Submission to Treasury's consultation on Buy Now Pay Later regulatory reform

Date of submission: 9 April 2024

About Financial Counselling Victoria and the financial counselling sector

Financial Counselling Victoria (FCVic) is the peak body and professional association for financial counsellors in Victoria. We provide resources and support to financial counsellors and their agencies who assist vulnerable Victorians experiencing financial difficulty. We work with governments, banks utilities, debt collection and other stakeholders to improve approaches to financial difficulty for vulnerable Victorians.

Financial counselling is a free, confidential, and independent service. It provides vital help for people experiencing, or at risk of, financial hardship. Financial counsellors are uniquely qualified professionals, specially trained to deal with complex financial matters. They assist more than 23,000 Victorians each year – including people impacted by catastrophic natural disasters, newly arrived migrants and refugees, and more than 3,800 family violence victim-survivors.

About this submission

We welcome the opportunity to provide a submission to Treasury's Buy Now Pay Later regulatory reform consultation. Our members have told us many stories about the predatory nature of Buy Now Pay Later (BNPL) credit providers, payday loan providers, and other low cost credit contract providers and lenders, and the negative impacts on the financial wellbeing of vulnerable Victorian clients.

We note and support the excellent consumer advocacy work by CHOICE in this field, with partners including our federal peak body Financial Counselling Australia, Financial Rights Legal Centre and Consumer Action Law Centre – to name a few.

We support all recommendations put forth by these consumer advocacy bodies in their submission to this consultation and provide a few further observations and recommendations.

Further questions about this submission can be sent to [redacted]

Our recommendations

Note *- We support the CHOICE & partners recommendation of making the partial credit check obligation apply to all BNPL loans, including those under $2,000 as a preferred recommendation. If this recommendation is not suitable, an alternative is provided below.*

01. Revise the financial threshold which triggers partial credit checks from $2,000 to a changeable amount which is equal to the Australian Bureau of Statistics data at that point in time of the median weekly income less tax of an employee.

As an alternative to the above *preferred* recommendation, we suggest that a financial threshold tied to median weekly income less tax will better align the average consumer's ability to service a loan's repayment terms with the trigger point at which partial credit checks and protections are enforced. We see that this will have a particularly positive impact for those consumers who are particularly vulnerable to predatory credit providers.

We note that those on incomes lower than the Australian median are still likely to be negatively impacted, especially where they hold multiple accounts with low balances. However, in the interest of a logical financial threshold which is indexed to individual capacity to service a loan, we believe that one tied to median weekly incomes less tax makes the most sense.

02. Revise maximum fees and charges from being dollar cost amounts to a percentage of the amount owed OR a dollar cost amount, whichever is lower.

In section 69E of the Regulations, we recommend that wherever a dollar cost amount is noted in relation to maximum fees and charges (e.g. $200, $125) that this is revised to reflect a relevant percentage amount *OR* the dollar cost amount, whichever is lower. This better protects consumers with low balances from being charged higher amounts to maintain their accounts, adding unnecessary fees and charges that increase the amount of their debt and makes it increasingly difficult to break the debt cycle.

For instance, where a client has a $750 debt on their BNPL account, charging a fee of 5% will result in fees of $37.50 rather than $200. Alternatively, where a client has a $7500 debt, charging the maximum fee of $375 rather than a 5% rate fee of $255, will be a more reasonable outcome.

This structure gives vulnerable consumers a fighting chance of repaying their debts, without needlessly falling into a debt cycle of increasing fees and charges.

03. Proactively increase awareness of complaints mechanisms

As an additional measure, we recommend that internal complaint mechanisms, and external complaint mechanisms such as AFCA's dispute resolution service be required to be *proactively* communicated to clients, for instance, by being included in all email and print correspondence. For instance, standard text to be included on the bottom of all correspondence that states –

"If you would like to make a complaint about our services, you can contact our internal complaints service on XXXX. You can also make a complaint to the Australian Financial Complaints Authority at www.afca.org.au".

We also note that AFCA should be supported to increase their capacity to respond in a timely manner to complaints made by consumers. Financial counsellors have reported that AFCA's capacity to respond is currently compromised due to an increase in demand – and AFCA has also noted these delays themselves on their website.

Noting that there are limitations based on AFCA's funding model as dictated by legislation, we recommend that reviews occur in order to ensure that the service is able to keep up with the expected increased demand after this proposed legislation passes and more consumers are aware of their rights when it comes to credit providers.

Thank you for the opportunity to provide this submission to the Treasury consultation on behalf of Victorian financial counsellors who each year, assist over 23,000 vulnerable people experiencing cost of living pressures.