distress and which require short term credit to meet basic living and essential household expenses; and
 - (b) a high proportion of retail clients who have obtained short term credit facilities in this manner state that they had been declined for regulated credit products (such as small amount credit contracts).
43. ASIC also notes that there has been a particular rise in short term credit obtained through short term credit facilities which has impacted Indigenous communities.

Impact on retail clients

44. The impact that the significant detriment has on these types of retail clients identified at paragraphs 41-43, includes:
- (a) exacerbating existing financial stress;
 - (b) increasing their inability to meet basic living expenses on an ongoing and prolonged basis;
 - (c) increasing their inability to improve their financial position;
 - (d) disempowering retail clients and exacerbating financial exclusion;
 - (e) undermining retail clients' financial capability and resilience;
 - (f) stress, anxiety and further negative physical and mental health outcomes caused by financial difficulty; and
 - (g) creating a debt trap in which retail clients get stuck.

Financial impacts

45. From the information available from data, reports provided to ASIC and CP 355 submissions, ASIC observes that the combination of financially stressed retail clients obtaining short term credit facilities in the manner described at paragraph 7, with no adequate affordability assessment, high fees (upfront, ongoing and default), plus a high rate of default, result in small debts spiralling into larger debts. This exacerbates a retail client's overall financially

stressed position and reduces their ability to meet ongoing basic living expenses. The submissions provided in response to CP 355 generally support this observation.

46. For example, the joint submission from Consumer Action Law Centre (**CALC**), Financial Rights Legal Centre (**FRLC**), ICAN, the Victorian Aboriginal Legal Service (**VALS**) and WEstjustice (the **Joint Consumer Group submission**) stated that offering credit to those who cannot reasonably afford to repay the credit does not amount to financial inclusion, rather it is quite the opposite and pushes people into rapid and more harmful debt spirals.
47. The joint submission from Financial Counselling Australia, Financial Counsellors ACT, Financial Counsellors' Association of NSW, Financial Counsellors' Association of Queensland, Financial Counsellors Association of Tasmania, Financial Counsellors' Association of Western Australia, Financial Counselling Victoria and South Australian Financial Counsellors Association (also covering the NT) (the **Joint Financial Counselling Sector submission**) noted that, in the experience of financial counsellors, short term credit facilities issued in the manner described in paragraph 7 almost inevitably result in significant harm for borrowers. In particular, the submission noted that the use of these credit facilities may result in people being unable to meet their daily living expenses, taking out further credit to repay their existing loans, becoming trapped in a debt spiral and asking family and friends for money.
48. The submission from Consumer Credit Law Centre SA (**CCLCSA**) stated that its experience is that short term credit facilities of this kind exacerbate the existing financial stress for already vulnerable retail clients. The CCLCSA's submission also noted that some of their clients are prioritising Cigno repayments over food, other essentials and repayments to regulated creditors.
49. Legal Aid Queensland's submission similarly noted that the high fees associated with these short term credit facilities make it difficult for retail clients to repay the debt and meet basic expenses such as rent and food.
50. LawRight, by reference to its CP 316 submission, referred to research which indicates that these types of loans often leave retail clients in a worse financial position – any influx of cash is short lived with consumers required to take up additional credit to meet the high cost of the loan, creating a cycle of hardship.

Non-financial impacts

51. ASIC understands that financial stress and difficulties caused by the short term credit facilities issued in the manner described in paragraph 7 can flow onto other aspects of retail clients' lives and can have adverse health impacts which affect overall quality of life. This has been evident from reports provided to ASIC and CP 355 submissions.
52. For example, the Joint Financial Counselling Sector submission states that the impact of these products is serious and flows on to other people in the borrower's family including, worryingly, children. One case study in the submission mentioned a separated mother who took out a loan for \$150 under a short term credit facility. She struggled to make repayments and had to forgo food and provisions for her children as a result of making the payments and had to seek emergency relief food parcels instead.

53. The submission further states that costs of these products for the community include the costs of affected retail clients seeking emergency or food relief or whose mental and physical health are affected. The submission notes that these costs are borne by the health and social security systems.
54. LawRight's submission to CP 316, enclosed in its submission to CP 355, referred to research from E Sweet, CW Kuzawa and TW McDade, titled 'Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health' published in *SSM - Population Health*, vol. 5, 2018 which discusses the various health impacts of financial pressures and debt resulting from short term lending generally, including depression, reduced psychological well-being, obesity and anxiety, suggesting that this is particularly true for unsecured short term credit.
55. Legal Aid Queensland's submission noted that the significant detriment caused by short term credit facilities, issued in the manner described in paragraph 7, includes retail clients experiencing significant stress and anxiety because they cannot access the protections of the existing national consumer credit regime.

Impacts observed by ASIC

56. ASIC has observed many examples of the impacts of significant detriment experienced by retail clients from reports provided to ASIC, CP 355 submissions and case studies, including that retail clients:
- (a) have been left with no money to pay for food;
 - (b) had to seek emergency food relief;
 - (c) were unable to pay rent and housing expenses and become at risk of homelessness;
 - (d) had to file for bankruptcy;
 - (e) suffered from stress, anxiety and other mental health impacts arising from, or exacerbated by the financial stress; and
 - (f) suffered additional stress and anxiety when their debts were referred to external debt collectors who threatened them with legal action.
57. Further details of the significant detriment that result from these short term credit facilities are set out in [CP 355](#) at paragraphs 25 to 31.

Why the order is an appropriate way of reducing the detriment

58. In determining why the order is an appropriate way of reducing the significant detriment resulting from the issue of short term credit facilities, ASIC has focused on:
- (a) identifying the specific product features, conduct and factors that have contributed to the significant detriment or that would likely contribute to significant detriment; and
 - (b) how we can best reduce future significant detriment or the likelihood of further significant detriment occurring.

59. We consider that the order is the most appropriate regulatory solution to reduce further significant detriment to retail clients because:
- (a) the submissions received in response to [CP 316](#) and [CP 355](#) confirm and broadly support ASIC's view of significant detriment and support ASIC's proposed action (with the exception of submissions received in response to CP 316 from entities issuing short term credit facilities in the manner described in paragraph 7);
 - (b) the order will prevent the charging of credit fees and charges and interest charges in excess of the limits permitted under the short term credit exemption;
 - (c) it will prevent, or at the least discourage, other credit providers from adopting these kinds of arrangements or similar conduct which will or is likely to result in significant detriment to retail clients;
 - (d) it will effectively force operators issuing short term credit facilities in the manner described in paragraph 7, who wish to continue to charge credit fees and charges and interest charges which exceed those permitted by the short term credit exemption in subsection 6(1) of the National Credit Code, to obtain an Australian credit licence and comply with the consumer protection provisions of the National Credit Act and the National Credit Code, including obtaining membership of an EDR scheme; and
 - (e) it is a more comprehensive and timely response than the other options available to ASIC.
60. ASIC has considered the following impacts of the order:
- (a) short term credit providers and their associates will not be able to charge self-determined high and unregulated fees and may therefore choose to exit the industry if they consider that the price cap in the short term credit exemption is 'uncommercial'; and
 - (b) if short term credit providers and their associates exit the industry, it may result in reduced access to credit for some retail clients who require credit but are ineligible to obtain a small amount credit contract or other regulated credit products.
61. ASIC has considered these impacts and has determined that it is appropriate to proceed with the order for the following reasons:
- (a) there will always be retail clients who are unable to access any form of credit, even of a short term nature, due to their inability to afford repayments without suffering financial hardship and who will therefore need to use existing Government and community services;
 - (b) limiting access to short term credit facilities would lead to more awareness by retail clients of other alternative options. Retail clients would benefit financially and non-financially as they would be prompted to make both greater and earlier use of more beneficial alternative products or options, including:
 - i) financial counselling and advice services, which assist retail clients to plan and negotiate their financial affairs free of charge;

- ii) regulated credit, which is less costly and provides legislative protections;
 - iii) Centrelink products (lump sum advances) and incentives;
 - iv) government and utility hardship programs or utility relief grants; and
 - v) non-commercial microfinance products (e.g. no interest and low interest schemes);
- (c) the increased and regular use of alternatives would, over time, reinforce the availability of these alternatives, and encourage retail clients to make use of them as they come to realise the costs involved, and the impact on their financial situation;
- (d) retail clients who decide to use one of the alternatives to a short term credit facility issued in the manner described in paragraph 7, are likely to experience:
- i) a reduction in the amount they will spend to access credit because of the lower charges associated with the alternative products; and
 - ii) where they use financial counsellors, better management of their income, changes to their spending habits and, overall, less reliance on all credit products;
- (e) it may increase the use of regulated credit by retail clients, for which consumer protections are provided under the National Credit Act and National Credit Code;
- (f) it will allow other credit providers to assist retail clients in a regulated and responsible manner;
- (g) it will provide a competitive playing field for regulated credit providers and prevent credit providers who currently offer regulated credit products adjusting their business models to avoid the necessity to comply with consumer protection provisions; and
- (h) the significant detriment and associated impacts that have been caused, and are likely to be caused, by short term credit facilities issued in the manner described in paragraph 7, as described in paragraphs 16-57 above, will be reduced.