afterpaytouch
ABN 30 618 280 649

www.afterpaytouch.com

Level 5, 406 Collins Street
Melbourne, VIC 3000 Australia

Manager
Financial Services Unit
Financial System Division
The Treasury, Langton Crescent
PARKES, ACT 2600

By email: ProductRegulation@treasury.gov.au

Re. joint consumer submission on the proposed Design and Distribution Obligations and Product Intervention Powers

Dear Ms Moore,

Thank you for providing Afterpay Touch Group (**Afterpay**) the opportunity to respond to the Consumer Action Law Centre's joint consumer group submission (**CALC submission**) to the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 **(the Bill).**

In this letter, we refer to the proposed product intervention powers and the design and distribution obligations under the Bill as the **ASIC powers**.

<u>In summary, Afterpay is strongly of the view that the ASIC powers are not appropriate for the simple, no cost, short-term product offered by Afterpay which enables consumers to purchase retail goods or services. Our reasons are set out below.</u>

About Afterpay

Afterpay is a modern-day payment service that services retailers and, in turn, encourages and rewards responsible spending. The Afterpay model, in essence, works by allowing consumers to purchase consumer goods and services using simple, interest-free instalment plans, available at retail stores – either online, on mobile, or in-store at participating merchants.

The majority of Afterpay's revenue is not derived from consumers but from merchants who pay Afterpay a fee to offer their customers flexibility in paying the **cash price** for goods and services. Goods and services do not cost a consumer more if they are paid for, on time, using Afterpay.

Afterpay account limits start low (most purchases average $150) and only increase with a positive repayment history. A proprietary fraud and real time repayment capability check is employed before each and every order. This is a sophisticated algorithm-based technology which identifies likely risk spots both within consumer groups and by product. As a result, 30% of order requests are not approved. The sophistication and accuracy of these checks has ensured a default rate on purchases of less than two per cent.

afterpaytouch
ABN 30 618 280 649
www.afterpaytouch.com
Level 5, 406 Collins Street
Melbourne, VIC 3000 Australia

Afterpay's business model is aligned with customer protection and as such includes clear policies and processes around responsible lending, complaints, dispute resolution, and financial hardship.

Afterpay has embedded consumer protection into business practices in a way that is compliant with federal and state consumer law. Afterpay voluntarily opts-in to the Credit & Investments Ombudsman's complaints process and offers a Financial Hardship Policy for any customers who present with financial difficulties.

Afterpay has proactively engaged with all major consumer groups, and as a result introduced several new measures including a review of the Financial Hardship Policy and Privacy Policy, highlighting budgeting tools ASIC TrackMySpend, Choice – Budgeting Software and the National Debt Hotline on the Afterpay website, and providing a prominent link on Afterpay's home page to a responsible spending page.

An important outcome of the proactive contact with consumer groups has been the offering of a direct line of communication between Afterpay and financial counsellors, should any hardship cases or complaints be presented to them, and which aims to resolve such matters in a timely way.

A recent internal deep dive of Afterpay data found that 77% of users say they use Afterpay to help with budgeting and 86% use a debit card to purchase items. Historically, 93% of Afterpay orders incur no late fees, and 78% of Afterpay users have never paid a late fee. Afterpay late fees are not designed to generate revenue for Afterpay and are a genuine estimate of Afterpay's loss incurred as a result of late payments. We describe late fees in greater detail below.

In addition, Afterpay chose to join the Credit & Investments Ombudsman's scheme in August 2016. Since then, the Ombudsman has received only 17 complaints (across over 1,500,000 customers) regarding Afterpay, 14 of which were resolved directly with the customer and did not require the Ombudsman to investigate further, three complaints are pending.

Regulation of Afterpay is inappropriate

While Afterpay respects the general sentiments of the proposed Bill and recognises the need for consumer protection measures in relation to credit, the CALC submission incorrectly classifies Afterpay as one of the 'unregulated credit' products it believes should be covered by this legislation. Afterpay is not similar to other finance type providers mentioned in the submission and offers a unique service which has been misrepresented in the submission.

a) Afterpay differs greatly from other credit arrangements

Afterpay is not regulated as a credit provider for the purposes of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Legislation**) as Afterpay does not impose any charge for the ability to pay the original purchase price (and no more) in fortnightly instalments. Afterpay settles with the merchant upfront on behalf of the customer who obtains the goods or services at the time of purchase.

ABN 30 618 280 649

www.afterpaytouch.com

Level 5, 406 Collins Street
Melbourne, VIC 3000 Australia

Unlike a traditional credit product such as those identified in the CALC submission, and as we indicate in the above description of the Afterpay product, there is no cost to the consumer for the Afterpay credit product. It is simply a purchase of goods or services at a clear and readily identifiable market price (namely, the retailer's normal cash purchase price), over time. There is no cost linked to the time value of money in any way whatsoever with the Afterpay product. Further, the credit term is short, the instalment obligations are simple and clear, and there are budgeting benefits in better scheduling payments to available funds.

In that way, the risk to Afterpay customers is greatly limited and clearly differs from regulated credit which may be offered at a significant cost (eg, a credit card or SACC[1]) or credit which falls outside the Credit Legislation but where costs accrue to the consumer. Afterpay's product is not one where a consumer is at risk of incurring significant costs of credit and which may suggest enhanced consumer protection is needed.

b) Afterpay should not be subject to a small part of a complex regulatory regime

Similarly, Afterpay is not regulated as a financial services business under the *Corporations Act 2001* (Cth) (**Corporations Act**) because the Afterpay product is a credit facility. Credit facilities are not a financial product (section 765A(1)(h)) for the purposes of the Corporations Act.

In our view, as it is regulated as neither credit nor financial product, it would be an inappropriate result if such a product, which relevant legislation does not intend to regulate, was to be made subject to only part of an extensive and complex regulatory regime – being the ASIC powers.

We note that Afterpay is a credit facility for the purposes of consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), Compliance with the ASIC Act is well recognised by Afterpay and existing ASIC powers are already appropriate to deal with any infringement of such provisions under the ASIC Act.

c) The ASIC powers are not intended or necessary in relation to Afterpay

The product intervention power and the design and distribution obligations (**ASIC powers**) were recommended in the Financial System Inquiry Final Report (**Murray Report**) to reduce the shortcomings of the existing framework which relies heavily on disclosure and appropriate financial advice (see page 199 of the report). The Murray Report's recommendation is based on the assumption that the information disparity between consumers and product issuers may lead to adverse consumer outcomes, particularly in the case of complex financial products where disclosure may not sufficiently inform a consumer of the risks involved with a financial product.

As a starting point, the Murray Report proposed the ASIC powers to enhance ASIC's ability to protect consumers where regulated products were otherwise compliant, but consumers were still prejudiced. Afterpay's product is neither a regulated financial product nor a regulated credit contract, and on that basis, should fall outside the proposed powers of ASIC.

[1] Small amount credit contracts regulated under the Credit Legislation.

ABN 30 618 280 649

www.afterpaytouch.com

Level 5, 406 Collins Street
Melbourne, VIC 3000 Australia

Further, products such as those offered by Afterpay are, in general, simple in their terms and operation, and readily understood by a consumer. A consumer uses Afterpay to pay in instalments the cash purchase price (and no more) for goods or services provided at the time of purchase. It is a simple sale by instalment, without additional charges. The Afterpay product has none of the complexities or potential for risk to consumers that the proposed ASIC powers are intended to avoid (eg, hybrid investment products). Regulating Afterpay's product in the same manner as such complex arrangements is clearly inappropriate.

In addition, we note that these ASIC powers were recommended to "decrease the number of consumers buying products that do not meet their needs" (see page 204 of the Murray Report). In the case of Afterpay, it is highly unlikely that Afterpay would "not meet consumers needs", as the consumer readily understands his or her retail purchase transaction and there is no cost other than the stated purchase price to be paid. It is a product which simply offers additional flexibility in making payments for the relevant goods and services, and without additional charges.

d) Afterpay's late fees do not modify this position

Unlike traditional credit products, it is in Afterpay's financial interest for customers to pay on time because there is no cost of Afterpay credit. Late fees apply when customers do not pay on time but are designed to act as a disincentive to such default. Afterpay late fees are not designed to generate revenue for Afterpay and are a genuine estimate of loss incurred as a result of late payments. Late fees do not incur interest and customers cannot make further purchases while payments are outstanding. This means that a consumer who misses a payment cannot get deeper in debt by buying more goods and services using Afterpay, unlike a credit card or small amount lending product where interest on missed payments can compound.

e) Examples in the CALC submission do not modify this position

The CALC submission includes two anecdotes which suggest Afterpay customers found themselves in debt as a result of using Afterpay services. While we understand names have been altered for privacy reasons, we are unable to match the facts to anything that has been assessed by our customer service team. Nevertheless, we think it is worth addressing some key points.

In the case of "Harriet", we note that Afterpay does have a proprietary fraud and real time repayment capability check and a person merely misrepresenting their birthdate is unlikely to be enough to gain access to an Afterpay account. Further, Harriet could always simply return the handbag to the store in which it was purchased, in line with the store's returns policy. As the purchase was funded using the Afterpay facility the refund amount would be paid to Afterpay, completely discharging Harriet's obligations to Afterpay (noting that she did not have to pay Afterpay anything more than the simple purchase price of the handbag - there were no other charges that would need to be covered).

In the case of "Tara", we note that we do offer a Financial Hardship Policy for any customers who present with financial difficulties. Again, the relevant goods may be capable of being

ABN 30 618 280 649

www.afterpaytouch.com

Level 5, 406 Collins Street
Melbourne, VIC 3000 Australia

returned in line with the returns policy of the relevant stores. For Tara to have a debt of $700, she would have had to have a good prior history of on time payments to Afterpay. This is because Afterpay starts new users on a low limit, and only increases it where they have demonstrated an ability to repay. Afterpay is simply is not a product which lets consumers quickly get in debt over their heads.

Noting this, the cases presented as examples are of concern to Afterpay and we strongly encourage consumer groups to liaise directly with Afterpay through established channels to address them.

Conclusion

Whilst Afterpay supports the proposed Bill as it stands, for the reasons set out above, Afterpay and its product are neither the type of entity nor the type of product which has been suggested or is intended to be subject to the proposed ASIC powers.

Afterpay strongly rejects any claim or inference that the Afterpay service will cause or has caused detriment to our customers. The impact of including Afterpay and the services which Afterpay provides as being subject to the ASIC powers legislation would create a regulatory burden and cost for Afterpay going forward, which is unnecessary because Afterpay is not a complex product and in any event is already regulated as noted above.

Accordingly, Afterpay does not support the extension of the ASIC powers in the manner suggested in the CALC submission.

We also note that an alteration to the scope of the reforms as suggested in the CALC submission comes late in the consultation process and would significantly change the scope of such reforms, in our view, without adequate consultation.

We are committed to an open and transparent business model and welcome any further questions, and specifically request that further and considerable consultation occur directly with us if the CALC submission is regarded in a positive way.

Anthony Eisen
Executive Chairman
[redacted]

David Hancock
Group Head
[redacted]