

6 January 2023

Mr Daniel McAuliffe  
Director  
Consumer Credit Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

CPA Australia Ltd

ABN 64 008 392 452

Level 20, 28 Freshwater Place  
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne  
VIC 3001 Australia

P 1300 737 373  
Outside Aust +613 9606 9677

[cpaaustralia.com.au](http://cpaaustralia.com.au)

By email: [CreditReforms@treasury.gov.au](mailto:CreditReforms@treasury.gov.au)

Dear Mr McAuliffe

### Regulating Buy Now, Pay Later in Australia – Options Paper

CPA Australia represents the diverse interests of more than 170,000 members, working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia strongly supports improving the regulation of buy now, pay later (BNPL) arrangements to ensure consumers are appropriately protected when engaging with these products.

While there are broader regulatory frameworks in place that provide some oversight of the BNPL sector, such as the *Competition and Consumer Act 2010*, they do not require the most important obligation that should be assessed by a BNPL provider before they offer a consumer a BNPL product. That is, an assessment of whether the consumer has the capacity to repay the debt without experiencing financial hardship.

We acknowledge that the BNPL industry has taken steps to address this gap by requiring Code Compliant Members to assess if a BNPL product is suitable for a consumer under the Buy Now Pay Later Code of Practice.

However, there are several limitations to this approach:

- the obligations only apply to BNPL providers who have signed up to the Buy Now Pay Later Code of Practice
- BNPL providers generally do not report credit information, including limits, repayments or defaults
- with no reporting of information consumers can sign up to multiple BNPL providers with no visibility of these multiple commitments between BNPL providers or in fact, with other regulated credit providers
- there are very minimal required checks for transaction amounts equal to or below \$2,000 BNPL products
- the assessment process for transactions above \$2,000 is also limited and while it may require a credit check, this is unlikely to consider existing BNPL products that a consumer may have, and
- the Code is not law and therefore is not enforceable.

Importantly, the Code also relies on the customer disclosing they are a 'vulnerable' customer as part of the assessment process. This is of significant concern given that recent research has found that those who have more than one BNPL account are:

- more likely to be from a lower socioeconomic area
- more likely to be receiving government benefits



- have a higher credit card utilisation rate, and
- use more personal loans<sup>1</sup>.

The same research also found that around 10 per cent of users are at high risk and in financial difficulty.

ASIC's consumer research of BNPL users in 2019 (Report 672) also found to make BNPL repayments on time:

- 20 per cent of users had to cut back or go without essentials, for example meals, and
- 15 per cent of users said they had taken additional loans<sup>2</sup>.

These findings are of serious concern and demonstrate the need for reform.

Consideration must also be given to other factors, such as the financial literacy of the Australian population, noting that there has been a slight decline across all age groups from 2016 to 2020 according to the Household, Income and Labour Dynamics in Australia survey. This survey also found that the gender gap had widened over this period<sup>3</sup>.

This means that many consumers may not have the financial literacy required to understand the financial arrangements to which they are contractually agreeing. This includes the fees and charges payable for late or missed repayments, even if information is provided about repayment schedules and fees. It also may mean that they do not have the financial literacy to assess if they have the capacity to repay the BNPL arrangement.

ASIC's Report 672 supports this notion, given that in the 2018–19 financial year, missed payment fee revenue for all BNPL providers totaled over \$43 million, a growth of 38% compared to the previous financial year.

Importantly, BNPL products do meet the definition of credit for the purposes of the *National Consumer Credit Protection Act 2009* (National Credit Act). However, they are not regulated as they fall under existing exemptions.

We believe that this is an unintended consequence of the regulatory framework and that the current regulatory gap is resulting in consumer financial detriment as evidenced by the research cited earlier in this submission.

**CPA Australia recommends that the BNPL sector be regulated under the Credit Act, as proposed in Option 3 of the consultation paper to ensure that BNPL providers:**

- **are appropriately licensed under the Australian Credit licensing regime**
- **comply with the responsible lending obligations to ensure that a BNPL product is not unsuitable for a consumer**
- **provide internal and external dispute resolution mechanisms for consumers**
- **cannot offer unsolicited credit increases to consumers, and**
- **improve disclosure practices to help consumers be better informed when engaging with BNPL products.**

<sup>1</sup> [Buy Now Pay Later: Multiple Accounts and the Credit System in Australia. Boshoff, Elizabeth and Grafton, David and Grant, Andrew R. and Watkins, John, October 15, 2022](#)

<sup>2</sup> [Report 672 Buy now pay later: an industry update, ASIC, November 2020](#)

<sup>3</sup> [The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 20, Melbourne Institute, 2022](#)

Improving the financial capability of BNPL consumers, and in fact consumers more generally, is also an important factor noted in the options paper. The [Moneysmart website](#) and the [Money Managed website](#) are both valuable resources that provide practical tips and useful tools. However, there is little to no promotion of these resources.

We also note that the National Financial Capability Strategy 2022 is aimed at supporting Australians to have the knowledge, skills, attitudes and confidence to engage in positive financial behaviours and make financial decisions appropriate to their individual circumstances throughout their lives<sup>4</sup>.

**CPA Australia recommends that the Government continues to support and grow the National Financial Capability Strategy to improve the financial capability of all Australians.**

If you have any queries about this submission, please contact Keddie Waller, Head of Public Practice & SME on 0401 716 083 or [keddie.waller@cpaaustralia.com.au](mailto:keddie.waller@cpaaustralia.com.au)

Yours sincerely

Dr Gary Pflugrath  
Executive General Manager, Policy and Advocacy  
CPA Australia

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<sup>4</sup> [National Financial Capability Strategy 2022](#)