

23 December 2022

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

Via email only: CreditReforms@Treasury.gov.au

BCCC Submission – Regulating Buy Now, Pay Later in Australia

The Banking Code Compliance Committee (BCCC) welcomes The Treasury’s consultation and the opportunity to comment on the future regulatory framework for Buy Now Pay Later (BNPL) products in Australia.

The BCCC strongly supports regulatory intervention for BNPL products to ensure consumers are better protected.

BNPL and the Banking Code

A number of subscribers to the [Banking Code of Practice](#) (the Banking Code) offer BNPL products or have partnerships with BNPL providers. While the Banking Code provides some important protections for consumers in their dealing with Code subscribers, it does not currently contain specific protections for BNPL products.

The Australian Banking Association stated, as part of its response to the recent independent review of the Code, that it will revisit a specific recommendation in relation to introducing a commitment that BNPL products issued by banks will be subject to credit checks and eligibility requirements to ensure products are suitable for consumers, after the outcome of Treasury’s consultation is known.¹

¹ <https://www.ausbanking.org.au/wp-content/uploads/2022/12/ABA-Response-to-BCOP-Review.pdf>

Support for regulatory reform

The rapid growth of the BNPL sector, advancements in technology and growing consumer harm have highlighted the need to close the unintended regulatory gap for the BNPL sector in the consumer protection framework.

We know through our monitoring and engagement work that gaps in the consumer credit regulatory framework and over-indebtedness can cause significant long-term harm to consumers – both financial and psychological.

Through our work, we regularly engage with a range of consumer advocates as well as our [Small Business and Agribusiness Advisory Panel](#), who share insights from their respective networks, including financial counsellors. Through this engagement, we have heard examples of consumers turning to unregulated BNPL products, contributing to unsustainable debt. We have been informed of some cases of annualised interest rates of up to 70% in late fees and charges.

The need for reform of BNPL has taken on increased importance in the current economic climate of rising interest rates and cost of living pressures, where consumers may turn to BNPL as an alternative or additional form of credit, given its ready accessibility and frictionless on-boarding processes. This could lead to financial distress with limited options for redress available to customers of BNPL products. We are concerned that BNPL products tend to increase a consumer's overall credit levels and can contribute to over-indebtedness.

As the Options Paper observes, the growth of BNPL has benefitted from an unintended regulatory gap created by exemptions in the consumer credit legislation that was not designed with BNPL in mind. This regulatory gap creates the potential for consumer harm due to the absence of baseline consumer protections that apply to other forms of credit.

While strong, robust and independently monitored industry codes of practice, like the Banking Code, can play an important role in the consumer protection framework, codes work best when they go above and beyond the law. There remains a need for legislative consumer protections, currently missing for BNPL and other unregulated credit products causing harm.

The BCCC supports regulatory intervention in the BNPL market. While we welcome the Options Paper, in our view other organisations and stakeholders will be better placed to recommend the most effective form of regulatory reform.

About the BCCC

The BCCC's purpose is to monitor and drive best practice code compliance – ultimately leading to better outcomes for customers and the community. To do this, the BCCC:

- examines banks' practices
- identifies current and emerging industry wide problems

- recommends improvements to bank practices
- sanctions banks for serious compliance failures, and
- consults and keeps stakeholders and the public informed.

Yours sincerely

A handwritten signature in black ink that reads "Ian Govey". The signature is written in a cursive style with a large initial 'I' and a long, sweeping tail on the 'y'.

Ian Govey AM
Independent Chairperson
Banking Code Compliance Committee
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