Min-it Software

ASIC 20-274MR: CP330 - Product intervention: Using the product intervention power: Continuing credit contracts

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Background Information

This submission is made on behalf of Min-It Software ("Min-It") clients.

We welcome the opportunity to submit this submission on ASIC's further consultation on proposed product intervention regarding continuing credit contracts.

Aside from the software produced in-house, specifically by or for franchised organisations, Min-it is a leading loan management software supplier to non-ADI, both in Australia, New Zealand and more recently, Papua New Guinea. These clients range from lessors, small lenders offering anywhere from $300 - $10,000, other lenders offering larger amounts, typically $5,000 - $50,000 or more, car financiers, home mortgage providers and those offering business loans.

A significant number of our clients are affected by continuing credit contracts issued both by Cigno Pty Ltd and its associate lender and Buy Now Pay Later ("BNPL") entities.

The vast majority of Min-It's clients are not affiliated with any industry association.

Introduction

We note the additional reforms to the original draft Legislative Instrument issued in July 2020.

Whilst in agreement with the new exemption relating to non-cash payment facilities, we disagree with the approach being taken to protect BNPL entities for the reasons stated below.

Responses

Support for the use of the Intervention Power

As we have previously stated, we support ASIC using its intervention powers against Cigno Pty Ltd and its associate lender, Gold-Silver Standard Finance Pty Ltd. Clients offering SACCs and MACCs have constantly come up against this lender and its excessive fee structure. Not only does it cause detriment to the consumer but it also causes detriment to other lenders. Consumers stop paying other loans in a bid to keep Cigno's fees down but they rapidly get out of hand. Our clients report that they inevitably have to decline further loan applications because they cannot meet Responsible Lending Obligations due to insufficient disposable income. A number of our clients have managed to assist some consumers by providing a consolidation loan but many are in such dire straits that they are referred to Financial Counsellors.

These consumers are not necessarily all on Centrelink benefits; many are employed but just get too far into a classic debt spiral.

Definitions

Section 4 defines "*continuing credit provider*" as "a person who is purporting to rely on subsection 6(5) of the National Credit Code in relation to a continuing credit contract".

We suggest strengthening this by amending the phrase “continuing credit provider” to read “exempt continuing credit provider” so that it highlights to the reader that the provider is using or relying on the exemption contained within subsection 6(5) of the National Credit Code.

Buy Now Pay Later exemption

Although ASIC states it has found a BNPL exemption warranted “as the significant detriment described in CP 330, does not, on the evidence currently available, arise from buy now pay later arrangements”. We disagree. We asked our clients for examples of consumers with high numbers of concurrent BNPL payments and were asked how many did we want. In the end, we attach 3 from one lender as examples but we could supply a great many more. Refer Appendix A.

These examples show high volumes (in excess of 50 with one showing 110 in the past 90 days) of concurrent payments. In almost all examples, this impacts other credit providers. As we advised the Senate Economics References Committee – Inquiry into credit and financial services targeted at Australians at risk of financial hardship in our submission dated 04 February 2019, consumers will pay the BNPL entity in preference to all others, even to the point of the consumer doing without food or paying rent. We supplied the Committee with a redacted copy of a consumer’s bank statement that showed regular payments to BNPL entities were made at the expense of dishonouring a payment to 2 lenders (Credit Corp and City Finance). This is not uncommon.

Our client that provided these 3 examples has indicated that around 70% of all applicants, irrespective of loan type, have some form of BNPL payment. Of these, over 30% are regarded as having excessive BNPL commitments and they define ‘excessive’ as having BNPL payments exceeding $1000 in any 2 month period. All 30% use in excess of 20% of their income on BNPL payments. We are aware of another of our clients that had a consumer apply for a loan that was using in excess of 60% of her weekly income on BNPL payments. All clients report that Centrelink beneficiaries are more over-committed than those employed with their BNPL payments and that over 90% of Part IX proposals received have a BNPL component. A number of our clients are offering BNPL consolidation loans simply to get the consumer out of their debt spiral but all indicate the situation is worsening.

All of the BNPL models that use the section 6(1) NCC exemption allowing for credit under a term of 62 days being exempt from the NCC require fortnightly set payments. That repayment frequency is fixed rather than simply being ‘regular’. The consumer has no real ability to control this and set the payment amount to the amount they can afford for that period. Whilst some would argue it is a credit product rather than a lay-by, it still constitutes the use of discretionary spending funds.

The providers of BNPL that charge a fixed monthly fee (either for administration or allegedly direct debiting recovery) but do not charge interest in our view should do so under the National Credit Code. That way the consumer is fully protected by the Credit Act. All that this would require is for a regulation to be passed. Whether the Treasurer would override this, though, with his proposals for Credit Reform is debatable since it encourages consumer spending.

The uptake of BNPL is now widespread and it could be argued the horse has well and truly bolted and it has allowed to be given some of the providers are ASX listed. Whilst it was initially aimed at discretionary spending by millennials (Gen Y), its use has spread across generations. This is because you can put almost anything on BNPL, from services (hairdressing, car repairs, golf fees, etc.) to food and alcohol.

It is interesting to note that just in the last year, 2 new players have entered the market offering a true payday loan. Both companies use the same subsection 6 (1) exemption from the National Credit Code that other Buy-Now-Pay-Later (“BNPL”) entities use for the contract and it is our understanding that they also use the subsection 6 (5) for the ‘umbrella’ contract. These companies appear to offer the classic debt trap to consumers the consumer advocates so desperately want to avoid yet it uses the same model as the BNPL entities. Money borrowed must be repaid on the consumer’s next payday plus a fee. The two companies are MyPayNow and a company that traded under the name of “Cheq” that has just recently rebranded itself as “BeforePay”[1]. Both companies will provide a pay advance and in the case of MyPayNow, loan up to 25% of a consumer’s pay. Before Pay has just raised $4 million and was oversubscribed by 200%. It claims to have over 100,000 users. We will refer to these as “GPPL” (Get Pay Pay Later) entities

[1] Palmer-Derrin, S, 2020. *“Like Afterpay, but for everything else: Sydney fintech Beforepay bags $4 million”, SmartCompany, 3 November 2020. Available online https://www.smartcompany.com.au/startupsmart/news/beforepay-fintech-wages-in-advance/?utm_campaign=SC&utm_medium=email&utm_source=newsletter&utm_content=smartco_daily&utm_term=2020-11-03 Viewed 03 November 2020*

Is ASIC also prepared to further amend the current draft Legislative Instrument to cover these as well?

We argue that there is sufficient detriment or these products allow for significant detriment with all forms of BNPL and GPPL for both consumers and other credit providers that the exemption now added is unwarranted and should be removed.

Appendix 1

Three bank statement summaries labelled A, C and C.