

22 December 2022

Mr Daniel McAuliffe
Director
Consumer Credit Unit
Financial System Division
Treasury

Via email: CreditReforms@Treasury.gov.au

Dear Mr McAuliffe

Re: Regulating Buy Now, Pay Later: Options Paper

COBA welcomes the opportunity to provide brief comment on *Regulating Buy Now, Pay Later: Options Paper* (the Options Paper). COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our 58 member institutions have \$160 billion in assets and over 5 million customers.

Customer owned banking institutions account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions and deliver competition and market leading levels of customer satisfaction in the retail banking market.

COBA's 2022 Policy Agenda position paper advocated for the review and modernisation of Australia's consumer credit regulatory regime, to take account of developments in the market, technology, and consumer needs. A modern and efficient consumer credit regime benefits consumers by appropriately balancing consumer protection while providing timely and fair access to credit. Bringing Buy Now Pay Later (BNPL) products and services into the National Consumer Credit Protection Act 2009 (the Credit Act) would require a 'levelling up' to meet obligations that already apply to COBA members while providing protections to BNPL customers.

Support for Option 3: Regulation of BNPL under the Credit Act

COBA members strongly support Option 3 where BNPL is subject to the same regulatory safety nets as other credit products, specifying that:

- consistent rules should apply to all credit-like products;
- lenders should be obliged to check the proposed loans are not unsuitable/can be repaid without substantial hardship by the customer, before offering or entering into a credit agreement; and
- Australian Credit Licence obligations (including membership of an external dispute resolution scheme) should apply.

Many components of Options 2 and 3 are similar, but there remains some ambiguity as to what the tailored Responsible Lending Obligations (RLOs) proposed in Option 2 would specifically look like.

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Watered down RLOs could create a knock-on effect for responsible lenders in the broader credit ecosystem. Ineffective RLOs could make it easier for customers to overcommit and in turn default—potentially impacting lenders subject to the full RLO regime. Given that BNPL businesses get priority access to repayment instalments through direct debit arrangements, such an outcome would doubly disadvantage credit providers who adhere to the baseline rules and regulations¹.

Option 2 risks muddling requirements, creating inefficiencies in delivery of credit products to customers and potentially creating or reinforcing an inequitable regulatory environment.

Other matters

Some COBA members believe it is important for BNPL providers to participate in the credit reporting regime. We note that this measure would be better considered in the 2024 review of the credit reporting regime.

Finally, one COBA member noted that using credit cards as a payment mechanism for BNPL purchases can create enduring lines of credit, and queried the appropriateness of this practice.

If you wish to discuss any aspect of this submission, please contact Sarah Wilson (swilson@coba.asn.au).

Yours sincerely



MICHAEL LAWRENCE
Chief Executive Officer

¹ See for example research by Dr Andrew Grant on consumer default priorities that says the consumers prioritise BNPL payments because of the automatic deduction payment method: [Researchers uncover 'pecking order of defaults' as belts tighten](#) published 21/9/2022 accessed 19/12/2022