



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:JvdPIb221222

22 December 2022

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

By email: CreditReforms@treasury.gov.au

Dear Sir/Madam,

Regulating Buy Now, Pay Later in Australia

The Law Society of NSW appreciates the opportunity to provide feedback on the future regulatory framework for buy now, pay later (BNPL) arrangements under the *National Consumer Credit Protection Act 2009* (Credit Act). The Law Society's Business Law Committee contributed to this submission.

Our comments are general in nature rather than specific responses to the questions set out in the options paper, '*Regulating Buy Now, Pay Later in Australia*' (Options Paper).

General Comments

The Law Society supports addressing the regulatory gap identified by Treasury in relation to the BNPL industry, and also supports the proposed parallel reforms to improve clean energy sector sales practices.¹

The Options Paper proposes 3 options for consideration:

Option 1: Strengthening the BNPL Industry Code plus an affordability test.

Option 2: Limited BNPL regulation under the Credit Act.

Option 3: Regulation of BNPL under the Credit Act, with full Responsible Lending Obligations.

We acknowledge the concerns expressed about the effect of the BNPL industry on vulnerable people, and the potential nexus with financial stress or hardship.² However, in circumstances where a requirement for BNPL providers to hold a licence would likely lead to increased compliance costs which would be passed on to the consumer, it is difficult to

¹ Options Paper, 17.

² Interestingly, however, the Australian Financial Security Authority found that in 2021, while around a third of personal insolvencies (34.2 per cent) had at least one BNPL debt, by value BNPL debts only represented 0.3 per cent of all unsecured debt in personal insolvency cases: Options Paper, 12.

recommend a more rigorous licensing regime at this stage. Given that a wide-ranging review of the credit reporting framework is to be undertaken by October 2024, we consider that it may be appropriate to support Option 1, that is, the imposition of a bespoke affordability assessment for BNPL providers under the Credit Act, and to address any other regulatory gaps in a strengthened Industry Code to make it fit-for-purpose, as an interim measure, pending that review.³

The strengthening of the Industry Code should include:

- A requirement that BNPL providers must allow consumers to set their own spending limit and a prohibition from increasing a consumer's spending limit without their permission.
- Fee caps for charges relating to missed or late payments, combined with disclosure requirements (noting the limitations where the BNPL provider is not licensed).
- Restrictions on using BNPL products for essentials, such as the purchase of groceries.

We would appreciate the opportunity to participate in any later consultation on the future regulatory arrangements for BNPL in Australia.

If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,



Joanne van der Plaats
President

³ Options Paper, 23:

Australia's comprehensive credit reporting framework is required by law to be reviewed and reports provided to the relevant ministers by 1 October 2024. The framework includes voluntary arrangements legislated under the *Privacy Act 1988* and mandatory arrangements applying to the big banks under the Credit Act. These reviews could examine in greater detail how BNPL providers can better report the credit information of BNPL consumers.