

Wednesday 21st December 2022

Treasury
Langton Crescent
Parkes ACT 2600

By email only: CreditReforms@treasury.gov.au

RE: Consultation – Regulating Buy Now, Pay Later in Australia

Dear Treasury,

Please accept our submission to Treasury's consultation on Regulating Buy Now, Pay Later (BNPL) in Australia.

Responsible Leasing Australia

Responsible Leasing Australia Limited (RLA) was established to provide an ethical and responsible peak body to the consumer and commercial leasing industries. Our members have joined forces to create a body that seeks to benefit all sectors involved in the industry that is aligned to enforcing honourable behaviour. RLA's focus is on future regulations meeting and working with legislators to create the proper outcome for all.

RLA only seeks to represent those members who identify as trustworthy, responsible and also commit to uphold the RLA Code of Conduct.

Introduction

In July 2022, Minister Stephen Jones MP addressed the Responsible Lending Summit and announced the introduction of Buy Now Pay Later (BNPL) reform. As reasoning when referring to if BNPL was a credit product.

We agree with the Minister's assessment that BNPL products are indeed a form of credit and should be brought under the Credit Act.

Recently the Albanese government passed the Financial Sector Reform Bill 2022, supported in full by RLA, largely based on the final report into the Review of Small Amount Credit Contract Laws Review submitted in March 2016 (SACC Review). In that review, there were several short comings in the current legislation which resulted in the potential of consumer harm. Specifically, relating to Consumer Leasing, the Bill, amongst other amendments, introduced a 'Protected Earnings Amount' which will be an effective cap (touted as 10%) of the available income that can be used for the payment of a consumer lease for all consumers.

As such, our members ask given their observations of the BNPL industry and taking the lead from the Minister, *what is good for the goose must be good for the gander*. We will discuss in detail our answers to the Treasury's questions.

Can you provide examples of other areas of consumer harm or industry behaviour this paper has not discussed? What are the main contributors of consumer harm? What evidence supports this view?

Potential of Uncontrolled Net Debt Position

Our members report that they have observed instances where consumers have accumulated an increased Net Debt position with BNPL products over a short period of time.

As an example, recently a customer approached one of our members for credit and provided 90-day bank statement during the credit application. Our member assessed that in month 1, 6% of the customers income was used for BNPL, in month 2, 11%; and, in month 3, 14%. A significant increase in expenses in a short period of time and no method to assess the consumers capacity was undertaken by these BNPL providers.

Our members report also that many applications that they receive are making payments to BNPL providers suggesting that the profile of the customer cohort obtaining BNPL products is similar to consumer leasing.

To that end, BNPL products do share similarities with a Consumer Lease. They both have small amounts of credit, for the acquisition of a product or service, with small periodical repayments; albeit, with the obvious distinction that one is required to be licensed and uphold a responsible lending regime, while the other is not. As such, the findings of the SACC Review must also apply to BNPL products given that the same potential for harm exists.

For example, the SACC Review's stated intention of the recommendations as proposed and now adopted by the Albanese government was that 'these proposals is (sic) to reduce the risk that consumers may be unable to pay for basic needs or default on other necessary commitments'¹.

RECOMMENDATION #1: *That Treasury consider introducing a 'Protected Earnings Amount' of 10% similar to that was introduced by the recently passed Financial Sector Reform Bill 2022. That the findings of the SACC Review be taken into consideration.*

Are the guiding principles appropriate and fit for purpose to inform the development of a BNPL regulatory framework? What other factors should be considered?

We feel that the guiding principles are reasonable and would permit Treasury to draw appropriate legislation.

Of the three options below, what option do you think is most appropriate? Would you change any aspects of that option?

RLA support the introduction of option 3.

¹ Review of the Small Amount Credit Contract Laws, Final Report, March 2016, p.3.

What do you think are the issues with the other two options?

As per the Minister's comments identified earlier, if it is credit, it is credit. As such, the only true measure that one can consistently apply an equal playing field for all participants in the industry is where each player must uphold minimum standards that is relevant for all and does not create an imbalance where consumers are drawn to one credit product over another due to reduced regulatory burden.

Licensing

We have witnessed this most recently in the licensing of the Debt Management (Credit Repair) industry which members of the RLA were pleased to see be employed. This basic requirement has meant that Debt Management firms have altered their previous unreasonable behaviour given that they are required to uphold obligations of the Act and, importantly, to act efficiently, honestly and fairly.

Responsible Lending

The other two options reduce the effect of the Responsible Lending Obligations (RLO) that would render their effectiveness to tokenism by not imposing a requirement to take steps to verify.

A consumer faced with the prospect of providing a bank statement would be less inclined to apply for credit should they feel that their finances were not suitable or likely not to be approved. Where this requirement does not apply, a consumer will take a less cautious approach and submit an application and be approved for credit not necessarily considering the consequences of the use of that credit.

There are, of course, many methodologies to assess a consumer's financial situation as implied in the ASIC v Westpac (Wagyu and Shiraz) case, however, this requirement obligates the credit provider to not simply make enquiry and but satisfy themselves with impartial evidence that a consumer's financial situation is what they say it is within reason.

Obligations and Needs

Members are also concerned that BNPL products may also stretch to everyday living needs placing households under further debt obligations. Our members foresee that these products will, if they already haven't, be used to make payments to supermarket chains for basic items such as groceries and also fast-food chains given their target market to younger participants.

Credit Amount

Since the introduction of BNPL products, our members report that they have observed a steady increase in the amount of credit BNPL providers are willing to lend to a consumer. Where once BNPL were micro amounts (under \$200 or so) these are now in the thousands and even to the tens-thousands in some cases as the Treasury options paper has indicated.

Left unchecked, as we have outlined above, this can significantly see an accumulation of debt that is paid to BNPL providers that would otherwise be used for basic living.

There is also the issue where a consumer who may have reached their credit limit with one provider and they obtain additional BNPL credit lines by applying to other BNPL providers. An issue that would be resolved by our Recommendation 1 above.

Risk Management

Our members have been showing increased concern about the long-term prosperity of the BNPL industry for some time. Not only from a point of view of regulatory protection from consumer harm but also in the terms of industry risk management that puts a risk to the Australian financial system overall.

Significant investment has been made by Australian retail investors and BNPL providers are indicating higher volumes of accumulated bad debt, particularly where we have seen increases in base interest rate from the Federal Reserve.

Imposing a regime of RLO's on BNPL industry will provide assurances to investors and consumers alike that that the product that BNPL providers takes a risk management approach to ensure it is appropriate for the consumer and that the lender will see a return.

Thank you for the opportunity to submit our response to this important pursuit of legislative reform. Should you require any additional information or to clarify any of the above, please do not hesitate to contact me.

Mark Thomas

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Responsible Leasing Australia