Regulating Buy Now, Pay Later in Australia

Submission by the Small Business Financial Counselling Service, Southern Queensland

Background

The Small Business Financial Counselling Service, Southern Queensland (SBFCS) is delivered by the charitable non-profit organisation, Rural Solutions Queensland Inc (RSQ). RSQ was incorporated in 2006 and is best known for the long-term delivery of the Rural Financial Counselling Service, Southern Queensland (RFCSSQ). With the onset of COVID-19 in 2020, RSQ expanded its service delivery to include Small Business Financial Counselling in both regional and metropolitan areas (including Greater Brisbane, Gold Coast, Sunshine Coast & Toowoomba).

Currently the organisation employs 30 Financial Counsellors of whom 16 are Rural Financial Counsellors and 14 are Small Business Financial Counsellors. In the 2022 Financial Year, approximately 1,500 businesses in Southern Queensland were supported by the team.

All services delivered by RSQ are completely free to clients. Funding is provided by the Australian Government (via the National Emergency Management Agency) and the Queensland Government. All clients supported are either experiencing, or at risk of experiencing, financial hardship and have <20 full time equivalent employees and <$10 million turnover p.a.

Over the past year, a noticeable increase in the use of Buy Now, Pay Later (BNPL) facilities by clients in financial hardship has been observed. Typically, the BNPL facilities have contributed substantially to the payment burden and associated financial hardship experienced by businesses.

Further information about the services available can be found at Small Business Financial Counselling Service.

Key Points

The key points identified by SBFCS relating to BNPL are:

- BNPL can represent a reasonable alternative and finance option for some businesses,
- Insufficient credit due diligence by providers,
- Cost transparency issues,
- ‘Optimistic’ marketing & communications activity,
- Hardship Practices, and;
- Opportunity for borrower education.

Further Information

Buy Now, Pay Later as a reasonable finance option for some businesses:

SBFCS appreciates that BNPL holds a legitimate position in the finance market, supporting business owners to access credit with a structure, an amount or a term that is unavailable to them from other financiers. SBFCS supports the existence of BNPL however identifies that this finance type shall benefit from additional regulation and oversight by regulators to prevent adverse outcomes being experienced by borrowers.

Insufficient Credit Due Diligence by Providers:

SBFCS questions the adequacy and detail of the credit due diligence undertaken by BNPL providers when supplying finance to business owners. From the cohort of clients supported by the SBFCS, the business operations are typically experiencing cashflow stress. It is not uncommon for these businesses to have had their access to credit restricted from traditional sources (commercial banks, creditors). Therefore, businesses turn to BNPL due to the quick and easy access (typically online with fast provision of credit).

Businesses who present to the SBFCS who have accessed BNPL shall usually hold multiple facilities with one or more providers. Due to the short-term nature of BNPL, this represents an extreme cashflow burden to businesses who frequently have outstanding taxation liabilities and arrears on other commitments such as commercial leases.

SBFCS suggests that significant scope exists for enhanced credit due diligence by BNPL providers to ensure that BNPL facilities are not placing additional cashflow burdens onto businesses who are already experiencing hardship. Ensuring that BNPL borrowers have the capacity to repay the facilities is considered paramount in ensuring that businesses are not placed at-risk by improper access to credit.

Furthermore, concern is held within the Rural Financial Counselling Service (RFCS, also delivered by RSQ) regarding the emergence of BNPL providers offering up to $1 million in finance to primary producers. Whilst challenges have not yet been experienced by clients of the RFCS, Rural Financial Counsellors hold reservations given the observations of their Small Business colleagues. A maximum cap on the size of BNPL borrowings is suggested as prudent.

Cost Transparency Issues:

Whilst it is acknowledged that BNPL providers are providing credit in what is commercially a high-risk business, and shall therefore be seeking a higher level of return than traditional finance sources (such as commercial banks), the SBFCS queries the transparency of the finance cost to access BNPL. Put simply, the majority of borrowers who are supported by the SBFCS do not understand the monetary value of the repayments required on their facilities

Strategies employed by BNPL providers which have been observed by the SBFCS include:

- Fixed daily/weekly cost of the finance which sounds 'cheap' however is proportionally significant to the face value of the debt. For example, facilities <$10,000 with a daily payment of, say, $20. Assuming $10,000 debt, this equates to 72.8% interest (more extreme cases have also been identified).
- Payments as a percentage of the daily revenues of the business, calculated via the point-of-sale system, not as a percentage of the finance amount, thereby stifling the free cash within the business.
- 'Low' interest rates however with aggressive establishment, administration, transaction, and dishonour fees which may represent >100% interest rate p.a.

The SBFCS strongly recommends the implementation of clear disclosure requirements regarding the costs of BNPL finance to borrowers. It is suggested that this would be best expressed in terms of an all-up comparison interest rate, to align with other forms of finance available and identifying the true cost of the finance.

'Optimistic' Marketing & Communications Activity:

Whilst the perspective of BNPL by the SBFCS is primarily formed by interactions with business borrowers who hold BNPL facilities and are in financial hardship, and not from borrowers who are accessing BNPL facilities for the first time, it is perceived that the marketing and communications activities undertaken by providers is optimistic to the point of being potentially misleading.

The SBFCS is aware of strategies such as the following being utilised by BNPL providers which are considered to overtly encourage businesses to borrow more without focus on their existing commitments:

- BNPL SmartPhone applications which show on the home screen only the 'amount available to spend'. Required repayments, current balance owing and arrears is only able to be identified by deeper forays into the application.
- Direct SMS messaging with terminology/vernacular such as 'Need support this holiday season? Get 8 weeks no repayments….'

Whilst it remains the borrower's decision as to whether they chose to take up a BNPL facility or to access previously approved facilities, the SBFCS believe that potential exists for increased disclosure and/or regulation of marketing and communications activities to highlight the repayment commitment that a borrower shall incur by entering into a BNPL finance agreement.

Hardship Practices for Business:

Whenever any finance provider extends credit, it is reasonable to assume that a cohort of borrowers shall encounter difficulty in making repayments and/or experience sustained financial hardship. Addressing these issues is a challenge for both the borrower and the finance provider, particularly when working within tight time horizons of BNPL finance (typically 3 months).

To-date, SBFCS has observed limited capacity within BNPL providers to address and/or work with borrowers who are experiencing financial distress/hardship. Generally, providers seek to immediately fall back to the finance agreement and the charging or repayment penalties/fees which are proportionally significant to the value of the debt (e.g. a $600 debt becoming >$2000 with penalties and fees). Usual approaches to supporting clients in financial hardship via the restructuring of debts over a longer period have not been evident. Additionally, BNPL providers lack clarity on the role of financial counsellors in supporting clients experiencing financial distress.

SBFCS suggests that minimum requirements be implemented to govern the manner in which BNPL providers interact with borrowers who are experiencing financial challenges such as those covered under the Code of Banking Practice.

Borrower Education:

Lastly, SBFCS typically supports clients who would not be considered sophisticated borrowers. Whilst this is likely not the full client base of BNPL providers, it is considered the client cohort who are most at-risk of financial hardship and associated vulnerabilities.

Currently, the SBFCS is not aware of any requirement for BNPL providers to ensure that the clients who access their finance to demonstrate that they understand the costs, terms, conditions, risks and implications of entering into the finance agreement. This lack of understanding can lead to a deterioration in the financial standing of borrowers and potentially be a catalyst for further vulnerabilities to emerge (loss of financial independence, deterioration in living conditions).

SBFCS advocates for the standardised implementation of practices and protections for BNPL borrowers across the industry, including:

- 'Cooling Off' periods between the approval of facilities and access to the facility,
- Requirements for 'plain English' legal agreements between providers and client,
- Requirement for clients to demonstrate their understanding of the repayments, fees, charges and associated terms and conditions,
- Clarity around recourse to borrowers and their assets by BNPL providers if repayment is not made,
- Regulation of taking personal and third-party guarantees by BNPL providers to support debts.

Summary:

The SBFCS observes that the BNPL sector holds a beneficial position in the Australian finance industry, providing a level of speed and flexibility not elsewhere available. However, it is perceived that gaps exist in the current regulatory framework which enable BNPL providers to extend a quantum of credit to clients at a cost and on repayment terms which are prohibitive and potentially endangers vulnerable clients. Furthermore, BNPL providers undertake communications activities which may shield the true cost and liability of the facilities to borrowers.

Most concerningly, there appears to be a lack of consistency and regulation around how providers interact with clients in financial hardship. If minimum industry standards are regulated, this shall benefit providers and clients alike.

Further Information:

If any further information is required, please contact:

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