

**EXPLANATORY STATEMENT for**  
**ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753**

Prepared by the Australian Securities and Investments Commission

*National Consumer Credit Protection Act 2009*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* under subsection 160F(1) of the *National Consumer Credit Protection Act 2009* (National Credit Act). Subsection 160F(1) provides that ASIC may, by legislative instrument, determine a period for the purposes of the following provisions:

- (a) paragraph 118(3AA)(b);
- (b) paragraph 119(3A)(b);
- (c) paragraph 123(3AA)(b);
- (d) paragraph 124(3A)(b);
- (e) paragraph 131(3AA)(b);
- (f) paragraph 133(3AA)(b).

Subsection 160F(2) provides that a legislative instrument referred to in subsection 160F(1) may determine different periods in relation to the following:

- (a) different classes of credit card contracts;
- (b) different credit limits;
- (c) different rates of interest.

## **1. Background**

In June 2015 the Senate referred matters relating to credit card interest rates to the Senate Economics References Committee for inquiry and report (Senate Inquiry). The Senate Inquiry found that a problem arises when a consumer consistently fails to pay their outstanding credit card balance in full at the end of statement periods, using their card as a borrowing facility, rather than to manage cash. In those situations, consumers risk taking on significant levels of ongoing debt with little prospect of repaying it in the short to medium term. The Senate Inquiry found that the high rates of interest often charged on credit card debts make them unsuited as long-term debt facilities.

To address this problem, the Senate Inquiry recommended that the responsible lending obligations that apply to credit cards should be amended so that serviceability is assessed based on the consumer's ability to pay off their debt over a reasonable period.

In 2018, the Government implemented the first phase of reforms outlined in its response to the Senate Inquiry through the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (Banking Measures Act). The Banking Measures Act inserted section 160F into the National Credit Act, as well as the other provisions mentioned above.

Under section 160F of the National Credit Act, ASIC has the power to prescribe a period (or periods) to be used for assessing whether a credit card contract or credit limit increase is unsuitable for responsible lending assessments.

Consumers that cannot repay the proposed limit of the credit card contract within the period prescribed by ASIC are taken to only be able to comply with that contract with substantial hardship. In effect, entering into the contract or providing credit assistance in relation to the contract, would be a breach of the responsible lending obligations in Ch 3 of the National Credit Act.

In prescribing the three-year period, ASIC has sought to strike an appropriate balance between:

- (a) preventing consumers from being in unsuitable credit card contracts; and
- (b) ensuring that consumers continue to have reasonable access to credit through credit card contracts.

ASIC found that current credit card industry practices are often equivalent to the assumption that a consumer can repay their credit limit within four to five years.

Section 160F will apply to licensees that provide credit assistance and licensees that are credit providers for both new credit card contracts and credit limit increases under existing credit card contracts from 1 January 2019.

## **2. Purpose of the instrument**

The purpose of *ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* is to ensure that consumers can afford to repay their credit card debts within a reasonable period by requiring that the unsuitability of a credit card contract or credit limit increase is assessed according to whether the consumer could repay the credit limit within three years.

## **3. Operation of the instrument**

Part 3 of *ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* provides that the period of three years determined for the purposes of Part 2 applies to:

- (d) new credit card contracts entered into on or after 1 January 2019;

- (e) credit limit increases entered into on or after 1 January 2019 under credit card contracts that were entered into before 1 January 2019.

*ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* has been made before its enabling provision has commenced to provide credit licensees with sufficient time to implement the reform by the commencement date. This legislative instrument relies on subsection 4(2) of the *Acts Interpretation Act 1901* for this purpose.

#### **4. Consultation**

ASIC consulted on its proposal to prescribe a period of three years for all classes of credit contracts through Consultation Paper 303 *Credit cards: Responsible lending assessments* (CP 303). A draft of the *ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* was attached to CP 303.

ASIC received 15 submissions in response to CP 303. While there were some divergent views about whether the period should be three years or two years, most respondents supported our proposal for a three-year period. Some submissions from industry associations indicated that their members had differing views, with some supporting a period of three years and some favouring a period longer than three years.

Most respondents supported the proposal that one period apply to all classes of credit contracts. Accordingly, ASIC has not exercised its power under subsection 160F(2) to prescribe different periods in relation to different classes of credit contracts, credit limit amounts or rates of interest.

A Regulation Impact Statement (RIS) was prepared before the Banking Measures Act was introduced into Parliament (and accompanied the Explanatory Memorandum to that Act). The Office of Best Practice Regulation has confirmed that the implementation of the credit card responsible lending reform through ASIC exercising its power under s160F of the National Credit Act complies with the Australian Government's regulatory impact analysis requirements.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753**

*ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

The purpose of *ASIC Credit (Unsuitability—Credit Cards) Instrument 2018/753* is to ensure that consumers can afford to repay their credit card debts within a reasonable period by requiring that the unsuitability of a credit card contract or credit limit increase is assessed according to whether the consumer could repay the credit limit within three years.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Securities and Investments Commission**