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Submissions on Buy Now Pay Later Discussion Document – November 2021

Our submissions are informed by our role as an independent financial dispute resolution scheme which investigates and helps resolve complaints between consumers and financial service providers.

Most of the Buy Now Pay Later (BNPL) providers are members of our scheme: Zip, Laybuy, Latitude (Genoapay), Openpay (Bundll), and Klarna. Humm is a FSCL member, but their BNPL arm is a member of the Financial Dispute Resolution Scheme (FDRS). Afterpay is also an FDRS member.

Complaints received by FSCL about BNPL providers

We receive complaints about BNPL providers, and all of these complaints to date have not gone further than our early assistance process. Our early assistance team observe that BNPL providers are resolving complaints through their internal complaints processes, effectively and efficiently, and entering into repayment arrangements with consumers to resolve their complaints.

This means we cannot provide any meaningful data about the issues in BNPL complaints because we have never assessed the merits of a BNPL complaint. However, we have commented on some questions, drawing on our experience and information obtained from investigating irresponsible lending complaints against other types of lenders.

Discussion paper question 1: Do you agree with our assessment of the benefits from BNPL?

We agree with the discussion paper's summary of the benefits of BNPL. These benefits include that BNPL:

- a) Provides an effective way for consumers to spread the costs of their purchases at peak purchase times (for example, holidays or the start of the school year).
- b) Is tied to a specific good or service and therefore does not have risks that the consumer will use it to fund other transactions (unlike a personal loan, for example).
- c) Allows consumers to purchase goods and services in bulk, or in one payment to the business, allowing consumers to take advantage of any discounts.
- d) Provides an ability for the consumer to demonstrate credit worthiness by successfully paying off a BNPL transaction which may be particularly beneficial for consumers who do not hold other credit products.

Discussion paper question 15: Are there any other issues with consumers having multiple BNPL accounts that we have not identified?

While we agree with the benefits of BNPL, we also hear from the financial mentor organisations we have relationships with, that there is an increase in the number of their clients where BNPL contributes to those clients being in financial hardship. Often this is where their clients are customers of several BNPL providers, which contributes to their clients' overall indebtedness. We have heard that BNPL providers have replaced payday lenders as a very easily accessible form of short-term credit.

Also, in responsible lending complaints we investigate about other members of our scheme who provide consumer credit, we can see from consumers' bank statements a general trend towards an increase in regular payments to BNPL providers. Further, consumers are often making regular BNPL payments to several different BNPL providers at one time. Having multiple debts with different providers is often a red flag for our case managers that a complainant may be in financial difficulty.

We consider this may indicate the ease at which a consumer can become a BNPL customer of several providers simultaneously, because BNPL providers are not required to conduct affordability or suitability assessments before credit is provided.

Discussion paper question 6: Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL?

We agree with the summary. We also note that the apparent ease by which consumers can become BNPL customers could be encouraging consumers who are in a difficult financial position to turn to BNPL to fund emergency and unexpected costs.

Discussion paper question 33: How could option three be designed (including the timing of requirements) to ensure BNPL delivers long-term benefits to consumers?

The cabinet paper dated 10 November 2021 states that: "...the lack of comprehensive affordability assessment is the root cause behind some consumers experiencing financial hardship". We generally agree with this statement, and that option three, that BNPL should be subject to the lender responsibility obligations under the CCCFA, should be considered.

The benefits of requiring BNPL providers to comply with responsible lending laws will have to be balanced against:

- The risk that some BNPLs would exit the industry if all the requirements of the CCCFA are immediately required.
- The benefits of the immediacy of a BNPL product with the consumer being able to spread payments over a period of time on an interest-free basis, noting that default fees apply if the consumer misses a repayment.

At a fundamental level, if there is a credit product that is causing or contributing to consumers falling into financial hardship, or exacerbating existing financial hardship, then the providers of that product must be required to check that their customers can afford the product.

Discussion paper question 31: Do you have any comments on option two: Government establishes appropriate incentives for BNPL providers to have an industry code which addresses the triggers of financial hardship?

If option two is preferred, we would like to see a BNPL code include a specific section on complaints to include:

- a) Effective identification of complaints by BNPL providers.
- b) Effective and efficient internal complaints process requirements on BNPL providers.
- c) Requirements to tell customers that they have access to a dispute resolution scheme, both at the time they become a customer and, more relevantly, when a complaint is received.

We would also like to see required consultation with the dispute resolution schemes and with consumer agencies on the drafting of a code.

Please contact us if you want to discuss our submissions in more details.

Yours sincerely



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