



25 August 2021

Stephen Garofano Strategic Policy Adviser, Strategy Group
Australian Securities and Investments Commission
email: hawking.submissions@asic.gov.au

Dear Sir/ Madam,

Thank you for the opportunity to provide comments to inform your decision making in relation to **The Hawking prohibition: Update to RG 38**. We welcome the proposal in respect to strengthening the protection of consumers from unsolicited offers of financial products that may not meet their needs, and adequate compensation for violations of said prohibition.

About us

Connect Health & Community is a not for profit community health organisation that provides a comprehensive range of services. These services include Dental, Physiotherapy, Dietetics, Podiatry, Hydrotherapy, Speech Pathology, Gambler's Help, Community Transport and Activity Programs to name but a few.

Connect Health & Community has a strong tradition of commitment to community participation via volunteering, with an increasing emphasis on consumer representation at all levels across the organisation. It has been in operation for over 40 years.

We receive funding from Federal, State and Local Government and work in partnership with other community agencies.

Gambler's Help Southern (GHS) is program of Connect Health & Community and has maintained continuous funding since 1995. GHS is the largest problem gambling service provider in Australia. It encompasses 25% of the Victorian population, operating from 13 geographically, demand led sites across the Southern Metropolitan Region of Melbourne and managed centrally from its corporate office at 2A Gardeners Road, Bentleigh East, Victoria.

Gambler's Help Southern provides the following specialist program streams:

- Therapeutic Counselling
- Financial Counselling
- Community Engagement
- Venue Support

Our therapeutic counsellors assist clients to identify and address the underlying causes which have led to the client experiencing gambling related harm. This may have resulted from trauma, drug and alcohol addictions and/or depression arising from grief or other mental health conditions.

Our financial counsellors assist clients to address the financial consequences of gambling related harm. This includes advocacy with financial institutions, landlords and energy providers.

The information provided in this submission speaks to the professional learnings of our staff and their observations from working with a very broad cross section of our community for over four decades. Our breadth of experience includes working as accountants, financial professionals and long term work as advocates in the community sector.

We invite you to contact myself, Evan Nathanson,
Program Manager, Mental Health, Child, Youth & Family, 2A Gardeners Rd, PO Box 30,
Bentleigh East VIC 3165. T: [REDACTED]
to discuss any aspect of this submission and our recommendations.

A handwritten signature in black ink, appearing to read 'Evan Nathanson', with a stylized, cursive script.

Evan Nathanson
Program Manager,
Connect Health & Community

Submission

Thank you for the opportunity to make this submission.

Our gambling therapeutic and financial counsellors are increasingly seeing clients who are impacted by credit card, store credit and Buy Now Pay Later (BNPL) debt due to hawking by stores and other companies.

Firstly, we would like to bring it to the attention of ASIC that this consultation process appears to be aimed at companies providing comments, rather than seeking appropriate input on the consumer experience. e.g. it asks for likely compliance costs; the likely effect on competition and other impacts, costs and benefits. We ask that consumers be taken into account when looking at all submissions.

Our first concern is that the definitions do not reflect the current practice, with companies actively undertaking provision of financial products specifically to avoid scrutiny of financial regulation scheme. This inclusion of credit-like activities will reduce the development of new products designed to avoid ASIC's compliance activities and regulation.

Recommendation

We recommend ASIC include BNPL products and other arrangements which rely on fees and late fee penalties in The Hawking provisions.

Through companies hawking BNPL, consumers are being actively encouraged to access financial products that may not suit their financial situation, or the consumer may not understand the possible implications of using BNPL products. Some BNPL advertising promotes 'no interest', however they fail to transparently explain, with the same vigour, the fees and charges to which consumers are exposed if payments are made late or not at all.

Recommendation

We recommend restrictions be put in place to BNPL popups for online purchases and promoting the use of BNPL by offering discounts/sales. We recommend the option to use BNPL services require an active selection at checkout only.

We believe that the current practice of encouraging the use of BNPL during the purchase process encourages customers to take on additional debt, for which there is not a credit check. In our day-to-day work as financial counsellors we are finding that as the BNPL market increases, our clients are accessing multiple BNPL loans at the same time, which results in unaffordable repayments and financial hardship. As these products mature in the market place it is noted that the 'interest free' tag is a misnomer, as when a default occurs and the debt be on sold, that ordinary collection arrangements - including interest - apply.

Recommendation

We recommend that the definition of credit products be expanded to include payment plans where the goods are provided upfront and the cost of failing to comply with payment arrangements takes the form of late fees rather than interest.

Should a consumer be deemed entitled to a refund because the lending is in breach of the Hawking Provisions, we believe that an additional penalty be imposed being that an additional fee be imposed.

Recommendation

We recommend the lender be required to refund to the customer all funds paid along with an additional amount equivalent to the bond interest rate legislated in the state where the lending was provided.

In addition to the above, we have further recommendations including:

- We are aware that clients are being contacted by multiple arms of the same entity and like entities.

We recommend that the sale or transfer of client data, including within divisions of the same company, be prohibited.

- The language used in the contracts supporting these products is often complex and does not make all the consequences of non-payment clear.

We recommend that there be plain English requirements on all documentation, including forms and consents.

- We are aware that technology is evolving to enable the mining of data prior to data being submitted.

We recommend that the mining of consumer data prior to submission of forms be prohibited.

We also recommend that abandoned online application forms do not constitute consent to contact.

- We often see clients who approach retailers after seeing “interest free” offers being advertised. These offers are not providing interest free arrangements but are in fact credit card arrangements. The credit offered often exceeds the value of the interest free goods. Often this is coupled with poor account statements that provide incomplete information causing confusion for consumers re: how the payments need to be completed within the interest free period.

We recommend the Hawking provisions need to include restricting the hawking of store-arranged interest free lending to customers to the value of the goods acquired in the transaction.