



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

20 DECEMBER 2022

Consumer Credit Unit, Financial System Division

The Treasury

Langton Crescent

PARKES ACT 2600

via email: CreditReforms@Treasury.gov.au

Dear Sir/Madam,

Regulating Buy Now, Pay Later in Australia

Small businesses are both merchant and consumer customers of unregulated credit and capital product providers, including buy now pay later (BNPL) providers. While some small business merchants view such products as enablers of trade, small business consumers may be reliant on them while vulnerable, with a heightened risk of experiencing hardship.

To set the minimum standards of acceptable commercial conduct by BNPL providers, we recommend the following:

- 1. Regulate BNPL under the *National Consumer Credit Protection Act 2009 (NCCPA)*.** We support regulating BNPL under the NCCPA, including the requirement for providers to comply with responsible lending obligations as set out in the Australian Securities and Investments Commission's (ASIC's) Regulatory Guide 209. Regulation of this sort will align requirements for BNPL providers with the current authorised deposit-taking institution (ADI) framework, improving BNPL providers' commitment to dealing with small-business merchants and small-business consumers.
- 2. Introduce a complementary BNPL Code of Practice.** We acknowledge the Australian Finance Industry Association's continued effort to ensure that the BNPL Code of Practice (the code) remains fit for purpose, including by commissioning an independent review on 14 October. Given the government's commitment to close the current unintended regulatory gap, we suggest a revised code complements the scope of BNPL regulation and continues to determine best practice industry standards of conduct for code signatories.
- 3. Clarify how ADI-BNPL products should interact with the relevant codes of practice and the Australian Financial Complaints Authority.** We recommend clarity is provided to small business merchants and small business consumers regarding their rights and the process to raise complaints, including which code of practice covers commitments to merchant customers for ADI BNPL and non-ADI BNPL products.
- 4. Assign responsibility for regulating BNPL providers to the Reserve Bank of Australia (RBA).** We recommend the RBA's regulatory oversight is expanded to cover BNPL providers, with specific intent to include BNPL under the standards that prohibit merchant terms and conditions from enforcing 'no-surcharge' rules.
- 5. Consider removing the exemption of some credit products under the NCCPA.** Exemptions made available on certain types of credit products in Schedule 1 of the NCCPA will continue to see unregulated credit providers extend products to vulnerable small business consumers with



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potentially poor product disclosure statements, excessive or disproportionate fees and charges, and poor complaints handling processes. We recommend the Schedule 1 exemptions be reconsidered, particularly how such exemptions might facilitate poor trading practices and allow BNPL providers to capitalise on vulnerable small businesses consumers.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Ms Sarah Blyton on 02 5114 6128 or at sarah.blyton@asbfeo.gov.au

Yours sincerely

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman