

DLK ADVISORY

LOOMING CHANGES FOR THE BNPL MARKET



The government has given the strongest indication yet that it will be seeking to regulate the Buy Now Pay Later (BNPL) market soon with the release of a consultation paper on the appropriate regulatory approach for emerging financial products to ensure access of credit while protecting consumers.

It has been estimated by the Reserve Bank of Australia that there are approximately 7m active BNPL accounts making \$16bn in transactions in the 2021-22 financial year. This accounts for around a 37% increase on the previous year. Low value BNPL products that typically provide a spending limit of \$2,000 are the most popular in Australia, although spending limits of up to \$30,000 are available with some providers for large ticket items such as home upgrades.

Currently, the BNPL space is unregulated in Australia because it falls under the exemptions available to certain types of credit under the Credit Act. Due to this exemption, BNPL products are not subject to responsible lending standards or other requirements of the Credit Act. In addition, providers do not need to hold an Australian Credit licence (ACL). Perhaps due to this lack of regulation, there has been an exponential growth in the BNPL market in Australia and many other similar unregulated markets. Consumer advocates argue that this regulatory gap has the potential to create harm in the absence of key consumer protections.

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“...as a minimum, I think putting in place some sort of credit checks to ensure that the product is affordable and suitable for the people...We don't want to see people who are in the same situation they were in the bad old days of the credit card...where they might have had five, six, seven or eight credit cards. No one company knew that the other one had one and this person was just simply unable to pay off their debts...And that's what we want to address.” – Assistant Treasurer and Minister for Financial Services, Stephen Jones

Some of the issues raised by various stakeholders on BNPL schemes include:

- Unaffordable/inappropriate lending practices contributing to financial stress/hardship;
- Poor complaints handling process and lack of hardship assistance;
- Excessive/disproportionate consumer fees and charges (i.e. large default fees relative to size of debt);
- Non-participation in Australia's credit reporting framework, meaning information is not available for use in credit checks by other lenders;
- Poor product disclosure practices, meaning consumers cannot make informed choices;
- Unsolicited selling targeting consumers and encouraging the use of BNPL for essentials such as groceries and utilities;
- Uncomplicated sign-up to BNPL products which increase chances of other consumer harms such as scamming, overselling and financial abuse; and
- Inadequate reverse charging provisions when goods purchased on BNPL are returned.

To resolve some of these issues, the consultation paper proposes three broad options of varying levels of regulatory intervention.

Option 1 will impose a bespoke affordability assessment for BNPL providers under the Credit Act and address any other regulatory gaps in a strengthened Industry Code to make it fit-for-purpose.

Option 2 will require BNPL providers to obtain and maintain an ACL, and in addition, introduce modified responsible lending obligations under the Credit Act to determine unsuitability combined with a strengthened industry code.

Option 3 will impose the strictest regulation, with BNPL providers needing to obtain and maintain an ACL. The existing responsible lending obligations in the Credit Act will also be applied to all BNPL credit, including requirements around reasonable inquiries into a consumer's financial situation and taking reasonable steps to verify this information.

CONTACT

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