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A FINANCIAL OMBUDSMAN SERVICE

8 March 2023

Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
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Submissions on the the Draft Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022

We thank the Ministry for the opportunity to make submissions on the BNPL Amendment Regulations. We are a financial ombudsman scheme with over 8,000 members including several BNPL providers, and many non-bank lenders. We regularly investigate complaints about consumer credit, in particular complaints that lenders have not met the affordability assessment requirements set out in the CCCFA and the CCCF regulations.

We provide our submissions on the five feedback issues identified in the consultation paper, below.

1. How should BNPL be defined?

1.1. We have no suggested changes to the BNPL definition.

2. What threshold amount of BNPL credit should trigger the need to carry out an affordability assessment?

2.1. We have two key submissions on the threshold amount, which we set out in the following paragraphs.

Submission one – multiple BNPLs

2.2. The draft regulations only appear to contemplate the situation where a consumer uses one BNPL provider. As long as the BNPL provider in question has not extended a particular borrower a ‘total credit limit’ exceeding \$600, then the provider could simply extend credit (up to \$600).

2.3. However, in our experience investigating lending complaints and, in the course of this, viewing many consumers’ bank statements, it is very common for consumers to access credit from several BNPL providers simultaneously. These

are often consumers who are financially stretched. They use BNPL as a fast way to obtain credit to pay for everyday needs. In many cases we see, consumers use BNPL continuously.

- 2.4. To unpack this some more, there are at least five BNPL providers in New Zealand. The way we read draft regulation 18I, a consumer could conceivably have five continuous revolving credit facilities of \$600 each available to them: \$3,000 in credit. If these were all six-week BNPL purchases, repayments would be \$500 per week. This is a big expense and likely to be unaffordable for many consumers.
- 2.5. We propose that the regulations should make the exemption threshold a total credit limit, across all BNPL providers, that does not exceed \$600 at any one time.
- 2.6. To achieve this, regulation 18I(3) would need to be amended. As it is currently drafted, we read the regulation to say that where the threshold has not been met, the provider must obtain a full credit report. However, the regulation does not say what the provider should then do with that credit report. There is no underlying affordability assessment obligation on the provider because 18I(1) carves out the requirement to comply with section 9C(3)(a)(ii) of the CCCFA.
- 2.7. We suggest that regulation 18I(3) is amended to make it clear that the purpose of obtaining the credit report is to assess whether the consumer already has a total credit limit across all BNPL providers exceeding the threshold amount. If that limit is exceeded, then the exemption would not apply.
- 2.8. We support the intent of draft regulation 18I(3)(b) which requires all BNPL providers to place a credit listing whenever a BNPL credit facility is made available. This would ensure visibility for all other lenders when undertaking their affordability assessments of a consumer's current BNPL credit in the aggregate.

Submission two – is the \$600 threshold low enough?

- 2.9. Even if a consumer only uses one BNPL provider, they could conceivably have constant access to \$600 of credit. Essentially they would have a \$600 overdraft. However, the difference between \$600 of BNPL credit, and a \$600 overdraft is that the BNPL credit would need to be paid back every six or eight weeks. This would mean a consumer having repayments of either \$100 or \$75 per week.

- 2.10. In our experience, from the complaints we investigate, \$100 or \$75 is a significant portion of some consumers' weekly incomes and, for many, this would not be sustainably affordable. An amount of \$25 per week may be more realistic, meaning the threshold would be better set at \$150. However, we appreciate that with a threshold that low, it may remove some of the benefits of BNPL in that it is an easily accessible form of credit.

3. Should BNPL affordability assessments comply with the affordability regulations

- 3.1. Fundamentally, we consider that for BNPL lending over the threshold, it would likely be satisfactory for BNPL providers to be generally exempt from complying with regulations 4AC to 4AN of the CCCF regulations, as long as they were still required to meet the requirements in section 9C(3)(a)(ii) of the CCCFA.
- 3.2. However, we consider that BNPL providers should still be required to undertake a credit check, akin to the requirement in regulation [4AK\(3\)\(b\)\(ii\)](#). This would provide an additional safeguard that a consumer entering into BNPL lending above the threshold is not already so highly indebted that they would clearly be unable to afford the BNPL lending within the usual repayment period of six to eight weeks.
- 3.3. We think this could be a reasonably cost-effective and efficient check that BNPL providers could undertake, while not having to comply with the full income and expense assessment in the regulations. This would serve to mitigate the risk that it becomes too onerous for BNPL providers to continue operating.

4. Other issues

- 4.1. We strongly support the proposed disclosure requirements summarised in paragraph 18 of the consultation paper.

5. Commencement

- 5.1. We think that the BNPL regulations should commence as soon as practicable. However, we are mindful that BNPL providers will need time to implement changes to their policies and practices. We suggest a lead-in period of six months would be sufficient.

Thank you for considering our submissions. If you would like to discuss them in more detail, please contact us.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Susan Taylor".

Susan Taylor
Financial Ombudsman and
Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Stephanie Newton".

Stephanie Newton
Case Management Team Leader