

A Toolkit for Consumer Advocates
to help you help your clients

CIGNO LOANS UPDATE Action Pack 2.0

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Using this toolkit

This toolkit summarises the types of Cigno loan lending models and ways to help your client if they have signed up to an unsuitable product they don't want or need, as well as an accompanying information resource that you can share with them.

This toolkit also includes legal resources for you to use if you are helping your client.

Template letters for complaining to Cigno:

- ▶ **Short term credit contract**
- ▶ **Continuing credit contract**

Template letter for complaint to ASIC:

- ▶ **Complaint to ASIC**

You can also call our Worker Advice Line for free legal advice or to discuss a client's matter.

WARNING: This toolkit is intended as a summary guide to the law and should not be used as a substitute for legal advice. Other legal arguments might be available for your client. This information applies only in Victoria and reflects the law as at 21 July 2021.

What is a CIGNO LOAN?

Cigno says they are a service provider who can assist low income and unemployed people to access short term credit.

They are not a lender. They partner with a lender who offers credit in a way that avoids the consumer protections under the National Credit Law. Cigno then charge **exorbitant fees** to manage the loan.

When a borrower gets a loan through Cigno's website, they are signed up to TWO CONTRACTS:

- 1. LOAN CONTRACT with a lender** (usually a company called Gold Silver Standard Finance BHF Solutions, or Fifit)

The Loan Contract is the contract under which money is loaned.

AND

- 2. SERVICE CONTRACT with Cigno Pty Ltd.**

The Service Contract is the contract under which nearly all of the fees are paid, ostensibly because Cigno is managing the loan contract.

Cigno's old and new LENDING MODELS

Cigno and their associates have previously used two different models to lend money, and both rely on exemptions under the law to lend money and avoid consumer protections:

1. SHORT TERM CREDIT MODEL PRE 14 September 2019

Up until 14 September 2019, Cigno predominantly worked with lender Gold Silver Standard Finance (**GSSF**) to offer the Loan Contract under the “**short term credit model**”. Short term credit is not regulated by the National Credit Law. It is defined as credit for less than 62 days and with a maximum charge of 5% of the amount of credit provided. A typical example is that on a \$250 loan a borrower pays a 5% fee to GSSF of \$12.50 under the Loan Contract and pays all other fees (generally close to the amount of credit provided) to Cigno under the Service Contract.

On 12 September 2019, ASIC used its Product Intervention Power (sometimes called the “**PIP**”) and made an Order banning the short term credit model. This Order came into effect from 14 September 2019. Cigno challenged ASIC’s use of the PIP in the Federal Court. On 29 June 2021, the Full Court of the Federal Court decided that ASIC did have the power to make this Order, and that Cigno is banned from using the short term credit model for contracts for 18 months after 14 September 2019 or after September 2020.¹ The Order does not invalidate or end Loan Contracts and Service Contracts entered into before 14 September 2019 or after March 2021, but adds weight to our argument that the contracts are unconscionable because of the significant and widespread consumer harm reported by ASIC. We note that the ban has now expired, meaning that technically Cigno could start using the short term credit model again.

2. CONTINUING CREDIT MODEL FROM 14 September 2019

In approximately September 2019, Cigno started using a new model, the “**Continuing credit model**”, which is different to the model that ASIC banned, but still avoids consumer protections afforded under the National Credit Law. Under this model, Cigno partnered with lenders BHF Solutions and FiFit, to offer the Loan Contract. These lenders again offered contracts that avoid the National Credit Law protections (they don’t have to do credit checks or be a member of AFCA). The continuing credit model works a bit like a credit card with a maximum limit but, unlike a credit card, the borrower has to ask for approval to draw down the amount already paid back. The maximum fee the lender can charge is:

- **for the borrower’s first contract:**
 - ▶ **\$200 in the first year; and**
 - ▶ **\$125 for every year thereafter;**
- **for a borrower’s second and following contracts – no fees.**

In the contracts Consumer Action Law Centre has seen the Lender has charged a flat fee of \$15. Cigno is charging exorbitant fees under the Service Contract, for example, \$248 of fees on a \$250 loan.

A summary of the current status of these loans

Date of Entry	"Short Term Credit Model"	"Continuing Credit Model"
BEFORE 14 September 2019	Not banned, but disputable*	Not banned, but disputable*
BETWEEN 14 September 2019-14 March 2021	Banned*	Not banned, but disputable*
AFTER 14 March 2021	Not banned, but disputable*	Not banned, but disputable*

*Important to complain to ASIC

Why isn't the continuing credit model banned?

Currently, both the short term credit model and the continuing credit model are technically legal. Despite this, we believe that the Loan Contracts and Service Contracts are unconscionable and unenforceable and we generally advise borrowers to stop loan payments.

For ASIC to ban either of the credit models by making a further product intervention order, they will need to show significant detriment to consumers. This means that it is very important that we complain to ASIC about both models on behalf of borrowers. You can see ASIC referred to the reports of misconduct in their [media release](#) when they took action against the short term model.

Remember—it is important to make a complaint to ASIC about both models. See our template letters.

That's all very interesting but what should I do with the client in front of me?

1

Advise client of option to stop direct debit. As this is a breach of the loan contract and service contract, there is a risk that they will be sued by Cigno but we think this risk is very low. We would recommend stopping direct debit payments by contacting bank.

2

Determine if your client's loan is the short-term credit model or continuing credit model.

3

Write to Cigno using our template letters:

- ▶▶ *A template letter for **Short term credit contract***
- ▶▶ *A template letter for **Continuing credit contract***

4

Complain to ASIC using our template letters. This template can be used for both credit models. Note that the lenders may now have changed for both.

- ▶▶ *A template letter for **complaint to ASIC for short term credit contract***
- ▶▶ *A template letter for **complaint to ASIC for continuing credit contract***

If you have any questions about any of this please feel free to **contact** the Consumer Action Law Centre Worker Advice Line

WORKER ADVICE LINE

(03) 9602 3326



Monday - Friday 10am - 1pm & 2 - 5pm

advice@consumeraction.org.au



FURTHER INFORMATION

CONSUMER ACTION LAW CENTRE - WORKER ADVICE LINE

Community and public sector caseworkers and lawyers can call Consumer Action for specialist legal advice on handling consumer matters on our Worker Advice Line. This service is available Monday to Friday from 10am to 1pm and 2pm to 5pm.



WORKER ADVICE LINE

 **(03) 9602 3326**

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 advice@consumeraction.org.au

CONSUMER ACTION LAW CENTRE - KOORI HELP ADVICE LINE

Aboriginal community and workers helping Koori clients can call our Koori Help Advice Line for specialist legal advice on handling consumer matters. This service is available Monday to Friday from 10am to 1pm and 2pm to 5pm.



KOORI HELPLINE

 **1800 574 457**
K R I H L P

Monday - Friday 10am - 1pm & 2 - 5pm

 koorihelp@consumeraction.org.au