AUSTRALIAN
RETAIL
CREDIT
ASSOCIATION

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**By email**

Dear

**Consultation Paper 313 Product Intervention Power**

Thank you for the opportunity to provide a submission in response to CP 313.

We suggest that the guidance produced by ASIC address the following two issues:

1. **If intervention is necessary, what is the aim of the intervention?**

   The legislation provides that ASIC may intervene if it identifies "*significant* detriment" is "likely" to occur to consumers. In addressing the cause of the significant detriment, is it the intention of ASIC to intervene using a 'light-touch' approach, so as to ensure that the potential detriment is reduced to something less than "significant" or the probability of "significant detriment" is reduced to something less than "likely", or will ASIC aim to produce 'good' consumer outcomes? We note that this will impact the form of the intervention chosen by ASIC.

   As an illustration, we note ASIC's proposed intervention in respect of short term credit (as discussed in CP 316). ASIC's preferred option involves prohibiting credit providers and their associates from providing short term credit and collateral services if the total fees exceed the prescribed limit.

   In that case, the "credit fees and charges" amounts in the existing s6(1) of the *National Credit Code* provide an appropriate guide for how the limit should be set for the total fees charged by the credit provider and their associates. However, in the absence of such a benchmark, how would ASIC set the limit? Would it look to set the

limit at an amount that was still disadvantageous to the consumer, but less than an amount that caused "significant detriment"? Or would it set the amount that represented a 'fair' amount to be charged (i.e. such that the loan provided 'value for money')? Alternatively, would ASIC take a more direct approach and prohibit all fees?

**2. Will ASIC allow multiple forms of permissible practices?**

The draft regulatory guide notes that, as part of the formal consultation process, ASIC will, in some circumstances, "present a range of options for intervening". Also, in conducting the consultation process, it is likely that stakeholders will recommend numerous effective means of reducing the identified significant detriment, each of which will have its own impacts on competition and innovation within the market.

In choosing one particular form of permissible conduct, ASIC will inevitably impact future competition and innovation in the relevant market. Such impacts could be reduced if ASIC designed the intervention in a way that permitted more than one form of permissible practice, each of which was effective at mitigating the identified "significant detriment". Will ASIC, in appropriate circumstances, permit multiple forms of permissible practices so as to reduce the impact of the intervention on competition and beneficial innovation? Alternatively, would ASIC preference more principles-based interventions that have less impact on competition and beneficial innovation?

As an illustration, ASIC refers to its previous actions in respect of the automatic rollover of term deposits as indicative of its approach to using the product intervention power.

In that case, ASIC made recommendations to improve practices, including advertising, disclosure of interest rates, and standardisation and disclosure of grace periods (which, we assume, would now be mandated using the product intervention power). Would ASIC have been open to also permit an alternate method of mitigating the identified "significant detriment"?

For example, an alternative approach could have involved an ADI allowing the consumer to agree to be rolled to the term deposit offered by the ADI with the highest interest rate on the day of maturity (possibly within a range of acceptable term lengths nominated by the customer). Given that this would have reduced the "significant detriment" identified by ASIC (in particular, the 'choice architecture' described in CP 313), there may have been less need to offer "grace periods" at the beginning of the new term deposit. In turn, this may have allowed ADI's to avoid the cost of breaking the term deposit during the grace period and resulted in less customer attrition. This would give the ADI consistency of funding and flexibility over the term of that funding, while ensuring that the consumer always got the highest rate on offer by that ADI (within the terms that were acceptable to the consumer). This may have even allowed the ADI to offer higher rates on its term deposits.

If you have any questions about this submission, please feel free to contact me or Michael Blyth.

Yours sincerely,

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