
BNPL SECTOR FACING MORE REGULATION



Late last year, the government released a consultation paper seeking views on options to regulate the Buy Now Pay Later (BNPL) market. The paper outlined three increasingly rigorous options for the regulation of the BNPL market, consisting of: strengthening the BNPL industry code plus an affordability test; limited BNPL regulation under the Credit Act (including licensing and a scalable unsuitability test); or regulation under the Credit Act.

Consultation has since ended with 78 submissions received from a range of stakeholders, including 16 confidential submissions. In response to the submissions and studies by consumer advocates, the Assistant Treasurer announced that the government will be moving forward with change of law to regulate the BNPL market that is in line with Option 2 of the consultation paper (ie limited BNPL regulation under the Credit Act).

“Our plan prevents lending to those who cannot afford it, without stopping safe, prudent BNPL use...Our plan maintains the benefits of BNPL that many Australians enjoy, and we must ensure that providers will have appropriate safeguards in place, and we must ensure that they operate honestly, efficiently, and fairly, in line with other regulated credit products.” – Assistant Treasurer, Stephen Jones

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According to the original consultation paper released, Option 2 proposes to bring BNPL within the Credit Act's application to apply a tailored version of the responsible lending obligations (RLOs) to BNPL products. It proposes to amend the Credit Act to require BNPL providers to hold an Australia Credit Licence or be a representative of a licensee with a requirement to comply with most general obligations including internal/external dispute resolution, hardship provisions, compensation arrangements, and marketing rules.

In addition, BNPL providers would be required to assess that credit is not unsuitable for an individual (similar to the existing RLO framework), scaled to the level of risk of the BNPL product or service. Providers would also be prohibited from increasing a consumer's spending limit without explicit instructions from the consumer, and fee caps for charges relating to missed or late payments would be required, combined with additional warning and disclosure requirements. Merchants who offer BNPL products to consumers would not be required to be an authorised credit representative of the BNPL provider.

In the announcement, the Assistant Treasurer touted that the proposed regulation would also give ASIC strong enforcement powers, which is in line with the previously released consultation paper. In it, an enhanced role for ASIC as the regulator of BNPL was envisaged with a corresponding extension of ASIC's industry funding arrangements to allow recovery of costs from the BNPL sector. Further, there was also consideration in relation to putting in place arrangements to monitor and measure outcomes arising from BNPL use and the effectiveness of any reforms and industry initiatives.

The government will be consulting with the industry and consumer groups in the coming months to bed down the details of the potential legislation. Draft legislation is expected to be released later this year for consultation, and the final Bill is expected to be introduced into Parliament by the end of the year.

CONTACT

If you have any queries, please feel free to contact us.

Adam Mallabone
adam.mallabone@dlkadvisory.com.au

Ben Melin
ben.melin@dlkadvisory.com.au

David Lilja
david.lilja@dlkadvisory.com.au

DLK Advisory
Level 10, 99 Queen Street, Melbourne VIC 3000
T: +61 3 9923 1222
www.dlkadvisory.com.au