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31 July 2018

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Australian Securities and Investments Commission
Level 5, 100 Market Street
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Dear Sir/Madam

ASIC Consultation Paper 303 – Credit card responsible lending assessments

The Consumer Action Law Centre (**Consumer Action**), Financial Rights Legal Centre (**Financial Rights**), CHOICE and Financial Counselling Australia (**FCA**) welcome the opportunity to comment on Consultation Paper 303 on credit card responsible lending assessments (**the Consultation Paper**).[1]

We also welcome the Australian Securities and Investment Commission's (**ASIC**) recent report on credit card lending in Australia.[2] The findings of the ASIC report largely reflect our casework experience. Credit cards continue to be the most significant debt issue impacting callers to the National Debt Helpline.

We support the proposal to cap credit card limits at an amount that can reasonably be repaid within a period set by ASIC. While ASIC's proposed three-year assessment period is a significant improvement on the current approach by credit card providers, we consider that a two-year assessment period would be more appropriate.

[1] Australian Securities and Investments Commission, *Consultation Paper 303 – Credit cards: Responsible lending assessments*, July 2018, available at: https://download.asic.gov.au/media/4801736/cp303-published-4-july-2018.pdf.
[2] Australian Securities and Investments Commission, *Report 580 – Credit card lending in Australia*, July 2018, available at: https://download.asic.gov.au/media/4801724/rep580-published-4-7-2018.pdf.

A two-year assessment period would ensure that Australians are not trapped in long term, expensive credit card debt. We consider that this proposal would significantly reduce the consumer harm being caused by inappropriate credit card product design and lending practices.

Our response to questions in the Consultation Paper are detailed more fully below.

About the contributors

Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

Financial Counselling Australia

Financial Counselling Australia is the peak body for financial counsellors in Australia. Financial counsellors assist people in financial difficulty by providing information, support and advocacy. They work in non-profit, community organisations and their services are free, independent and confidential.

Financial Rights Legal Centre

Financial Rights Legal Centre is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. Financial Rights operates the National Debt Helpline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling. Financial Rights took over 25,000 calls for advice or assistance during the 2016/2017 financial year.

B1Q1: Do you agree with our proposal to prescribe a three-year period? If not, why not?

We consider ASIC's three-year assessment period would be a significant improvement on current credit card lending practices. However, we consider that a two-year period should be prescribed. We have provided further details below in B1Q2. We have outlined our concerns relating to credit card product design, responsible lending assessments and marketing in further detail below in response to B1Q1.

Credit card design

The need for legislative reform in relation to credit card lending has been well established.[3] We have long held the view that responsible lending standards in Australia's credit card market are extremely poor, and this results in significant—and often crippling—over-commitment for many Australians with credit cards. Lax lending, aggressive marketing and a pervasive sales culture within banks have snowballed to create a debt disaster for over 1.9 million Australians currently struggling with credit card debt.[4]

Credit cards have been designed to trap many people in long term, expensive debt. While credit cards can assist to smooth the irregularities of income and expenditure, it is not difficult for a person to become caught in a harmful debt spiral. Those who have persistent credit card debt—that is, they are not re-paying the outstanding balance each month—are likely to experience harm. This harm may be financial (high interest rates or fees), but it may also be non-financial (such as forgoing essential expenditure or experiencing personal distress). In some cases people are made bankrupt, lose their homes and tens of thousands of dollars in trustee's fees as a result of unmanageable credit card debt.

Credit card providers know that people tend to underestimate their spending, and raise the 'long term, contingent elements of the credit card price (such as interest rates that apply after teaser periods and late fees)'.[5] Research has found that credit card providers under-price the short-term, non-contingent elements of the credit card contract to take advantage of consumers' tendency to be overconfident about their ability to repay the amount owing.[6] Credit card design and marketing, including default settings for minimum repayment amounts and responsible lending assessments, have set up many Australians to fail when it comes to getting on top of their debts.

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[3] For example, see Senate Economics References Committee, *Interest rates and informed choice in the Australian credit card market,* 16 December 2015, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Credit_Card_Interest/Report; The Treasury, *Consultation Paper – Credit cards: improving consumer outcomes and enhancing competition,* May 2016, available at: https://treasury.gov.au/consultation/credit-cards-improving-consumer-outcomes-and-enhancing-competition/; *Treasury Laws Amendment (Banking Measures No. 1) Bill 2017 – Explanatory Memorandum,* available at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5990_ems_dd1cdd7a-a52c-4974-a8e4-be97a298df5d/upload_pdf/649662.pdf;fileType=application%2Fpdf.

[4] Above n. 2, p. 7.

[5] Oren Bar Gill, *Seduction by Plastic,* American Law & Economics Association Annual Meetings, 2004, p. 7.

[6] Ibid.

There are clear incentives for credit card lenders to advance more credit than the borrower can reasonably repay—this situation drives income streams for the bank. It is our experience that many people struggle for years at a time to make repayments without ever reaching the point of default. ASIC observed in its report that 'consumers who are in persistent debt, or repeatedly making low repayments are profitable for credit providers'.[7]

The Financial Conduct Authority in the United Kingdom made similar findings, stating that credit card lenders 'have fewer incentives to avoid lending to consumers who have persistent debt or make systematic minimum repayments because they are profitable to the firm'.[8] There are also incentives at an individual level. Credit remains exempt from the ban on conflicted remuneration, and sales targets for credit cards remain a key driver of bank staff behaviour.

These issues can only be addressed by regulatory reform, as attempts at self-regulation in this area have clearly failed.

Current assessment practices

Lenders currently determine whether a credit limit is 'not unsuitable' by assessing a person's capacity to make the minimum repayment plus a small buffer (as opposed to the total card limit).[9] It is not uncommon for people to request certain limits when opening credit card accounts only to be provided with a much larger limit, or to be provided unaffordable limit increases in the future. This leaves people vulnerable to incurring significant debt when unexpected expenses or financial difficulty arises and can lead to crippling interest charges and other fees.

Kathy's story

Kathy was on Newstart benefits when she applied for a credit card in around 2014. She wanted a credit limit of $1,000 as she was a gambler and manages her finances by ensuring she does not have access to any large sums. She knew having access to a large credit card would only fuel and exacerbate her addiction and she would never pay the debt off. The bank approved a $10,000 limit—on the basis of $15,000 per year for income (roughly $288 per week) and allowing for just $5,352 per year (roughly $103 per week) for expenses.

She received invites to increase the limit over time but never accepted as she knew she would have trouble managing these. She made some repayments on the card, which included some large lump sum payments which were proceeds from her gambling.

[7] Above n. 2, p. 9.
[8] Above n. 2, p. 39; Financial Conduct Authority, *Problem credit card debt,* accessed 26 July 2018, available at: https://www.fca.org.uk/credit-card-market-study-interim-report/problem-credit-card-debt.
[9] Above n. 1, p. 10.

The loan application form appears to have been completed by a bank employee electronically inputting her details into their computer. She asked for a copy to be posted to her but it was never provided.

She was also sold consumer credit insurance, when her loan application clearly states her occupation as "home duties" and her Newstart benefits were going into her transaction account. As she was not working she could not claim on any unemployment or disability benefits. Kathy is now on the age pension, has numerous health issues and is struggling to make repayments.

Using the credit card calculator on MoneySmart, we estimated the amount of time it would have taken Kathy to pay back the card if she stuck to the original minimum payment of $204 (not reducing minimum repayments) at 8 years and 1 month. Clearly even this would have been a stretch on Centrelink benefits.

Case study provided by Financial Rights Legal Centre.

Alexandra's story

Alexandra earns $80,000 per annum before tax. She has two credit cards, each with an available limit of $20,000. She currently has a balance of $1,000 on one and $0 on the other. She set up a new transaction account with a new bank in 2014 and applied for a credit card as they offered her a low interest rate, and bonus points with her transaction account. Alexandra was asked to provide her payslips and details of her liabilities which includes a large mortgage of $1,000,000 with a co-borrower. The credit provider did not ask her what the credit card was for, and offered her a limit of $27,000. Alexandra now has an available credit limit of $67,000. If she reached the maximum on all three facilities, she could not afford to pay the three credit cards and meet her obligations under her mortgage or pay for her basic living expenses.

Case study provided by Financial Rights Legal Centre.

Basing assessments on a person's ability to make minimum repayments tends to lead to consumers using credit cards as 'revolvers', rather than as a 'transactors'. This in turn leads to higher levels of household debt, exacerbates financial distress—and has a strongly negative impact on quality of life. We often see people with multiple credit cards or significant credit limit increases that have been approved on the assumption that only minimum repayments would be made. This can leave some people trapped in debt for decades. A Victorian man who recently contacted Consumer Action would need more than 146 years to repay just one credit card debt at minimum repayments – see the case study below.

Assam's story

Assam (name changed) called the National Debt Helpline earlier this year seeking help with his financial situation. Assam told us that he is 58 years old and moved to Australia in approximately 1994. Since then, he has not been able to work due to ill health. Assam instructs that he has relied on the disability support pension since around 2003, and has diabetes, depression and high blood pressure. Assam says he moved in with his brother and his brother's family in 2015 after he couldn't afford the rent for his apartment.

Assam has five credit cards and one overdraft facility. The six facilities have a total limit of $61,500, which he has nearly maxed out. The main debt Assam owes is to Commonwealth Bank for a Mastercard with a current balance owing of more than $44,000. Assam told us that the Mastercard credit limit was originally $2,000, but since at least September 2015 the limit has been $44,600. Assam's credit card statement from January 2018 shows that if he makes minimum repayments, it would take him 146 years and 5 months to repay the card and he would pay $340,604.78 in interest.

Assam also has a Commonwealth Bank overdraft, which has allowed him to accumulate even more debt with Commonwealth Bank. Assam says that he has never sought financial hardship for any of his accounts despite struggling financially and his financial troubles exacerbating his medical conditions. Assam describes his approach to managing his credit cards as taking a little bit from this one to pay that one and a little bit from that one to pay the other one.

We assisted Assam to lodge a complaint with the Financial Ombudsman Service in relation to the Commonwealth Bank debts. The matter has since settled with the Commonwealth Bank on favourable terms for Assam.

Case study provided by Consumer Action Law Centre.

Adding to the problem of inappropriate responsible lending assessments is the fact that some people see credit limit increase offers as an 'endorsement for the bank that they have good credit history and are 'worthy' of the increase.'[10] This leads to acceptance of increased credit (and debt) which may not be affordable as there is the belief that the banks would not make offers if they did not think the debt could be repaid.

[10] Sweeney Research commissioned by Consumer Affairs Victoria, *Unsolicited credit card limit increase offers,* July 2009, p. 4.

Credit card marketing

Some people accept credit card limits based on their trusted relationship with the bank. Research has found that direct approaches from banks and other financial institutions via direct mail or personal contact appeared to have a particularly strong impact on a person's decision to take up a credit card or to increase their credit card limit. For example, credit card offers during a bank branch visit. The research suggested that this impact was particularly strong when it came from a bank or financial institution that the person already had a relationship with. According to the researchers, 'Low income and other vulnerable consumers appeared to be more likely to be influenced by this type of promotion and more inclined to interpret pre-approval and offers of increased limits as considered evaluations from their providers that they were credit-worthy, able to afford the debt or being rewarded for their loyalty or custom.'[11] While unsolicited credit card limit increase offers will soon be banned,[12] lenders can still make unsolicited credit card offers generally. There are also many Australians still dealing with the financial repercussions of unsolicited credit card limit increase offers.

Melanie's story

About 16 years ago, in 2002, Melanie (name changed) was living with her partner and their three children in Western Australia. Melanie took out a credit card with Coles Myer, and the card limit was $1,000. In about 2015, the family moved to Victoria. Her partner would work "fly in and fly out". Melanie was the primary carer of their children and worked casually on a farm. Around the end of 2016 Melanie wasn't able to pay the credit card anymore as her boss had put on extra workers and her hours were reduced. When there wasn't enough money in the joint account, Melanie says she relied on using the credit card to feed and clothe her children. By this stage the credit card had a limit of $8,000.

Melanie instructs that her partner was economically abusive. He controlled all of the finances and would put money in a joint bank account each week for expenses. If the money in the account didn't cover expenses, Melanie would use the credit card. At the time she was working part time at Woolworths and would pay it back as she could.

Every few years Coles Myer would send her letter saying if you want to increase your credit limit you can sign and send this letter back. She would do that and says that they did not ask for any information about her wages or expenses. Melanie would pay the credit card off monthly until she was on a bad track where she was spending more money on groceries and family items than she was receiving in income.

[11] Consumer Affairs Victoria, *The impact of credit card advertising on consumer decision making and behaviour*, June 2008, p. 8.
[12] Above n. 2, p. 19.

In mid-2017, Melanie suffered an injury in the workplace and lost sight in her right eye. She says from there, everything in her life went "pear shaped". Melanie was forced to have surgery and started a long process of recovery during which she could not work.

Melanie is not sure when, but the credit card debt was sold to Lion Finance. In mid-2017, Lion Finance obtained a default judgment against Melanie for a debt of over $10,000 including interest and costs. Melanie says she doesn't recall anything about this because she was on very strong pain medication at the time. This pain continues and will be life-long.

In late 2017, Melanie ended her 18-year relationship with her ex-partner and escaped family violence. She became a single parent and cares for two of their children. Shortly afterwards, Lion Finance issued Melanie a bankruptcy notice then filed a creditor's petition in the Federal Circuit Court. Melanie says that due to her injury and family break-up, she couldn't face the bankruptcy process and didn't respond.

In 2018, Melanie attended the hearing of Lion Finance's creditor's petition. She was granted an adjournment and referred to a financial counsellor. At this stage, Melanie was living in their family home with her children and her family were at risk of homelessness. With the assistance of Consumer Action, Melanie agreed with Lion Finance that it would dismiss its creditor's petition if she repaid the debt of $18,000 by instalments including all legal fees of approximately $6,000.00. Lion took a security interest over Melanie's house to secure its debt.

Case study provided by Consumer Action Law Cenre

People might also feel their ability to reject a particular credit limit is limited if that person receives their credit card as part of a package with their mortgage or an interest-free purchase. Research conducted by Consumer Affairs Victoria found that a common theme 'was the extent to which these consumers felt they had no choice but to accept the credit card, even if they were uncomfortable with the high credit limit and interest rate. Many had been unable to manage these credit cards responsibly and had found themselves in precarious financial situations as a result.'[13]

Increased spending and reduced income

Excessive credit limits are often not in response to clear consumer demand. Rather, large credit limits encourage additional spending that would not otherwise occur. Researchers have 'made several experiments about the effect of credit on a spending decision and they found that a higher credit limit

[13] Ibid, p. ii.

on credit card spending increases spending especially for some groups of users (younger consumers and less educated consumers)'.[14]

Another study from the United States found that it is clear that 'increased liquidity triggers immediate and large jumps in spending and debt.' Researchers found that on average, 'debt rises by about $40 in the month in which a credit line increases. In two months after a credit line increase, the average debt rises by more than $180. Within a year, the debt rises by more than $350.' The research also found that people seem to set "target" credit-card utilization rates. For instance, if a person is originally using 60% of their card's credit limit and then the limit is increased, they might increase spending on that card to raise the utilisation rate back to 60%.[15]

For some people excessive credit limits exacerbate financial problems following illness or job loss, rather than just simply encouraging over-spending.

Sarah's story

Sarah (name changed) contacted the National Debt Helpline after Googling 'debt help'. Sarah says she is legally blind, and earlier this year was diagnosed with a brain tumour that is linked to her blindness. Sarah says that she relies on the Disability Support Pension for income, and defaulted on her credit card payments recently while in hospital undergoing surgery.

Sarah told us that she has had a Commonwealth Bank credit card since around 1997. Sarah had regularly made repayments until she became unwell. Sarah now has a credit card debt of approximately $16,000. After Sarah defaulted on her credit card repayments, she says that she contacted the Commonwealth Bank to explain her situation. Sarah says that the bank's 'hardship plan' was to move her from a $20 annual fee card with a 19% interest rate to a $60 annual fee card with a 13% interest rate. The bank is now asking her to confirm how long her treatment will be and when she can start paying, but Sarah doesn't know the answer as her treatment is 'up in the air'. Sarah says she is just making minimum repayments but is not getting ahead because the interest is just too much.

Sarah has been referred to a face-to-face financial counsellor for further assistance.

Case study provided by Consumer Action Law Centre.

[14] Mirjana Pejic Bach et. al., *Credit card spending limit and personal finance: system dynamics approach*, Croatian Operational Research Review, 2014, p. 36.
[15] Wharton University of Pennsylvania, *Elastic Plastic: How consumers respond to changes in credit card limits and rates,* August 2000, available at: http://knowledge.wharton.upenn.edu/article/elastic-plastic-how-consumers-respond-to-changes-in-credit-card-limits-and-rates/.

B1Q2: Should we prescribe a period of two years for consistency with other requirements, such as the minimum repayment warning under reg 79B of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations)?

We consider that a two-year period should be prescribed. This would encourage people to use credit cards as a transactional tool, rather than an ongoing loan facility with a long term outstanding balance. Aside from resulting in more sustainable debt levels, this reform could also help to shift people's perception of how credit cards are best used. Credit cards are unsuited as long-term debt facilities,[16] and more suitable products are available for loan terms of two years or more.

A two-year period would also neatly align with the minimum payment warning that must already be included on monthly statements,[17] which many people are now familiar with. The risk of financial harm from making minimum repayments was articulated in the Explanatory Statement to the Regulations, and the policy rationale for nudging consumers to repay their debts within two years remains sound.[18] A person looking to repay a credit card debt within two years will still pay interest charges equal to 25% to the credit card limit, which is a significant amount.[19]

The two-year assessment period would also align with the minimum repayment amounts set by some credit providers. For example, ING's Orange One credit card has a minimum monthly repayment amount of 5% of the outstanding balance.[20] This is in line with the proportion of the credit limit that would need to be repaid each month to pay off the limit within two years (5.2%).[21] We are concerned that if a three year period was prescribed, then this could actually encourage these credit providers to reduce minimum repayment amounts. As we have noted in previous submissions, we support lifting mandatory minimum repayment amounts as we consider that it would encourage people to use their credit cards as transactors rather than revolvers.[22]

Setting maximum credit limits based on a person's ability to repay within two years would still provide people with an adequate level of credit to absorb unusual and unexpected expenses, while at the same time capping available credit at an amount that can be managed. Even if someone does need to hold an

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[16] Above n. 1, p. 12.
[17] *National Consumer Credit Protection Regulations 2010* (Cth), Reg 79B.
[18] *National Consumer Credit Protection Amendment Regulations 2011 (No. 6) – Explanatory Statement*, available at: https://www.legislation.gov.au/Details/F2011L02260/Explanatory%20Statement/Text.
[19] Above n. 1, p. 10.
[20] ING Bank, *Orange One Terms and Conditions,* 22 March 2018, p. 11, available at:https://www.ing.com.au/pdf/orangeone/Orange%20One%20Terms%20and%20Conditions.pdf.
[21] Above n. 1, p. 11.
[22] Consumer Action Law Centre and Financial Rights Legal Centre, *Submission – Credit Cards: Improving consumer outcomes and enhancing competition*, June 2016, available at: https://consumeraction.org.au/wp-content/uploads/2016/06/CALC-and-FRLC-Response-to-proposed-reforms-FINAL.pdf; Consumer Action Law Centre, *Submission – Exposure Draft Treasury Laws Amendment (2017 Measures No. 8) Bill 2017,* 23 August 2017, available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/08/170823-FINAL-submission-Exposure-Draft-Bill.pdf.

outstanding balance on their card for the short or medium term, they would still be in a position to repay the outstanding balance—rather than being caught in a loop of making minimum repayments potentially for decades, without the capacity to clear their debt.

Reducing credit card limits to an amount that can be repaid within two years would allow people to better manage their finances and reduce their risk of entering financial hardship. In our experience, irresponsible lending by banks (including credit card lending) has been the beginning of a debt spiral for people who can end up taking out loans from payday lenders and other predatory finance providers. It is very rare that we encounter a person with payday loans whose debt problems did not begin with inappropriate lending by a bank. Contrary to suggestions by the banking sector, tightening lending requirements will not drive people to fringe finance. Rather it will avoid people falling into financial hardship, and significantly improve their financial wellbeing and resilience to prevent them from falling prey to payday lenders.

Irene's story

Irene is a single mother of two children aged seven and two. Irene left high school in Year 10, then worked a number of jobs between leaving school and having children. Her sole income comprises of Centrelink benefits since 2010. She does not receive any child support. Irene and her children live in her father's house with her father. Irene pays a monthly board to her father to cover living expenses for herself and her children. Irene is a victim of family violence in the form of economic abuse from her former partner. Irene suffers from mental health issues.

Over the course of 5 years, Irene slowly but surely became caught in a self-perpetuating, downwards spiral of debt:

- In October 2014, Irene was approved for the first CBA credit card with a $4,000 credit limit. In March 2015, Irene was approved for a CBA personal loan of $10,000.
- In May 2015, Irene was approved a $3,000 balance transfer with St George to pay out the CBA credit card balance of $4,000. CBA did not close the credit card (as there was just over $1,000 still owing) which allowed Irene spending the $4,000 limit again. Irene was left with two credit cards with a total debt of $7,000.
- In February 2016, Irene was approved a third credit card by ANZ for $3,000 to pay off the Cash Converters payday loans she had received throughout this time.
- In September 2016, Irene was approved a Latitude credit card for $4,000.
- In November 2016, Irene's father paid approximately $10,000 to her creditors, including multiple Cash Converters payday loans, to clear her slate and return her pawned goods from Cash Converters.

Irene first obtained credit and went into debt as a result of economic abuse by her partner. By the time that relationship ended, Irene was using multiple credit cards, and regularly taking out payday loans and pawning personal items. The various credit facilities she obtained were used to attempt to pay off her debts, and ultimately a vicious cycle of taking out loans to pay off her debts, which in turn drove her deeper into debt, was established. Despite her father assisting to temporarily clear her debts, Irene continued to obtain credit and now owes approximately $16,700 to her creditors.

Case study provided by Consumer Action Law Centre.

The two-year prescribed period should be a maximum period for assessment purposes. In some circumstances, we consider that lesser periods should be used for affordability assessments based on the features of the card. For example, we recommend that credit card providers assess affordability for no- or low-interest balance transfer cards based on the person repaying the entire limit within the promotional period.

We also note that strong incentives will continue to exist for banks to underestimate a person's expenditure in order to maximise available credit limits. Our casework experience suggests there has been systemic irresponsible lending and over-reliance on benchmarks by banks when providing loans, including credit cards. Suitability assessments must be based on actual income and expenses, not artificial benchmarks like the Household Expenditure Measure in order for this reform to succeed. We also strongly support an appropriate savings buffer being factored into affordability calculations.

B1Q3: Do you agree with our proposal that the prescribed period apply to all classes of credit card contracts? If not, why not?

We agree that the prescribed period should apply to all classes of credit card contracts. This would ensure that all Australians with credit cards are afforded the same protections and would minimise transition costs for lenders. There is no policy justification for prescribing different periods for different classes of credit card contracts. In our view, if a higher credit limit or interest rate is only affordable when repaid over a longer period, then it is not a suitable credit card for that person. We also note that even a 'low rate' or low limit credit card can result in someone paying excessive amounts of interest over a long period if the card is not suitable.

Mary's story

Mary took out a credit card 15 years ago. She didn't use the card very much. She can't remember when she stopped, but it was a long time ago. The card only had a limit of $2,300. Mary has been paying what she can but she never met the interest charges. She currently owes $1,500 and is struggling to pay any amount towards the debt. Mary visited the bank and was told there's nothing they can do about it. She's 79 and receives the age pension.

Case study provided by Financial Rights Legal Centre

Jill's story

Jill (name changed) instructed Financial Rights that that she obtained a credit card with a bank in the mid-1990's with a $1,500 limit. She spent the money on Christmas presents and missed a payment (or payments) within a few months of opening the account and the card was cancelled. She made a repayment arrangement with the bank to pay $30 per month in about 1997.

Fast forward to 2018. Jill contacted the National Debt Helpline at Financial Rights because, despite paying $30 per month for about 21 years, her debt was still just over $1,000. She is on the Disability Support Pension and is a carer for her adult disabled son. Statements obtained from the bank going back to 2011 (all they could provide) confirmed that Jill had been paying $30 per month during that period. She had incurred interest every month and sometimes late fees. In some months the account was debited $45 in interest and late fees, meaning she was effectively going backwards. We estimate Jill must have paid in excess of $7,000 towards her $1,500 debt over the years.

Case study provided by Financial Rights Legal Centre

B1Q4: What changes would need to be made to systems and processes to ensure compliance with the prescribed period by 1 January 2019?

Given that the banking industry has already committed to setting credit card limits at an amount that can be affordably repaid over five years in the draft Code of Banking Practice,[23] we do not consider that major additional changes would be needed to systems and processes to ensure compliance. Further, we consider that applying the same prescribed period to all classes of credit contracts would minimise transition costs for industry.

We note that any costs associated with changes to systems and processes would be far outweighed by the savings to consumers battling unaffordable credit card debt. Consumers are accruing interest on more than $30 billion of credit card debt currently, and ASIC found that consumers that were repeatedly charged interest on high-interest rate cards could have saved at least $621.5 million if interest was charged a lower rate. Addressing the detriment to consumers and the broader community should be prioritised over considerations about costs to industry.

[23] Australian Banking Association, *Draft Code of Banking Practice*, April 2018, clause 60, available at: https://www.ausbanking.org.au/code/code-of-banking-practice/.

B1Q5: Do you agree with our expectations about the assumptions that should be made when assessing whether a consumer can repay the credit limit within three years? If not, why not? Should any other assumptions be made?

We strongly agree with ASIC's expectations about the assumptions that should be made when assessing affordability of a credit limit. We support credit card providers assessing a person's ability to repay based on the assumption that interest will be charged at the highest rate under the contract. Further, we agree that credit card providers should assume that people will be repaying the entire limit of other credit cards within the prescribed period.

Further, credit card providers should assume that a person will repay outstanding balances prior to the expiry of a promotional period. For example, if a person currently has a balance transfer card with a promotional period that expires in 10 months, the subsequent credit card provider should calculate affordability on the basis that the person will be repaying the outstanding balance on the balance transfer card within 10 months.

ASIC's next steps

Wwe strongly support improvements to credit card responsible lending assessments. However, the reform will not necessarily stop persistent credit card debt problems or solve the debt issues facing existing credit card holders. Due to a range factors, including behavioural biases, people may still repay low minimum repayments and pay interest month-to-month. We therefore strongly support ASIC's follow-up work on credit cards, which will include publishing information on the amount of problematic credit card debt in Australia.

We also support ASIC's position that it expects credit providers to take proactive measures to address problematic credit card debt, and that it plans to publish the names of credit providers committed to doing so. However, we recommend that this expectation be made a requirement, in line with the regulatory regime in the United Kingdom.[24]

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[24] Above n. 1, paragraph 56.

Please contact Katherine Temple on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

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