

MEDIA RELEASE

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BNPL Code of Practice public consultation closes

The Australian Finance Industry Association (AFIA), has welcomed the comprehensive feedback it has received during the public consultation for the new Buy Now Pay Later (BNPL) Code of Practice. AFIA represents over 100 retail banks, finance companies and fintech lenders, including BNPL providers.

Diane Tate, AFIA CEO said that the world-first BNPL Code of Practice has been developed to strengthen consumer protections for BNPL customers. “BNPL providers are proactively setting a best practice standard in direct response to areas identified as potential risks to consumers, while preserving customer choice to make purchases and payments in a way that suited their needs.”

“AFIA appreciates the time taken by our stakeholders to give us feedback, especially at a time when we are all working hard on managing the many impacts of the COVID-19 crisis,” Ms Tate said.

In particular, Ms Tate highlighted feedback that:

- Applauded the providers for taking a proactive approach to increasing consumer protection
- Agreed that fees should be fair and capped
- Supported the commitment of not offering BNPL to people under age 18, and
- Agreed with the importance of various measures to help customers manage their payments and spending that go above and beyond the law, such as:
 - not providing additional products if a customer is in arrears,
 - stopping collections activity and freezing late fees when considering hardship requests,
 - not initiating bankruptcy proceedings.

Areas of feedback that Ms Tate highlighted would require further work included:

- Identifying what a fair, reasonable, and capped fee might look like – noting competition law obligations and the different BNPL business models limited the degree prescription is possible and workable
- Reviewing the upfront assessments of suitability for a customer without disrupting the simplicity of the product or frustrating customers, and
- Introducing additional actions to support vulnerable customers without imposing restrictions that could inadvertently cause customers to seek alternative and less affordable options or requiring new systems to share customer information that would not be appropriate.

An AFIA industry working group will now review the feedback and plan the next steps of the development and implementation of the new code. This will include codifying existing commitments that BNPL providers have around not permitting the purchase of weapons or gambling services.

“As part of the consultation process it was important for us to give additional time for some of our stakeholders to give us feedback. As a result, we now aim to finalise the code with a view to launching it on 1 January 2021,” Ms Tate said.

“The draft code was developed prior to the COVID-19 crisis, so this is providing real-time experience.

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The crisis has demonstrated how BNPL products and services continue to offer value to customers and retail businesses by providing a simple, low-cost, and technology-based answer to making sure people continue to access the goods and services they need.

“Our BNPL members – Afterpay, Brighte, flexigroup, Klarna, Latitude, OpenPay, Payright and Zip Co – strongly believe that good consumer outcomes are achieved with customer-centric product design, and industry initiatives that go above and beyond the law; and our new code delivers just that.

“Despite the delay in launch date, our BNPL members are bringing forward best practice standards by already introducing many of the commitments in the new code, including having accessible hardship programs, membership of the Australian Financial Complaints Authority, and ensuring that customers do not spend more if they miss a payment,” she said.

AFIA’s BNPL members have committed to additional consumer safeguards that are designed to help customers manage their payments and prevent them from losing control of their spending. The Code requires that BNPL members not provide any additional products or services if a customer is in arrears. Customers do not receive promotional material if they are behind on payments or experiencing financial difficulties. Furthermore, late fees and charges can be waived (including those already applied) while steps are taken to work out a mutually acceptable repayment arrangement.

“Many of our BNPL members have continued to see business growth during the COVID-19 crisis, with the vast majority of customers continuing to use BNPL products and services to manage their payments while they keep their money longer in their bank account.

“Consistent with other consumer products, there was an initial increase in requests from customers asking for hardship assistance because they lost their job or were seeking information because they were concerned their situation would change. Our BNPL members have continued providing fast and compassionate solutions for their customers experiencing a change in their personal and financial circumstances,” Ms Tate said.

Ms Tate said it is important to remember that BNPL providers are already subject to significant regulation, despite the perception otherwise.

“BNPL providers are already required to meet various legal and regulatory obligations; this is often misunderstood. BNPL providers fall under the remit of a range of laws and oversight by regulators including ASIC, ACCC, AUSTRAC, OAIC and the courts.

“BNPL providers must comply with a range of consumer protection laws, including the ASIC Act prohibitions against misleading or deceptive conduct as well as the unfair contract terms provisions. Other laws include the Privacy Act which regulates the handling of BNPL customer personal information including consumer credit reporting information and anti-money laundering laws relating to customer identity.

“ASIC also has a new product intervention power which it could use to take action against a BNPL provider if the product offered is determined to raise risk of consumer harm, while the Design and Distribution Obligations will also apply to BNPL products.”

Ms Tate said due to the different business models in the BNPL market it will take some time to work through the feedback. “AFIA will continue to work with our BNPL members and stakeholders and make sure we stay alert to COVID-19 developments as we finalise the new code this year.”

For media: email vessa@wilkinsonbutler.com mobile 0477 738 439

For more information: visit our website: <https://www.afia.asn.au> or email info@afia.asn.au