ZIP'S SUBMISSION TO THE AUSTRALIAN GOVERNMENT'S EXPOSURE DRAFT LEGISLATION PACKAGE FOR BNPL

Zip Co Limited ('Zip') welcomes the opportunity to provide a submission to Treasury's draft legislative package for the regulation of Buy Now, Pay Later ('BNPL') products within the current consumer credit regulatory framework, and appreciates the engagement that has occurred with Treasury in the lead up to the release of this package. Zip supports 'fit for purpose' regulation in the BNPL sector, having advocated for Option 2 throughout this consultation process, and we provide this submission with that context.

Zip is an ASX-listed (ASX:ZIP) leading global financial services company, offering innovative consumer centric products that bring customers and merchants together. Zip offers point-of-sale credit and digital payment services, predominately in Australia, New Zealand and the United States.

We note at the outset that Zip directionally supports the draft legislative package. This submission focuses on key areas of the package that Zip requests Treasury consider further and is not a submission on all provisions contained within the exposure draft bill, exposure draft regulations and explanatory materials.

Background - Zip Products

In Australia, ZipMoney Payments Pty Ltd holds an Australian Credit License with authorisations to engage in credit activities as a credit provider. ZipMoney Payments Pty Ltd operates three consumer products, namely Zip Pay, Zip Plus and Zip Money, as well as a merchant acquiring network. The Zip Pay product is Zip's BNPL product and currently operates under the exemption provided by section 6(5) of the National Credit Code. Zip Plus and Zip Money are both currently regulated as credit contracts under the *National Consumer Credit Protection Act 2009* (Cth) and will not be impacted by this reform.

Further information about Zip Pay is set out below:

1. Zip Pay is a line of credit. A customer can transact up to their credit limit, provided their account is up to date and they meet Zip's drawdown criteria.
2. Zip Pay has a minimum credit limit of $350, with the maximum credit limit of $1,000 for new customers. Customers who have exhibited good repayment behaviour over time (using Zip's internal criteria) can apply to increase their credit limit up to $1,500.
3. Customers can use the line of credit to purchase goods and services with Zip integrated merchants (closed loop), non-Zip merchants (open loop) via the Visa network, and to pay bills using BPAY.
4. Zip Pay is a digital product. Customers can perform transactions using:
    a. the Zip App or website;

    b. direct with merchants who offer Zip Pay as a payment method through the merchant's website or instore; and
    c. a single use Visa or digital Visa card anywhere that Visa is accepted.
5. Customers can structure their repayment amount and repayment frequency to suit their budget (subject to meeting minimum monthly repayments). Repayment frequency can be set to weekly, fortnightly or monthly. All customers provide an authority to make automatic repayments at onboarding. Additional repayments can be made at any time.
6. Unlike some BNPL products offered by other providers, Zip Pay is not a "pay-in-four" solution. It offers greater flexibility by allowing customers to make multiple purchases up to their agreed credit limit, with flexible repayment options.
7. No interest (including default interest) is charged in connection with purchases made or bills paid using Zip Pay.

Summary of Zip's Feedback

Zip encourages Treasury to give further specific consideration to the following key matters:

1. **Fee caps**. The proposed definition of a 'low cost credit contract' ('LCCC') requires the buy-now-pay-later contract to comply with the same fee caps that currently appear in regulation 51 of the National Consumer Credit Protection Regulations 2010 (Cth) ('NCCPR'). These fee caps have not changed in almost 30 years and in Zip's view should be reviewed.
2. **Reasonable belief**. Further guidance should be given on what constitutes reasonable belief under draft regulation 28HAD(5) and draft regulation 28HAF(4).
3. **Licence variation**. Further guidance should be provided on the approach to varying existing credit licences to include authorisations for LCCCs.

We expand on certain matters below.

Zip's Specific Feedback on Proposed Provisions

Extension of the application of the National Credit Code

The draft legislative package identifies that additional drafting is to be added to extend the application of the National Credit Code (NCC) to the provision of credit under a LCCC (which includes a buy now pay later contract) and to set out the constitutional basis for the extension. We expect the additional drafting will clarify the status and ongoing application of certain exemptions set out in section 6 of the NCC (specifically the exemptions in subsections 6(1) and 6(5)), and to address the definitions of "credit" and "credit contract" in sections 3 and 4 of the NCC, and the meaning of "provision of credit" in section 5 of the NCC, in the context of LCCC. This will be important, as some BNPL providers do not currently impose a charge for providing credit and therefore fall outside section 5(1) (and do not need to rely on an existing section 6 exemption).

Definition of ‘Low Cost Credit Contract’ (LCCC) - section 13C

The proposed definition of LCCC states that:

> *A contract is an **LCCC** if: (a) credit is, or may be, provided under the contract; and (b) the contract is (i) a buy now pay later contract, or (ii) a contract of a kind prescribed by the regulations; and (c) the period during which credit is, or may be, provided under the contract is no longer than the period (if any) prescribed by the regulations; and (d) the contract satisfies any requirements prescribed by the regulations that relate to fees or charges payable under the contract; and (e) the contract satisfies any other requirements prescribed by the regulations.*

We have identified the following potential issues with this definition:

1. While the draft regulations do not include a proposed time period for the purposes of subsection 13C(1)(c), if a time period were to be prescribed (similar to the current 62 day period specified in section 6(1) of the NCC), we are concerned that Zip Pay would be unable to satisfy that requirement because it is a revolving line of credit with no fixed term.
2. Subsections 13C(1)(c) and 13C(1)(d) appear to replicate some aspects of the exemptions in subsections 6(1) and 6(5) of the NCC. However, given a LCCC must be a BNPL contract that satisfies both subsection 13C(1)(c) and subsection 13C(1)(d), we are concerned that this formulation would unintentionally exclude some BNPL products from this definition.

Notwithstanding point 2 above, we are supportive of an approach that streamlines fee caps and charges for all BNPL products, noting that the caps can vary significantly under the two existing exemptions in subsections 6(1) and 6(5) of the National Credit Code.

Fee caps - regulation 69E(2)

The proposed fee caps under regulation 69E(2) remain unchanged from existing fee caps in regulation 51 of the NCCPR. Zip submits that these caps must be revisited and standardised across all BNPL contracts for the following reasons:

- The existing fee caps in regulation 51 have not changed since being introduced in 2010, and those same fee caps appeared in earlier State and Territory consumer credit regulations from the mid 1990s onwards;
- The Explanatory Statement to the original regulation 51 noted that a maximum charge was prescribed to 'limit the exemption to credit contracts where account charges reflect the costs of establishing and maintaining the account';
- The cost of providing BNPL products to customers has materially increased since 2010 (for example increase in resourcing costs, interest rates, customer data storage and security and supplier services); and
- The proposed modified responsible lending obligations regime will further increase the cost of providing BNPL products both from an application assessment perspective as well as ongoing compliance costs, and the fee caps should make adequate provision for this cost increase.

Zip submits that the fee caps should be regularly reviewed and increased in line with changes to the consumer price index (CPI). In addition, the fee caps should include an indexation mechanism.

Further, item 2 of regulation 69E(2) provides that, if a customer opens a second LCCC within 12 months of operating the first LCCC with the credit provider, the fees and charges on the second account are capped at $0. This is also the current position under regulation 51. Zip's understanding is that this provision is intended to prevent credit providers from circumventing the annual fee caps in item 1 by opening multiple accounts for a single debtor.

Zip submits that it is being unintentionally and unfairly caught by item 2, and expects other BNPL providers are in the same position, because: (1) Zip does not allow customers to hold more than one Zip Pay account at a time; and (2) if a customer sought to open a new Zip Pay account within 12 months of closing their first account, Zip's fees are structured in such a way that the annual fee caps in item 1 would not be exceeded. In circumstances where a customer has voluntarily closed and then, within 12 months, applied for a new Zip Pay account, Zip considers it ought to be allowed to impose the fees permitted by Item 1.

Zip requests that Treasury reconsider the drafting of item 2 to avoid what Zip considers to be an unintended consequence of the existing regulation 51. Treasury should consider applying the caps at a customer level rather than an account level, such that no customer would be charged in excess of the caps in item 1 in any 12 month period.

Unsuitability assessment requirement

Before entering into or increasing the credit limit on a LCCC, a licensee must obtain certain prescribed information that the licensee 'reasonably believes' to be substantially correct, being the 'income of the consumer', the 'expenditure of the consumer', and any LCCC, small amount credit contracts or consumer leases to which the consumer is currently a party. Whilst the proposed regulation does not require that this information be verified, a licensee must make an assessment to ensure it holds the 'reasonable belief' that the LCCC is not unsuitable. Treasury has confirmed that the definition of a 'reasonable belief' is a legal standard and that it is open to each licensee to interpret its meaning.

In the absence of clear guidance requirements on what constitutes a 'reasonable belief', providers may take unnecessary steps to comply with the requirement to conduct an unsuitability assessment, which may be contrary to the intent and purpose of the modified responsible lending obligations.

For these reasons, Zip requests that Treasury consider providing more detailed guidance in the explanatory statement (including by way of examples) on what might constitute a 'reasonable belief' in the context of these regulations.

Separately, following Treasury's consultation last year on screen scraping practices, we understand from our engagement with the ACCC that the ACCC is currently conducting an initial investigation into bank scraping practices. Zip also notes delays have recently been announced regarding CDR for non bank lenders.

In Zip's view, these developments will likely have a direct impact on the options available to BNPL providers to comply with regulation 28HAD.

Commencement

We note that the amendments are proposed to commence on a day fixed by Proclamation or, at the latest, 6 months following Royal Assent. Zip is concerned that this will not provide sufficient time to introduce compliance processes to support these reforms, particularly in the context of the modified responsible lending obligations. Zip requests that Treasury consider a longer transition period of 12 months post Royal Assent to ensure providers have adequate time to implement these changes.

Credit Limit

In relation to references to credit limits “less than $2,000” in sections 133BXF and 133BXG and regulation 28HAD, Zip is of the view that such references should be amended to “$2,000 or less” as a matter of practicality and to allow for rounded credit limits.

We appreciate the opportunity to provide feedback on the exposure draft legislation package for BNPL and are open to discussing any aspect of our submission with you.