

23 December 2022

Consumer Credit Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: creditreforms@treasury.gov.au

Regulating Buy-Now, Pay-Later in Australia

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's 'Buy-Now, Pay Later (BNPL) in Australia' Options Paper (**the Options Paper**).

Our members comprise 20 Australian banks and international financial institutions with an Australian banking licence. Some of our members offer their own BNPL products, a number offer unsecured credit products, and accordingly bring different perspectives to this important policy question.

The ABA's view is that policy development in this area cannot be confined to an examination of BNPL without considering the broader regulation of credit and credit-like products. We agree with the Minister for Financial Services and Assistant Treasurer, the Hon Stephen Jones MP, that BNPL and other credit products are often indistinguishable from a consumer's perspective and yet the regulatory oversight of the former is substantially weaker.¹

Consistent with that formulation, our view is that it would have been better if the Options Paper had adopted a greater focus on alignment with the existing regulatory regime of credit products set out in the *National Consumer Credit Protection Act 2009* (the Credit Act), including its strong consumer protections. Specifically, that the guiding principles on page 19 of the Options Paper had more closely reflected the formulation above.

We acknowledge that there can be differences between BNPL and traditional credit products, but any differences in the regulatory treatment of BNPL from other credit products should have a clear, evidence-based policy justification. That would reduce the risk of: (1) embedding in legislation the consumer harm that can currently arise from some BNPL practices and (2) the potential for regulatory arbitrage.

The ABA does not support option 1 as we believe it does not satisfy either of the two policy concerns noted above. Our understanding is that the tailored approach to responsible lending obligations (RLOs) in option 2 would involve certain RLOs not applying to BNPL products and option 3 would involve the full suite of RLOs applying. To the extent that our understanding is correct, we raise the following points in relation to the approach taken in the Options Paper and would welcome the opportunity for further consultations with Treasury to consider the following policy questions.

Approaches to responsible lending obligations

The ABA would encourage additional clarity on the approach to the RLOs in the Options Paper. Consistent with our statements above, we believe that variations from the Credit Act and existing regulatory regimes should have clear, evidence-based policy justifications.

¹ For example, Minister Stephen Jones interview with Peter Stefanovic, AM Agenda, Sky News, 21 November 2022; Stephen Jones MP, [Address to the Australian Finance Industry Association, 18 May 2021](#).

We note that at page 27 of the Options Paper, the varying assessment practices of BNPL providers is discussed and it is noted that *“BNPL providers’ checks generally do not appear to satisfy the RLO requirements under the Credit Act”*. To the extent that it is proposed that certain RLOs would not apply to BNPL products in order to accommodate those existing business practices, the ABA would not be supportive of such an approach.

The current RLO arrangements are already intended to be scalable based on the risk of consumer harm and the kind of credit product sought, amongst other factors. We believe that additional consideration of the merits of extending the existing RLOs to BNPL products with specific guidance included on their scalability for BNPL products, would be beneficial. The ABA would appreciate the opportunity to engage further with Treasury to further develop the approaches to RLOs.

Inclusion of BNPL in the Comprehensive Credit Reporting (CCR) regime

The ABA is also concerned that the inclusion of BNPL in the mandatory CCR regime has not been adequately considered in the Options Paper.

The CCR was a recommendation of the 2014 Financial Systems Inquiry and the Productivity Commission’s Inquiry into Data Availability and Use. The Productivity Commission noted that the effective and efficient operation of credit markets relies upon credit providers being able to access sufficient and reliable information about borrowers as a basis for making lending decisions.

Applying this principle, the ABA believes that the increasing popularity of BNPL and the higher levels of hardship experienced by some BNPL users² means that the CCR is not well served by continuing to exclude BNPL from the mandatory regime.

The ABA believes that the CCR regime has been an important enhancement to Australia’s credit reporting system to assist credit providers inform their credit decision and the amount of credit provided. However, even with the introduction of mandatory reporting, there is a lower level of data available for credit origination in Australia than in other equivalent economies, such as the United Kingdom or Singapore. We believe that the expansion of the CCR regime to BNPL providers would be a positive step that will lead to improvements to the amount, pricing and types of credit available to individuals and businesses.

We note at page 23 of the Options Paper, the statutory review of the CCR framework in 2024 and the potential to *“examine in greater detail how BNPL providers can better report the credit information of BNPL consumers”* is referred to. The ABA would be concerned with an approach that seeks to defer consideration of this critical issue until 2024. In practice, this would mean deferring even the consideration of this issue until 2024 and then allowing for additional year/s for consultations, legislative development and passage. During which time many BNPL liabilities will continue to be invisible from the credit reporting system. Treasury should consider the consequences for consumers of this kind of delay.

For the reasons above, we would be in favour of a detailed examination of the merits of including BNPL in the mandatory CCR regime in the current consultation and suggest that Treasury consult further on this.

Additional consumer protections that should be considered

The ABA is also concerned that the three options do not include a consumer protection on banning unsolicited BNPL limit increase offers as exists in the Credit Act³. We note that this issue is considered at page 13 of the Options Paper, alongside the response of some BNPL providers that such unsolicited limit increase offers *“may help customers’ build confidence around using BNPL responsibly”* [emphasis added].

² ‘Buy Now Pay Later: Multiple Accounts and the Credit System in Australia’, University of Sydney, Dr Andrew Grant, 15 October 2022.

³ section 133BE of the National Consumer Credit Protection Act 2009.

Our view is that the Options Paper has paid insufficient consideration to the merits of aligning the proposed BNPL regulatory regime with the Credit Act's prohibition on unsolicited credit increase offers and that clear, evidence-based policy reasons are needed to justify such a divergence. Options 2 and 3 only propose a prohibition from increases to a consumer's spending limit without explicit instructions which we support but suggest that further consideration be given to the merits of banning unsolicited BNPL limit increase offers.

Related to the above, we recommend that Treasury consider formal consumer protections for BNPL users to request reductions to their limits. Consideration should be given to alignment with the equivalent protection in the Credit Act.

The ABA supports the extension of Internal and External Dispute Resolution protection for all BNPL users.

Additional consultation

For the reasons above, the ABA is concerned that several important elements of the Options Paper require further detail, consideration and development to ensure that the current inconsistent regulatory regime that does not adequately protect consumers is not embedded into legislation. We encourage further consultation with relevant stakeholders to properly consider these issues and concerns.

Thank you again for the opportunity to provide feedback.

Yours sincerely,

Head of Customer Policy

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.