Academics from the University of Sydney Business School
Consultation Response Submitted by John Watkins (Honorary Associate),
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December 23, 2022

Consumer Credit Unit
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

Subject:	**Consultation: Regulating Buy Now, Pay Later in Australia (c2022-338372)** **Date:** 21 November 2022 - 23 December 2022 **Consultation Type:** Options Paper

Dear The Hon Stephen Jones MP and The Consumer Credit Unit,

The authors of this response write independently of any commercial interests and provide the following inputs to support the construction of regulation for Buy Now Pay Late (BNPL) in Australia:

1. Introduction: background of authors and the BNPL study supporting insights shared.
2. Regulatory Issues: acknowledging the areas of consumer harm identified and providing new areas from data driven research.
3. Guiding Principles: acknowledging the existing principles, and identifying new principles.
4. Options for Regulatory Intervention: identifying preferred option and not recommended options, providing reasons for the assessment of the options.
5. Supplementary reforms to support a new BNPL regulatory framework: acknowledge the reforms and shared other areas of potential reform.

Regulation of BNPL is important to implement to protect vulnerable consumers and it must be balanced to ensure that most consumers can continue to enjoy the product safely as they do today.

The data driven insights provided are from a large-scale study on a unique dataset to support this objective. We contribute these insights to assist the Treasury shape this important balanced regulation for BNPL in Australia.

Please do not hesitate to contact the undersigned if you should have any clarifications or requests for further insights.

Sincerely,

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1. Introduction

The authors of this response are John Watkins who is a management consultant in global payments and Honorary Associate of the University of Sydney Business School Department of Business Analytics; Dr Andrew Grant who is an Associate Professor at the University of Sydney Business School Department of Finance, and Dr David Grafton who is a financial consultant with 30 years' consumer credit experience (including 8 years as Chief Risk Officer for CBA's Retail Bank) and Honorary Associate in the University of Sydney Business School Department of Business Analytics. The authors write this response from a perspective independent of any commercial interests and draw upon extensive academic and industry experience.

The data driven insights that inform this response are drawn from a unique large dataset of over 800,000 BNPL consumers. This is the only large-scale, multi-provider, BNPL study in Australia[1].

2. Regulatory issues with BNPL

The eight regulatory issue areas outlined in the "BNPL Consultation" are important issues to be addressed. The two questions raised by Treasury for regulatory issues are:

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

Sections 2.1 and 2.2 address the questions raised by Treasury

- Section 2.1 acknowledges existing issues shared in the BNPL Consultation, and raises additional dimensions with data driven insights on the contributors of consumer harm; and,
- Section 2.2 raises new regulatory issue areas with data driven insights on the contributors of consumer harm.

2.1. Acknowledge issues and raise new examples of consumer harm

2.1.1. (1) Unaffordable lending practices

The authors acknowledge this as a key issue area and agree with the items raised in the BNPL Consultation.

Further considerations include:

2.1.1.1. Debt stacking with BNPL (holding multiple BNPL accounts when in financial stress)

Our study, using transaction data from over 800,000 consumers, identified evidence that holding multiple BNPL accounts was more likely than holding a single BNPL account when there were signs of financial stress[2].

The likelihood of holding multiple BNPL increases

i) 2.2 times if in the highest risk of missing payments in next 12 months,
ii) 2.1 times if recently 100% utilized (maxed out) on a credit card,
iii) 1.7 times if holding a personal loan,
iv) 1.5 times if in the lowest socioeconomic group, and,
v) 1.3 times if receiving government benefits.

[1] Watkins, John, Grant, Andrew R, Grafton, David, and Boshoff, Elizabeth, Buy Now Pay Later: Multiple Accounts and the Credit System in Australia (October 15, 2022). https://ssrn.com/abstract=4216008

[2] Ibid

In the diagram below, an example of all financial stress risk factors on vs risk off showcases the increase in likelihood to stack debt in vulnerable groups by holding multiple BNPL accounts.

vi) Consumer A is 15.6 times more likely to hold multiple BNPL than Consumer B.

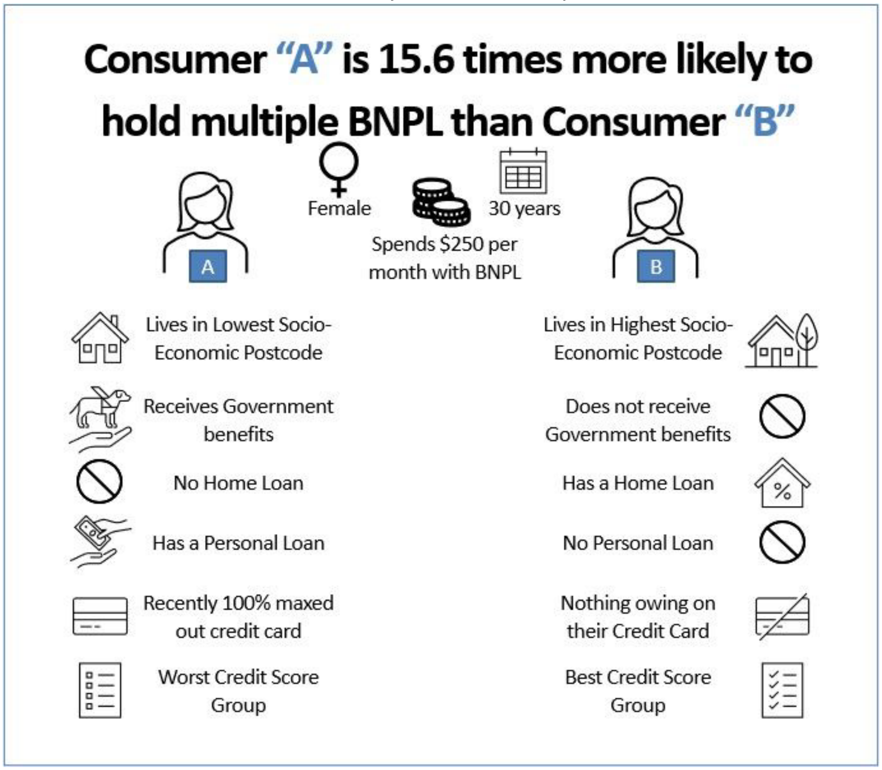

Figure 1*: Debt Stacking Risk On vs Risk Off Example*

2.1.1.2. *Lower socio-economic postcodes have higher per capita BNPL spend*

BNPL usage is more concentrated in lower socio-economic postcodes. This highlights the need to ensure appropriate protections are in place to ensure safe lending practices while maintaining access to BNPL.

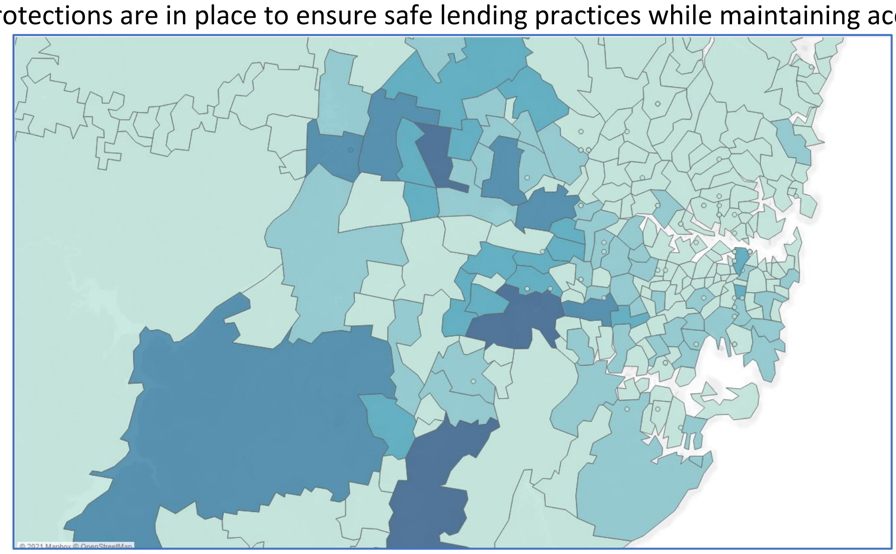

Figure 2*: BNPL Spend per Capital by Postcode – Greater Sydney Region*
(Darker shaded areas indicate higher usage. Highest usage areas – Campbelltown, Liverpool, Mt Druitt)

2.1.2. (2) Complaints handling and hardship assistance

The authors acknowledge the lack of consistent and appropriate complaints handling and hardship assistance is a concern.

2.1.3. (3) Excessive consumer fees and charges, including default fees

The authors acknowledge the concern area, and that standards, and guidelines should be designed and enforced by regulatory authorities.

2.1.4. (4) Non-participation in credit reporting

Increasing transparency of BNPL holdings by providing BNPL data to one or more Credit Reporting Bodies (CRBs) is the single most powerful way to address most issues raised in this regulatory options paper. Greater transparency of BNPL holdings will ensure that financial abuse, affordability assessments, debt stacking, and other concerns are more readily identified and able to be addressed throughout the credit life cycle. Increased transparency can be achieved without impacting the customer experience at point-of-sale because online data exchange can take place near instantly. Further, the frictionless processes to establish BNPL accounts that customers enjoy today can be maintained and enhanced through a more transparent and more comprehensive credit reporting regime that includes BNPL and other credit providers.

Further considerations include:

2.1.4.1. Balance outstanding on credit products and other credit information needed to prevent consumer harm

The current Comprehensive Credit Reporting (CCR) and related legislation does not have the provision of balance outstanding on lending products available to be shared with CRBs. This information is critical to support both affordability and credit assessment to prevent overextending credit to vulnerable consumers. The University of Sydney study[3] has identified that:

i) Consumers recently maxed out on their credit cards are 2.1 times more likely to hold multiple BNPL accounts (debt stacking);
ii) BNPL users with credit cards with utilisation rates above 40% are more likely to hold more than one BNPL account.
iii) Holding a credit card itself is not the issue, but holding a revolving balance is strongly predictive of holding multiple BNPL accounts.

This indicates that consumers are turning to BNPL when other available avenues of debt are exhausted, deepening their financial difficulties. This is only identifiable when balance information is available at CRBs.

2.1.4.2. Lack of a comprehensive participation of Australian Credit Licence (ACL) holders in CRBs leads to gaps in credit reporting that can cause consumer harm

The current mandatory participation threshold is for ACL holders with over $100 billion in assets (lending balances)[4]. This limits mandatory participation to the Big 4 Banks in Australia. Further, it limits mandatory participation to these prime lenders and only mortgage lending can reach that threshold.

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[3] Ibid

[4] Treasury, National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting and Other Measures) Bill, https://treasury.gov.au/sites/default/files/2019-08/c2019-t401119-explanatory-materials.pdf, 2019, para 1.14

The entire credit card market outstanding balances in Australia is $39 billion as at October 2022[5]. These gaps in the completeness of participation in credit reporting can lead to the following consumer harms:

i) The current mandatory participation thresholds only apply to the most prime lenders in Australia, meaning non-prime lending where most consumer harm can occur is not transparent for lenders to make affordability and credit assessments.
ii) Consumers do not benefit from an improved credit rating from good repayment behaviour. This is especially important for younger consumers who are primary users of BNPL.
iii) Financial abuse and consumer scams are more likely to go unnoticed when there is no mandatory reporting for ACL holders outside of the $100 billion in assets threshold.
iv) Inconsistent information held by different CRBs. Some lenders only report to a subset of CRBs (for example, *illion* has a large dataset of non-traditional lenders). Credit providers may obtain incomplete information if they only search on a single credit bureau when participation is not mandatory.

Avenues to address this issue are discussed further in Section 4.

2.1.5. (5) Lack of transparency – Product disclosures and warning requirements

The authors acknowledge the concern and need for consistency in information representation and minimum standards to protect consumers.

2.1.6. (6) Unsolicited selling, advertising, and using BNPL for essentials

The authors acknowledge this is an area that requires attention to address regulatory issues, particularly where there may be misdirection from utility companies of hardship customers toward BNPL options. However, the use of BNPL for essentials is not specifically a concern, just as credit card use for essentials is not specifically a concern. The key concern is affordability and hardship assessment. The authors' observations in this area are outlined in sections 2.1.1., 2.1.2., and 2.1.4. above.

2.1.7. (7) Frictionless process, overselling, scams, and financial abuse

The authors acknowledge the issue area. The core concerns of this issue are affordability, hardship, and fraud. Maintaining frictionless processes is key for most consumers so that they continue to access the benefits they enjoy from BNPL.

2.1.8. (8) Refunds, Return of Good, and Unauthorized Transactions

The authors acknowledge this issue area. This area must be addressed. Consideration must be given to how BNPL providers participate in the ePayments Code of Practice, and how it is enforced.

2.2. Additional concern areas that need to be considered

2.2.1. (9) Downstream credit impacts (repayment hierarchy)

In addition to the impact directly from BNPL to vulnerable consumers if unaffordable lending occurs, the mandatory auto-pay for repayments forces BNPL to be repaid ahead of other forms of credit. This has two concern areas.

[5] Reserve Bank of Australia, Payments and Infrastructure – Payments Data, https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html, Oct 2022, C1.1 Credit and Charge Cards

2.2.1.1. *Mandatory auto-pay for BNPL repayments forces repayment of BNPL ahead of other obligations*

Repayment of BNPL ahead of Credit Cards is observed when consumers have a BNPL auto-pay on their debit card, without one on their credit card.[6] In this situation, funds in a consumer's debit card (transaction account) can be accessed first by the BNPL provider to repay the BNPL debt. In this situation, where the consumer has a credit card, there are 4 times as many consumers that have missed 2 or more payments on their credit card, than in the general population of credit card holders[7].

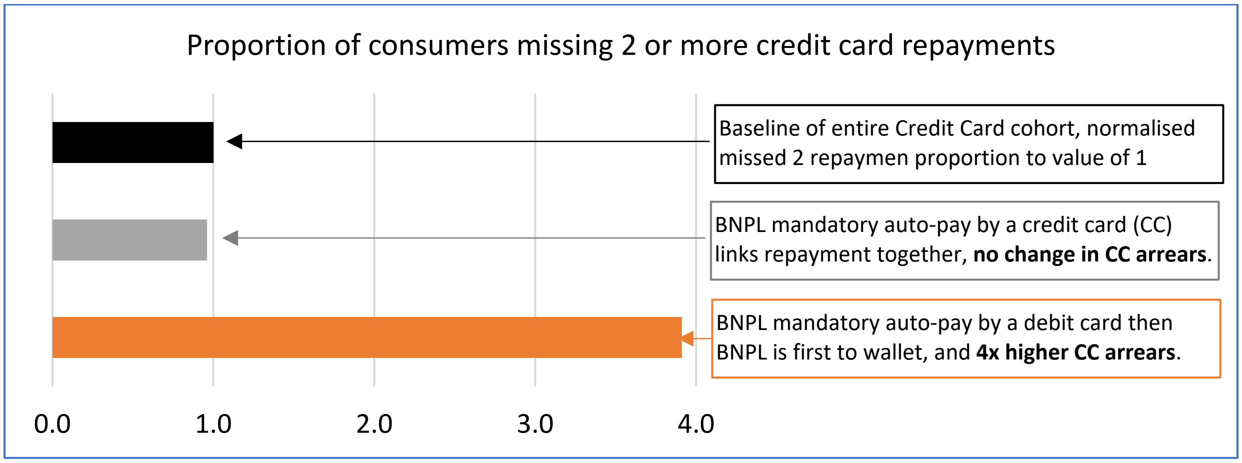

***Figure 3**: When BNPL is first to wallet with mandatory auto-pay on a debit card, credit card arrears are four times higher than the credit card holder population.*

A lack of transparency of BNPL holdings makes it challenging for other credit providers to identify if the consumer is still actively using BNPL and whether current or new lending is beyond their capacity. This can lead to overextending the consumer even if other credit providers utilise all the best information available to them under Responsible Lending Obligations (RLOs).

2.2.1.2. *BNPL providers do not see all the losses from their lending, therefore credit assessment based solely on data from BNPL spending observed by a BNPL provider may overcommit customers.*

Figure 3 above shows that credit card providers can incur higher losses when BNPL providers are set up in a way that they are repaid ahead of other obligations. This means that the BNPL providers and their credit assessment models based only on their internal data do not present a complete picture of the consumer's financial situation. In fact, BNPL providers could continue to extend larger limits to consumers in delinquency on other credit products. Further consideration should be given to:

i) Greater transparency of credit holdings, as outlined in section 2.1.4. above
ii) Minimum standards for credit assessments to give guidelines on when and how to consider external data, such as data from credit reporting bodies
iii) Greater flexibility and choice for consumers on how and when to repay obligations

2.2.2. (10) Consumer harm through non-sufficient fund (NSF) fees charged excessively

There are BNPL providers that regularly re-present failed BNPL repayments which can cause repeat NSF fees, also known as dishonour fees. NSF fees on re-presented payments are for the same purchase

[6] See the discussion of consumer default pecking order here: https://www.illion.com.au/researchers-reveals-debt-priority-pecking-order/
[7] Watkins et al (n1)

transaction. The NSF fees are not charged by BNPL providers. The NSF fees are charged by the consumer's financial institution, typically their bank or credit card provider. This causes consumer harm through additional fees and charges incurred by the consumer. The authors' research has early findings in this space that we are continuing to analyse and quantify the impacts.

In the United States (U.S.), the Consumer Finance Protection Bureau (CFPB) is aware of BNPL providers regularly re-presenting payments at high frequency and has raised it as an area of concern[8]. Further, in the U.S. the Federal Deposits Insurance Corporation (FDIC) has issued guidance to ensure financial institutions take appropriate actions to reduce the risk of consumer harm and potential violations[9].

2.2.2.1. Consecutive failed payment re-presentment attempts can cause consumer harm through unnecessary fees.

There are three primary ways that consumer harm can be reduced, which requires considerations from both the payment presenter (payee) and the payer's financial institution:

i) Limitations on the number of re-presentments for payment. In the U.S., limitations have been set in the e CFPB's Payday, Vehicle Title, and Certain High-Cost Instalment Loans Rule.
ii) The financial institutions that charge dishonour fees or NSF fees need to have appropriate disclosures to consumers of these practices, and when NSF fees can be charged multiple times due to re-presentments.
iii) There should be limitations on the number of times financial institutions can charge NSF fees for re-presented payments, to protect consumers from harm from excessive fees.

3. Guiding Principles

Treasury has outlined five guiding principles and raised a further question area on guiding principles:

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

The guiding principles cover the issues of consumer protection, flexibility for providers, competitive marketplace, comparable product regulation, and practical enforceability. We believe that these principles are appropriate and fit for purpose. There are three additional guiding principles that we propose for consideration: consistency of regulation to avoid regulatory arbitrage, an efficient and transparent financial services system, and scalability of regulation.

3.1. Existing Guiding Principles

Each of the five guiding principles raised by Treasury are important. We believe that they are fit for purpose.

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[8] Consumer Finance Protection Bureau (United States Government Agency), Buy Now Pay Later Market Trends Consumer Impacts Report, https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf, September 2022, Section 6.2.1 Discrete Consumer Harms, page 74
[9] Federal Deposits Insurance Corporation (United States Government Agency), NSF Fees Guidance and Consumer Harms, https://www.fdic.gov/news/financial-institution-letters/2022/fil22040.html, 2022

3.1.1. (1) Consumer Protection

3.1.1.1. BNPL products are not held in isolation by consumers. In our study of multiple BNPL holders, we found around 40% of consumers held multiple BNPL accounts. Measures to address consumer protection require sufficient transparency around account holdings.

3.1.1.2. The recent addition of a hardship flag in credit reports is beneficial to aiding consumer protection, but is somewhat undermined if consumers are able to obtain credit in the form of BNPL without informing existing credit providers of their circumstances.

3.1.2. (2) Flexibility for providers

3.1.2.1. The BNPL product, similar to other fintech products, is reliant on a relatively seamless process for the consumer.[10] The lack of time taken to perform a credit check by some providers is no doubt part of the attraction.

3.1.2.2. Flexibility for providers to bring other products onto the market could include different time scales, structures of payments or methods of payments. At present, those providers who aim to circumvent RG.209 Responsible Lending Guidelines are limited by the constraints of the 'loophole' (i.e. not being able to charge interest, time-scale no longer than 68 days.)

3.1.3. (3) Competitive marketplace and roles and interests of consumers, merchants, and providers

3.1.3.1. Costs of compliance (such as obtaining an ACL or providing information to the credit bureaus) may be relatively large for monoline BNPL providers. Significant upfront and ongoing expenses related to adhering to guidelines are likely to be incurred.

3.1.3.2. Consideration should be given to how the costs of offering BNPL are fairly distributed among consumers and merchants. There is concern that by not passing on the costs of BNPL, non-BNPL users may be subsidising those that use BNPL.

3.1.3.3. In a better regulated BNPL marketplace, costs of payment via BNPL are likely to be incurred more by those who use the service. Moreover, lower default rates among BNPL users would likely lead to lower costs of service provision across the board. Thus, the additional costs of compliance with regulations for BNPL are likely to be offset by lower costs of credit default.

3.1.3.4. BNPL providers themselves do not benefit from the lack of transparency surrounding the product. Large costs are incurred from the write-off of bad debts, at least some of which could be attenuated through the use of information sharing channels provided by credit bureaus.

***3.1.4.* (4) Comparable Product Regulation**

3.1.4.1. Mainstream credit products targeted towards consumers require adherence to RG.209 Guidelines. It is difficult to justify that a product which offers similar credit limits and other features to that of a credit card be much less regulated.

3.1.5. (5) Practical enforceability

3.1.5.1. Creating completeness of adherence by providers is most achievable when all providers are subject (mandated) to the same regulatory guidelines.

3.1.5.2. Ensure exemptions, such as the Australian Securities & Investment Commission (ASIC) Sandbox, are practical through clear application of exemptions and measurable criteria for exemption removal.

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[10] See Berg, T., A. Fuster, and M. Puri (2022) "FinTech Lending," *Annual Review of Financial Economics*, 14, 187-207 for an in-depth discussion of fintech platform loan underwriting objectives.

3.1.5.3. Leveraging existing processes and systems can create greater transparency of BNPL holdings to more practically assess compliance with regulations. For example, mandating participation in CCR assists regulators with transparency in relation to customers' financial positions.

3.2. Additional Guiding Principles

The authors believe that the following additional guiding principles should be considered when formulating regulation for BNPL.

3.2.1. (6) Consistency of regulation to avoid regulatory arbitrage

3.2.1.1. Provision already exists under the National Consumer Credit Protection Act 2009 (NCCP) for BNPL to be regulated. There is no need for a separate code of conduct duplicating these regulated areas, or for BNPL to be regulated separately from mainstream credit. If BNPL is not regulated under a regulatory regime across all credit, providers can selectively choose how they would like to be regulated. This could create an inconsistent and non-level playing field, potentially to the detriment of consumers. For example, BNPL platforms do not offer the same level of hardship provisions as required under the NCCP.

3.2.1.2. Moreover, the existence of two regulatory codes for hardship assistance (the BNPL Industry Code and existing regulation in place for ACL holders) creates a regulatory arbitrage, and pushes the burden of hardship provisions onto the ACL holders with more complex requirements and enforceable provisions. A consistent regulatory environment should be considered to create a more even playing field and ensure appropriate accountability for hardship assistance across all provider types.

3.2.2. (7) Efficient and transparent financial services system

3.2.2.1. The lack of credit reporting to CRBs undermines the integrity of the credit reporting system, leading to suboptimal outcomes for consumers and credit providers alike.

3.2.2.2. Opaque credit markets typically lead to higher adverse-selection costs for lenders, and thus higher overall costs of access to credit for all consumers.

3.2.3. (8) Scalability of Regulation

3.2.3.1. Unless appropriate scalability is applied, which the regulations allow for, compliance with the NCCP may be overly burdensome for BNPL providers.

4. Options for Regulatory Intervention

Treasury presents three options for regulatory intervention and raises two question areas:

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

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

Of the three options presented for consideration, Option 1 and 3 are not favoured for the reasons explained below in section 4.1. Options 2 and 3 are in fact quite similar in that under the full RLO requirements set out in Option 3, there already exists provision for a “scalable” approach based on materiality and risk. Our recommendation would be to adopt such an approach to the regulation of BNPL. This could best be done under Option 2 with the adoption of scalable RLOs. The reasons supporting this recommendation, and a possible operating model for its operation, are discussed in section 4.2. They draw on our extensive data-based research into the impact of BNPL on consumers which is referenced in section 2.

4.1 Observations on options not recommended

4.1.1 Observations and Feedback on Option 1

The main benefit of selecting Option 1 is that the self-regulating code is already in existence and does go some way towards defining BNPL providers' obligations and conduct. Requiring BNPL providers to obtain an ACL could be a lengthy and complex process and self-regulation outside of NCCP regulations is likely to be a less onerous obligation.

There are however several significant disadvantages in proceeding under Option 1 which are as follows:

4.1.1.1 The code does not define BNPL as credit and as such BNPL would remain outside of the RLOs that apply to most other consumer credit providers. Under this structure, consumers would not have the level of protections needed to address some of the observed areas of consumer harm.

4.1.1.2 The Industry Code appears to have few powers in respect of handling breaches. The main enforcements are in referring serious matters to ASIC, which would have to be done in any event under ASIC's Product Design and Distribution Obligations, and it is not clear how effective the other proposed actions such as “name and shame” would be. The main avenue to enforcing compliance would seem from the Code to be with ASIC, which raises the question of whether the Code has a meaningful role to play in managing breaches.

4.1.1.3 The Code is voluntary, not mandatory, and although nearly two years old, has not been signed by all providers. In this context it is worth noting that CCR reforms did not result in full participation by lenders until mandated several years after the initial enabling legislation was passed.

4.1.1.4 The processes for assessing a customer's risk and ability to repay a BNPL obligation are much weaker under the Code than under RLOs and our research (and that of ASIC and anecdotal evidence from consumer organisations such as Good Shepherd) has shown that this can lead to consumer harm, particularly for those in financial difficulty.

4.1.1.5 There is no obligation to access or record a customer's BNPL debt or repayment performance on a credit bureau. This lack of transparency leads to both mainstream credit and BNPL providers making sub-optimal risk assessments. This argument was fundamental in driving the reforms to the Privacy Act that enabled the introduction of CCR that has resulted in better, fairer credit decisions being made to the benefit of the consumer, the industry, and the broader economy. If lenders are unable to properly understand a customer's financial position (due to data asymmetry between lender and borrower) then sub – optimal credit decisions will result.

4.1.1.6 In view of the Industry Code not providing for the same level of assessment of risk and repayment capability as is required under RLOs, there is a significant issue in granting unregulated credit (up to $3,000) to individuals who are credit hungry, who may be unable to obtain facilities from organisations bound by RLOs, and for whom it is not known whether they have the capacity to repay additional debt obligations. Our research has found that this is not a hypothetical outcome. This is not to say that full verification of income and expenditure needs to be done in all cases. There is much to be said for adopting a scalable approach (which is provided for in the existing RLOs) that will preserve the fast and easy customer experience benefits of BNPL at point of sale that are clearly enjoyed by the majority of users, and which are fundamental to the BNPL business model, while at the same time implementing appropriate measures to protect a minority from customer harm.

4.1.2 Observations and Feedback on Option 3

Option 3 is essentially an extension of Option 2, with more restrictive regulation for the assessment of a consumer's individual circumstances.

4.1.2.1 The lack of scalability of Option 3 is likely to result in a poor customer experience at point of sale, reduced access to BNPL for consumers, untenable business model for providers of any size to make low value BNPL credit accessible, and appears disproportionate relative to the risk of consumer harm.

4.2 Observations on option recommended

4.2.1 Observations and Feedback on Option 2

Option 2 is the recommended approach because it brings BNPL under the existing NCCP regulatory regime and provides for scalability in assessing a consumer's financial position. Being under NCCP will provide for improved transparency of BNPL holdings to the benefit of consumers, BNPL providers, and the credit industry in general.

4.2.1.1 Our key recommendation is to use the existing regulatory framework (under RLOs) to regulate BNPL as a credit product in a scalable manner. Developing separate regulations specifically for BNPL providers risks regulatory arbitrage by providers and legal inconsistencies across different sets of regulations which could prove very complex to implement and manage.

4.2.1.2 Mandatory capture of income for use in servicing, mandatory supply of at least partial CCR[11] information and a default flag, and appropriate use of external databases, such as CRBs, are key regulatory controls to prevent consumer harm.

i) We recognise that BNPL providers will have valid concerns that one key to their success is in providing consumers and merchants (at the modest dollar value end of the BNPL spectrum) with a quick and efficient sign-up process that can be carried out at a retail point of sale.

ii) As such, to require a full servicing and risk assessment for a $100 purchase would seem disproportionate and we strongly recommend that a scalable approach be adopted that enables a minimum level of automated checking to be undertaken for low-value (relative to income) facilities with increasing levels of verification applied to higher-value (relative to income) facilities. It is important to use income-to-value as the determining metric, not just BNPL amount, as even a small BNPL debt can be difficult to service if income is very low.

iii) For low-value (relative to income) applicants any assessment needs to be fully automated and not require the customer to undergo a lengthy verification process.

iv) Where there is a poor credit score, and/or weak servicing capacity, BNPL providers will have to demonstrate that providing facilities for this segment of the population is not inconsistent with their stated Product Target Market Determination (TMD) under ASIC's existing Product Design and Distribution Obligations[12].

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[11] Types of bureau information include: (i) Negative only (reporting defaults, judgments and enquiries); (ii) Partial participation only (Credit Liabilities, open accounts, limits etc.); (iii) Full participation in CCR (including RHI)

[12] ASIC, Product Target Market Determination, https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-274-product-design-and-distribution-obligations/, 2020

4.2.1.3 The authors believe this is practical to implement for the following reasons:

i) From the data we have access to from our published work, we can estimate what this proportion of instantly assessed applications will be, which should be of assistance to BNPL providers concerned about negative business volume impacts arising from onerous verification processes. Our hypothesis is that a very high proportion of applicants would be instantly assessed.

ii) Such a scalable approach would be relatively easy to implement as step one and will require BNPL providers to send and consume at least "Partial" CCR data (e.g. open accounts, debt) to one or more bureaus, check the customer's resulting credit score and servicing capacity and have appropriate policy responses in place.

4.2.1.4 Further considerations for this approach

i) The main disadvantages of this approach are in the additional work that BNPL providers would be required to undertake. However, implementing these recommendations would directly address consumer harm issues and the scalable approach proposed would not impose a burdensome verification overhead that would damage the fundamental BNPL business model.

4.2.1.5 The main benefits of Option 2 are that the approach brings BNPL under the existing NCCP regulatory regime, and also provides for scalability in assessing a consumer's financial position.

i) CRB BNPL data can help young consumers to quickly build a credit score, especially for those who (increasingly) do not wish to use traditional credit products such as personal loans or credit cards and who have a "thin file" i.e. little information on CRBs.

ii) "Full" CCR data which includes 24 months of Repayment History Information (RHI) is of great value in any assessment of credit risk, but many small lenders have found that it is expensive and difficult to source, supply and consume such information. One option here would be to not require a full 24 months of RHI data but to focus instead on providing to a CRB a default flag – as is provided today by the credit industry - to identify customers whose accounts had been closed due to missed payment(s). This would be a clear indicator of financial stress and lead to improved consumer outcomes.

5. Supplementary reforms to support a new BNPL regulatory framework

Treasury outlines the following supplementary reforms in the following areas:

i) Improving the financial capability of BNPL consumers

ii) Australia's CCR Framework

iii) An enhanced role for ASIC as the regulator of BNPL

iv) Payments Surcharging – BNPL providers typically have no-surcharge rules, prevent merchants passing on the cost of BNPL to consumers.

The authors agree that further considerations should be made in these areas. In particular i), ii), and iii) should be aligned with the main reforms for BNPL regulation as soon as practically possible.

5.1. Additional supplementary reforms to consider

5.1.1. Indigenous and vulnerable consumers

In order to support vulnerable communities, the following reforms should be considered:

5.1.1.1. Vulnerable consumer groups such as Indigenous Communities need specific considerations

In 2006, there were lending practices in Indigenous Communities that led to borrowers becoming over committed, many of whom were dependent on government benefits for income[13]. ASIC worked with credit providers to enhance lending practices and assessment criteria to protect these communities. BNPL and other credit providers should continue to deliver enhanced lending practices in Indigenous Communities, that meet their specific needs. Similar actions to those taken in 2006 should be considered and include:

i) Appropriate assessment criteria in remote communities, to ensure appropriate protections while maintaining access to the credit market.

ii) Industry funding (including but not limited to BNPL providers) for specialised support through financial counsellor roles, financial educator roles, and other roles designed to support the needs of these communities.

6. Closing Remarks

The authors continue to pursue research in this important area which we will share as further insights emerge. We would be pleased to contribute these findings to the regulatory reforms process and are available at any time for such discussions and collaborations.

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