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Dear Retailer

AER expectations regarding 'buy now, pay later' services

This purpose of this letter is to:

- warn retailers that actively encouraging customers experiencing payment difficulties to use buy now, pay later (**BNPL**) services to pay their energy bills may contravene section 50 of the *National Energy Retail Law* (**Retail Law**), and
- ask that retailers who identify they may have engaged in any contravening conduct to self-report it to the AER immediately.

Buy now, pay later services

BNPL services enable customers to pay for purchases up front, with repayments made in instalments to a BNPL service provider.

BNPL services can offer consumers an easier-to-access form of credit when compared to credit cards and payday loans. However, unlike established forms of credit, BNPL services are not currently regulated under the *National Consumer Credit Protection Act 2009* (**Credit Act**). This creates the potential for consumer harm due to the absence of protections available to other products regulated by the Credit Act.

The BNPL sector has experienced rapid growth since its emergence in around 2015, and there are now estimated to be over 7 million BNPL service accounts nationwide.

Hardship obligations

The AER is committed to ensuring retailers comply with the hardship obligations in the Retail Law, *National Energy Retail Rules* and their hardship policies. With the considerable challenges facing the east-coast energy market and rising cost of living more generally, we expect to observe a significant increase in the number of consumers experiencing financial hardship this year.

While there is no prohibition on customers using BNPL services at their own instigation, we are concerned that retailers may be actively encouraging customers experiencing payment difficulties (many of whom are vulnerable consumers) to use BNPL services to pay their energy bills instead of offering them payment plans or hardship protections.

Section 50(1) of the Retail Law requires retailers to offer a payment plan to hardship customers and other customers experiencing payment difficulties, including where the retailer believes the customer is experiencing repeated difficulties in paying their bill or requires payment assistance.

We consider that a retailer may contravene section 50 of the Retail Law in circumstances where:

- they initiate internal practices or policies requiring representatives to encourage customers to use BNPL services when those customers are having difficulty paying their bill, or
- their representatives take independent steps to encourage customers experiencing financial difficulty to pay their bill with BNPL services.

This conduct may undermine customers' hardship protections as in these circumstances, the customers no longer owe a debt to the retailer and it is the BNPL service manager who manages the debt.

Next steps

We ask retailers to:

- review their compliance systems, processes, and internal policies to ensure their hardship obligations under the Retail Law are being met, and
- self-report any potential contraventions to the AER.

The AER is also encouraging ombudsman schemes and financial counsellors to refer any concerning conduct in relation to the use of BNPL services to the AER for further assessment.

Any information we receive will be assessed in line with our [Compliance and Enforcement policy](#).

Please contact [REDACTED] if you wish to discuss any of the matters raised in this letter.

Yours sincerely

[REDACTED]

Rowena Park
General Manager
Compliance and Enforcement