



1 April 2021

Secretariat  
AFCA Review  
The Treasury  
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PARKES ACT 2600

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### **Afterpay submission to the Review of the Australian Financial Complaints Authority**

Afterpay welcomes the opportunity to provide a submission to the review of the Australian Financial Complaints Authority (AFCA Review).

Afterpay has been a voluntary member of AFCA since it became the 'one-stop shop' for complaints resolution in November 2018, and was a member of one of AFCA's predecessor schemes prior to that. Afterpay also played an active role in making AFCA membership a mandatory requirement in the Buy Now Pay Later industry Code of Practice (BNPL Code).<sup>1</sup>

This review is a timely opportunity to provide feedback and to consider whether further enhancements should be made to ensure that AFCA is appropriately calibrated and operating effectively. In this submission, we comment on the specific areas relevant to Afterpay's experience with AFCA.

AFCA is one of the most important consumer protections in the financial services industry. On one hand, it allows consumers to access an independent dispute resolution service at no cost, where the overlay of fairness ensures that outcomes are not driven from a purely legalistic perspective. On the other hand, initiatives such as the [AFCA Datacube](#) allow financial firms to benchmark their complaint handling practices against their competitors, which can promote healthy competition among financial firms.

#### **About Afterpay**

Afterpay has revolutionised the way that consumers pay for goods and services by turning the traditional model of high-cost consumer credit on its head. Afterpay has grown into a leading international player in the Buy Now Pay Later (BNPL) sector, with over 11 million customers globally.

Afterpay is a no cost service to the customer if instalment payments are made on time. Responsible spending rules and consumer protections are built into the service – these

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<sup>1</sup> [BNPL Code](#) (cl 13.9).

rules help ensure customers never revolve in debt, no exceptions. In circumstances where the customer does not pay their instalment payments on time, their service is immediately suspended, and late payment fees can be applied. Late payment fees are fixed, capped and do not accumulate or compound over time.

## **Afterpay's performance at AFCA**

Using AFCA's Datacube, we have been able to establish that Afterpay has the highest resolution rate (83%) in the BNPL industry which is significantly above the wider financial services industry (58%).<sup>2</sup>

Complaints relating to hardship account for less than 5% of Afterpay's complaints, far below the industry average of 10%, and demonstrates that Afterpay is dedicated to providing a hardship program that is accessible, fair and easy to navigate.

Afterpay has only had four matters progress to the final determination stage of AFCA's process, and all of these have been found in Afterpay's favour.

As AFCA would be aware, a significant proportion (about one third) of AFCA complaints about Afterpay relate to Afterpay's decision to prevent a customer from spending. Although Afterpay seeks to minimise all complaints, these types of complaints are reflective of the responsible spending rules that are built into the Afterpay platform.

The second largest proportion of AFCA complaints about Afterpay (also about one third) relate to concerns around the merchant or the underlying product/service that has been purchased. Afterpay typically settles these complaints in favour of the customer, even though we have no control over the goods/services.

## **Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?**

Afterpay's interactions with AFCA are always of a high standard. AFCA has been receptive to our feedback, especially in circumstances where we have sought to differentiate our product from traditional forms of credit. In fact, there have been multiple instances where AFCA case managers have booked in time with our team to discuss particular cases in detail in order to find a fair and reasonable solution. We have also had positive experiences when we have escalated specific issues to senior AFCA staff, with timely and pragmatic responses.

## **Is AFCA's dispute resolution approach and capability producing consistent, predictable and quality outcomes?**

One barrier to AFCA producing 'consistent, predictable and quality outcomes' is that [AFCA's Rules](#) were not drafted with BNPL products in mind.

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<sup>2</sup> [AFCA Datacube](#). Complaint period 1 July 2019 - 30 June 2020

## *Account closures*

AFCA must exclude from its jurisdiction a complaint about a financial firm's assessment of the credit risk posed by the borrower.<sup>3</sup> In practice, this means that AFCA does not consider complaints about credit/loan application decisions and when order attempts are declined for BNPL products.

However, AFCA does not exclude complaints that relate to the closure of an account. This is reasonable for traditional credit products because the credit assessment is undertaken at the time of application and successful applicants gain access to a revolving credit facility. In contrast, Afterpay does not provide customers with an unrestricted spending limit and we do not approve every order.

As part of our commitment to responsible spending, Afterpay permanently closes accounts where a payment has remained outstanding for over 180 days. Our platform is not designed for customers that cannot meet their payment obligations on time.

However, AFCA does not accept that account closures are an assessment of Afterpay's credit risk under C.1.3(a) of its Rules. This means that customers can raise an AFCA dispute about their account being closed, even though they will not be able to transact on the Afterpay platform. This results in a poor customer experience, as the customer may be led to believe that Afterpay's decision to prevent spending can be overturned. In circumstances where Afterpay's decision to close an account is based on credit risk grounds, we recommend that AFCA also exclude these complaints from its jurisdiction.

## *Merchant-related disputes*

As noted above, around one-third of AFCA complaints about Afterpay relate to the underlying goods/services that have been purchased, and customer service issues related to the merchant/retailer. Although Afterpay has no contractual or legal responsibility for the customer service issues of a merchant/retailer (in the same way that a credit card provider is not responsible for customer service issues related to a merchant/retailer)<sup>4</sup>, Afterpay will typically make a commercial decision to settle these complaints in favour of the customer to avoid paying AFCA's case fees.

Afterpay's average order value is \$150, which is significantly lower than the fees that AFCA charges as a complaint progresses through the AFCA process.

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<sup>3</sup> AFCA Rule, C.1.3(a)

<sup>4</sup> Note, this feedback is not about retailer/merchant issues that would be covered by card scheme chargeback arrangements. This is about other merchant-related customer service issues that would not be covered by chargeback rules.

**Do AFCA's funding and fee structures impact competition? Are there enhancements to the funding model that should be considered by AFCA to alleviate any impacts on competition while balancing the need for a sustainable fee-for-service model?**

Similar to the feedback above, AFCA's funding and fee structure was not designed with BNPL products in mind. For example, AFCA's case fees are more likely to be proportional to amounts associated with credit card, personal loan, mortgage and insurance products.

As noted above, Afterpay the average order value is only \$150. Accordingly, AFCA's fee structure can be prohibitively expensive when applied to BNPL product complaints, and result in commercial decisions being made to resolve a complaint in the customer's favour, even though the customer's complaint is without merit.

AFCA should consider the effect these costs have on newer FinTechs who are competing with larger incumbents.

**Conclusion**

We commend AFCA on its first two years of operation, and its efficiency in dealing with the challenges that the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* and the COVID-19 global pandemic have presented.

In particular, we applaud AFCA on its ability to include product providers that fall outside the *National Consumer Credit Protection Act 2009 (Cth)*, and recommend that AFCA shares its experience of the BNPL sector with the Financial Ombudsman Service (FOS) in the UK as the UK embarks on developing a BNPL-specific regulatory framework. We believe that participation in this important consumer protection measure should be a mandatory requirement for all BNPL providers in the UK, like it is in Australia under the BNPL Code.

We look forward to future engagement with AFCA where we can further demonstrate the differences between our business model, other BNPL products and traditional credit products.

Should you wish to discuss this submission further, please contact us via email:



Yours faithfully



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