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Treasury

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Afterpay submission to the Regulating Buy Now, Pay Later in Australia Options Paper

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Executive Summary

Afterpay welcomes the opportunity to provide a submission to Treasury's Regulating Buy Now, Pay Later in Australia Options Paper ('Options Paper'). We agree with Treasury's findings that the evidence base for potential sources of consumer detriment from Buy Now Pay Later ('BNPL') products remains limited, and BNPL products like Afterpay have delivered significant benefits for a large number of consumers. We welcome the opportunity to build on this foundation and continue the development of the BNPL regulatory framework.

In this submission we provide an overview of Afterpay's pay-in-four BNPL product, how we have designed it to ensure consumers are protected, and how best to deliver a fit-for-purpose regulatory regime. We have provided feedback that addresses the key issues outlined in the Options Paper in a manner that is evidence-based, proportionate and tailored to the sector.

Overall, Afterpay supports Option 1 and aspects of Option 2 as part of an expanded regulatory regime for BNPL. Many of the issues raised in the Options Paper are largely addressed by the existing regulatory frameworks applicable to BNPL products when combined with the BNPL Code of Practice (BNPL Code). These include hardship and complaints handling, fees and charges, advertising and marketing practices, as well as scams and fraud. We believe mandating the BNPL Code for all BNPL providers, potentially as a condition as part of a new requirement to hold an Australian Credit Licence, would address the bulk of concerns surrounding these issues.

In regards to affordability assessments, Afterpay's view is that its existing product and policies, supported by the BNPL Code, are already delivering better outcomes than traditional regulated credit products. However, we are supportive of steps to evolve the current framework that exists in the BNPL Code in a measured way, to strike the right balance between consumer protection and financial inclusion.

BNPL is an Australian innovation that has delivered significant benefits to Australian consumers, retailers and the broader economy – and has now been exported globally. As an Australian innovation supported by a world class financial regulatory environment, we have an opportunity to develop 'right touch' regulation that puts the consumer first, allows the sector to grow, and adapts to future innovations.

1. Lending practices and affordability assessments

Afterpay's existing approach to affordability assessments is delivering better outcomes than traditional regulated credit products

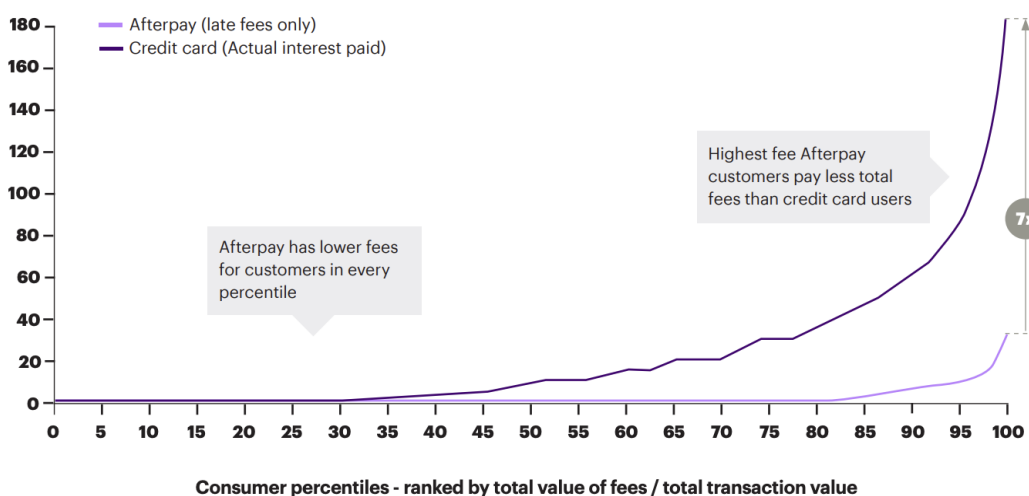
Afterpay's product design delivers consistently better outcomes for customers when compared to traditional regulated credit. Evidence of this can be seen in Afterpay's credit losses and impairment charges, which are significantly lower compared to traditional credit.¹ Further, the overwhelming majority of Afterpay transactions are from repeat customers who have shown positive repayment behaviour. Central to this is the fact that Afterpay:

- Starts a customer on a low initial spending limit that only increases gradually with proven on-time repayment behaviour
- Provides dynamic spending limits, which may increase or decrease depending on the customer's repayment performance
- Does not provide a guaranteed line of credit
- Does not perform a one-time assessment of a customer's capacity to pay
- Is based on regular, relatively low-value transactions, with an average order size of around \$150

These inbuilt features are proving successful in managing consumer outcomes with 95% of all Afterpay instalments being paid on time and 98% of all purchases not incurring late fees. Research by Accenture, commissioned by Afterpay, found that vulnerable consumers gain the most from switching from credit cards to Afterpay. The most vulnerable credit card users pay up to seven times more in fees compared to Afterpay users.²

Afterpay user fees vs. credit card user fees

% of purchase value, latest data



¹ Block, [Quarterly Results Q3 2022](#) state Afterpay's loss rates are 0.96% of Gross Merchant Value.

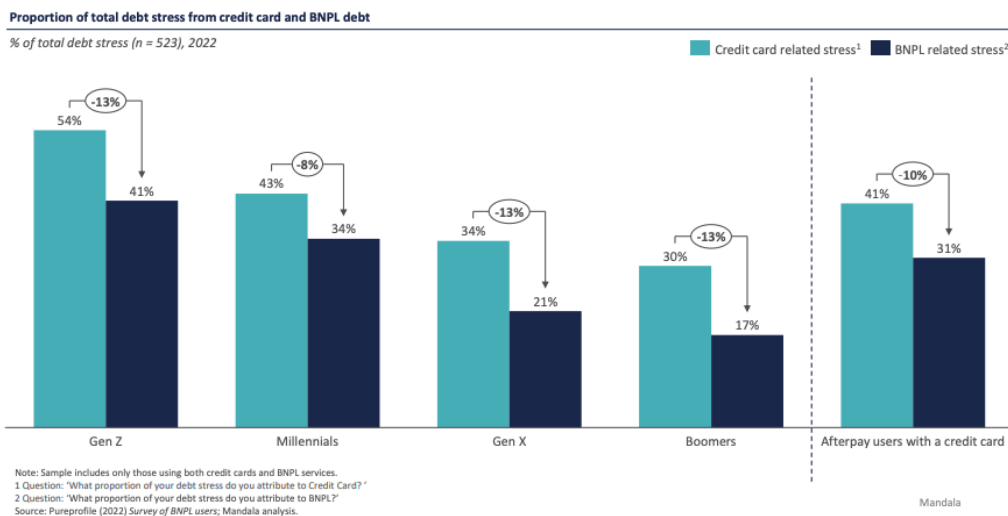
² Accenture, [Economic Impact of Afterpay](#), 2020.

While Afterpay carries out the relevant identification and AML/CTF verification checks on consumers when they open an account with us, at present we do not check a consumer's credit file in Australia. Instead, our internal data-driven, dynamic modelling system takes into account a range of relevant factors around a customer's historical payment behaviour and aforementioned product controls. This contributes to our loss rate which remains one of the lowest in the industry at less than 1%.³

BNPL's design features reduce debt-related stress when compared to credit cards

The Options Paper makes note of HILDA data relating to the debt-related stress of BNPL users, correctly pointing out that the HILDA data is "a better indicator of the financial situation of consumers of these products rather than financial stress these products may cause."⁴ Afterpay commissioned research into this area, finding that across all age groups, Australians using BNPL services find it less stressful than using credit cards.⁵

Australians using BNPL services find it less stressful relative to using credit cards



The existing BNPL regulatory framework combined with a mandated BNPL Code provides a sufficient affordability assessment for low value and low risk BNPL products

The most effective way to ensure good consumer outcomes is through product design. Afterpay's practice is to start consumers on low limits, require the first payment upfront for new customers, pause accounts when repayments are not made, and only allow limits to grow with demonstrated repayment behaviour. This allows a continual assessment of a product's suitability for a particular customer, instead of at a single point in time during

³ Block, [Quarterly Results Q3 2022](#) state Afterpay's loss rates are 0.96% of Gross Merchant Value.

⁴ Australian Treasury, BNPL Options Paper (p12).

⁵ Afterpay BNPL Consumer Research Report, Mandala, December 2022.

sign up. Our approach has consistently delivered better consumer outcomes than traditional regulated credit products that are subject to the responsible lending obligations.

As the Options Paper notes, BNPL products are already subject to a range of regulatory requirements as well as the BNPL Code. Combined with the low-risk nature of the product, this means that the potential for consumer harm with these products is very limited. In recognition of this, Afterpay believes that the existing regulatory framework and BNPL Code are able to deliver the right consumer outcomes.

Although BNPL providers are not licensed by ASIC, ASIC has undertaken a significant amount of regulatory supervision of the BNPL sector over the last four years. This includes two major reports on the BNPL sector ([REP 600](#) and [REP 672](#)), and a current review of BNPL providers' compliance with the Design and Distribution Obligations. In contrast, ASIC's last review of the credit card sector was published in 2018 ([REP 580](#)).

We acknowledge and share the concern that the BNPL Code is not mandatory or enforceable by ASIC, and while the BNPL Code covered over 95% of the BNPL industry when it first commenced in March 2021, the emergence of new BNPL competitors (such as global technology firms and large banks) has resulted in an uneven playing field for BNPL providers. A mandatory code should be the immediate priority of any new regulatory regime for the sector.

We also acknowledge that there may be room for the BNPL Code to be improved, and note stakeholder concerns with some current thresholds – including that new BNPL customers may be able to access up to \$2,000 in credit. In response to these concerns, we are supportive of changes being made to reduce the \$2,000 threshold to \$1,000. We believe the lower threshold, coupled with the product design safeguards that have been built into our product (such as the default requirement to make the first 25% instalment payment upfront, and the fact that we prevent customers from undertaking additional spending when they are in arrears) provide a robust framework for consumer protection.

Credit checks can play a role as part of a broader affordability assessment regime for higher value BNPL products

Afterpay recognises the Options Paper's proposal that the credit reporting regime can play an important role in future BNPL regulation. Any requirements in this regard should strike the appropriate balance between strong consumer outcomes, responsible lending and financial inclusion.

The Options Paper recognises that credit checks for new BNPL customers could form an affordability assessment under both Options 1 and 2. While we do not believe the evidence indicates this is necessary for low value and low risk BNPL products, credit checks are far more proportionate and supportive of financial inclusion than traditional RLOs designed for high-interest credit products (Option 3).

Any mandated credit checks should maintain reasonable thresholds that promote financial inclusion. This is particularly important for individuals who have very little or no credit history. Many BNPL customers are eschewing traditional high-interest credit products entirely and choosing a better alternative at the outset. These individuals should not be precluded from accessing safe and low cost BNPL products without first having built a credit file using higher cost and higher risk products.

The Options Paper notes that if a new potential BNPL customer does not satisfy thresholds under a credit check, then additional inquiries and considerations by BNPL providers may be required. While Afterpay agrees in principle with this approach, central to this must be efforts to ensure customers are not financially excluded or pushed toward high cost products. The regulatory regime for BNPL products should be nuanced enough to allow providers to respond to customers with an adverse credit history by providing, for instance, even lower initial spending limits (such as \$300).

It should also be noted that significant modernisation of the credit reporting system is required for it to be effective in the BNPL context. This includes the ability to collect BNPL data in real-time and reflect a consumer's BNPL history in their credit file in a way that does not negatively impact their credit score. This will require ongoing engagement with the credit bureaus and should form an important objective of the Credit Reporting reviews scheduled to begin in 2023.

A non-prescriptive approach to affordability assessment tools should be maintained for BNPL

While credit checks have historically played a role as an affordability assessment tool, other tools – including product design tools – are also available. The regulatory framework for BNPL affordability assessments should remain flexible in recognition of the product's inherent low-risk nature in comparison to other credit products.

A non-prescriptive approach also better enables the incorporation of new affordability assessment tools and processes. Innovative tools like Open Banking – and in time, Open Finance – can play a role in evolving credit decisioning frameworks. Similarly, more bespoke options like the development of the BNPL Paywatch initiative (such as that currently being implemented in New Zealand) present important assessment tools that should not be precluded from consideration under Options 1 or 2.

An individual's proven repayment history for BNPL products should be an important metric to assess affordability

In Afterpay's extensive experience, previous repayment behaviour is the best predictor of a customer's repayment capacity. In recognition of this, a customer's proven repayment history for a BNPL product should be a crucial input into any affordability assessment regime.

For existing BNPL customers, their BNPL transaction history provides meaningful evidence that the product is appropriate for them. In practice, this means existing account holders should not be subject to additional affordability assessment (such as a credit check) under any new regulatory regime to continue accessing their existing BNPL account. In addition, if a BNPL customer has a proven repayment record, then this information should be usable by a BNPL provider as part of any additional affordability assessment required for increases to that customer's spending limits.

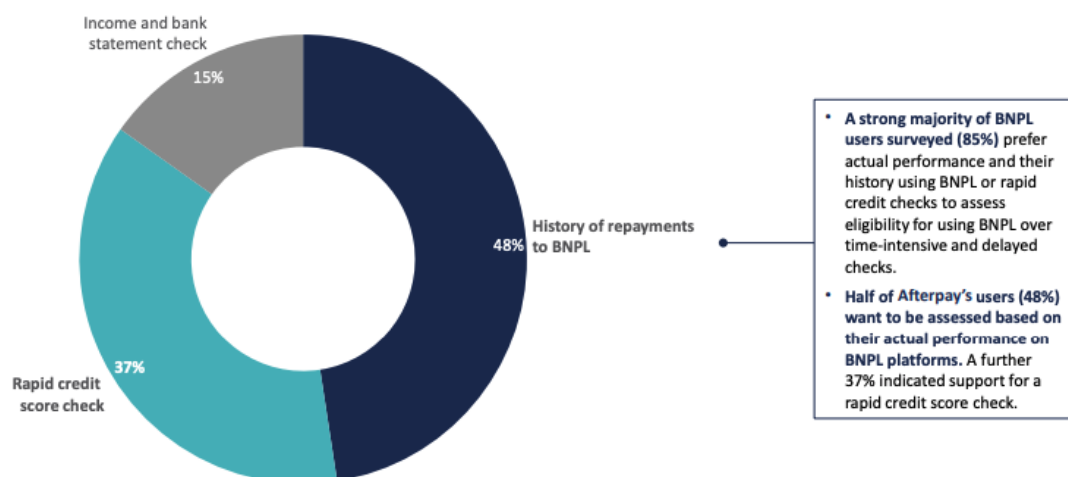
The BNPL Code recognises this approach in a proportionate and scalable way, by requiring BNPL providers to conduct additional affordability checks when customers are borrowing over a certain threshold (\$3,000). We are strongly supportive of this approach, as it ensures the right balance is struck between protecting consumers and allowing innovative and low risk products to operate.

The use of BNPL data for affordability assessments is also reflected in consumer preference. In research conducted for Afterpay by Mandala consulting, consumers were asked which type of affordability check would be most suitable for BNPL. 48% of consumers answered that they wanted to be assessed based on their actual performance on BNPL platforms (i.e. by their repayment history - in line with what Afterpay already does), while 37% indicated support for a rapid credit check. Notably, only 15% of BNPL users thought checking their income and bank statements was a suitable assessment of BNPL access.⁶

Majority of BNPL users (85%) prefer actual performance using BNPL or rapid credit checks to assess eligibility for using BNPL over time-intensive and delayed checks

Preferred approach to assess eligibility for using BNPL services¹

% of active Afterpay users (n = 996), 2022



¹ Question: "Which option do you think would be most suitable to assess whether people can access BNPL services?"
Source: Pureprofile (2022) Survey of BNPL users; Mandala analysis.

⁶ Afterpay - Regulatory Cost of Option 3 - Research Report, Mandala, December 2022.

Case study: New Zealand BNPL Indebtedness Indicator

The New Zealand BNPL industry, including Afterpay, has developed an BNPL indebtedness indicator (called Paywatch) in partnership with New Zealand credit bureau, Centrix. We believe this initiative represents a tailored and effective response to the risk of vulnerable consumers using multiple BNPL accounts when they are in financial difficulty.

Under Paywatch, each BNPL industry participant accessing the Centrix service will be alerted if a new account applicant has an active overdue account with another BNPL participating provider.

The service operates based on a daily feed from each participant denoting every active account that is overdue, in circumstances where a customer has consented to their information being disclosed for this purpose. Where one or more payments is more than seven days overdue, we will be alerted of that new customer's status, and the number of BNPL providers that have provided an overdue status on that customer.

This information will be used as part of the upfront affordability assessments being conducted by BNPL providers to ensure we continue to lend responsibly. Each BNPL provider is still responsible for making their own independent decision on whether to provide its services to any such customer.

Paywatch has a number of important advantages over the traditional credit reporting system. It is closer to real-time in providing an indication of someone's indebtedness status with a BNPL provider and has comprehensive coverage of consumers using BNPL products, whereas many younger adult consumers have thin or blank traditional credit files with the credit reporting bureaus.

Paywatch is also an example of industry and credit bureaus working together to find solutions. We note that credit bureaus in other countries have announced other initiatives designed to accommodate BNPL product data sets. However, we are concerned that these initiatives are being announced unilaterally, without sufficient stakeholder input.

2. Complaints handling and hardship assistance

Afterpay's approach to hardship and the BNPL Code of Practice

Afterpay's approach to hardship assistance and complaints handling represents best practice; bolstered by a consumer-centric product that is transparent, responsive and safer than traditional credit. Our policies are informed and overseen by the BNPL Code, which requires members to meet high standards that reflect – and often exceed – existing legislative regimes.

Afterpay offers a generous and accessible hardship program, which is highlighted on our website, where flexible payment timelines with no additional fees or costs can be agreed upon. Importantly, Afterpay does not decline hardship requests. According to our latest quarterly reporting to the BNPL Code Compliance Committee ('CCC'), total hardship

arrangements with Afterpay represented just 0.49% of our active customer base. The average time for these hardship applications to be resolved was one calendar day.

Our hardship policy aims to give customers a clear and accessible understanding of what financial hardship can look like and how consumers can reach out to Afterpay if they are encountering hardship. We have never legally enforced a debt nor do we sell debts to collection agencies. We also do not participate in the credit reporting system and do not require evidence to support hardship requests. This means that customers do not experience the harm that can ordinarily arise (e.g. pressure to pay to avoid negative impacts on a credit score, aggressive debt collection practices, legal enforcement of debts) when they find themselves unable to meet their repayment obligations.

Afterpay's product design also strengthens our capacity to respond in real-time to customers who may be in financial difficulty. If a customer thinks they may not be able to make a payment, they can request a repayment arrangement to a more suitable date. If a customer misses a payment, their Afterpay account is frozen until they have settled this payment. If the customer does settle a missed Afterpay payment, they can access the platform, but their indicative spending limit will have been reduced to reflect this missed payment.

Afterpay also provides clear and consistent communications over the lifecycle of each transaction. This helps customers understand at every opportunity what they have to pay and when, and therefore how to avoid any late payments. If a customer does miss a payment, we notify them, provide them with notice that fees may apply after a certain date, as well as provide a short period of time to make this payment to avoid a late fee. If a customer is unable to pay, we encourage them to make contact with our customer service team who are trained to sensitively manage cases of customers in financial difficulty. These agents follow our hardship policy, which as already noted, gives them the power to modify payment plans (without ever imposing additional fees or costs on the customer) to suit a customer's financial circumstances and signposts them to the appropriate charities and agencies that support consumers in financial difficulty, if necessary. This approach is designed to achieve the best outcomes for our customers and does not reflect standard practice in the regulated credit sector.

Afterpay's approach to complaints handling

Afterpay's complaints policy provides our customers with easily accessible avenues to raise issues and concerns. In line with our obligations under the BNPL Code, Afterpay commits to deal with every complaint in a fair, open and transparent manner and seeks to resolve complaints as quickly as possible. Our complaints policy complies with ASIC's Regulatory Guide on dispute resolution (RG 271) and aims to:

- Acknowledge all complaints within 1 business day or as soon as reasonably practicable.
- Resolve complaints within 5 business days. If a complaint takes longer to resolve, we must provide the complainant with an initial response within 10 business days.

- Resolve all complaints within 21 days. If we can't resolve the complaint within 21 days, we commit to notifying the complainant as soon as possible of the reason for the delay and let them know when we expect to be able to resolve the complaint.
- When we have completed our investigation of the complaint, we will provide the complainant with a written response which will include the outcome of our investigation, their right to take their complaint to AFCA and AFCA's contact details.

We provide complaints data on a quarterly basis to the CCC. As of FY21, our complaints remain extremely low as a proportion of our total transactions and customers. Our latest quarterly reporting to the CCC showed that our internal dispute resolution ('IDR') complaints represented 0.24% of active customers. Of these complaints, 99% were resolved. There were 133 new complaints during this period that went through external dispute resolution ('EDR'). Of these, 94% were resolved, with the vast majority being resolved by Afterpay directly.

Analysis of our EDR complaints provides important context and insight into the issues consumers are raising. For example, the most frequent complaint raised with Afterpay relates to a consumer's interaction with a merchant. This often involves customers being dissatisfied with a merchant's dispute resolution process, customers not receiving their item from the merchant or there being a delay, and requests for refunds. Less frequent issues that result in complaints include product issues (for example, in-store payment declined), alleged unauthorised account activity, and customers being declined the use of Afterpay services.

These themes and data points demonstrate that consumers are largely satisfied with the BNPL Code's IDR and EDR complaints processes, and that Afterpay has been effective in dealing with complaints by generating fair and timely outcomes for our customers.

Although consumers may be dissatisfied with the inability of AFCA to assist them with a complaint relating to the conduct of a merchant, the fact that a large proportion of Afterpay's EDR complaints are made up of these types of complaints indicates that our customers are well aware of their ability to make a complaint to AFCA because of Afterpay's membership of AFCA.

Afterpay acknowledges that some stakeholders have raised concerns about the complaints and hardship practices of the BNPL industry. We are strongly committed to working with these stakeholders and the broader industry to address any shortcomings and to improve processes where evidence supports such changes.

3. Changing spending limits and dynamic limits in BNPL

As previously outlined, Afterpay's practice is to start customers on low limits, pause new purchases when repayments are not made and only increase limits with proven on-time repayment behaviour. Conversely, spending limits can also reduce if repayment behaviour changes. By only increasing a customer's spending limit after they have demonstrated

strong repayment behaviour, Afterpay ensures that lending responsibly is built into our business model.

Dynamic spending limits are a central consumer protection feature of BNPL and critical to the underlying BNPL model. Inhibiting BNPL providers' abilities to adjust spending limits in response to repayment behaviour would result in a highly perverse consumer protection outcome by likely forcing BNPL providers to provide much higher spending limits at the point of customer sign up.

Above spending limits of \$3,000, the BNPL Code requires BNPL providers to conduct additional affordability checks (such as a credit check). Because these affordability checks cannot happen without customer consent, the BNPL Code already applies a proportionate framework for ensuring that customer spending limits cannot be increased dynamically beyond this threshold. This threshold has proven effective in managing risk and ensuring strong repayment rates in the BNPL sector to date and presents a reasonable benchmark that can be adjusted in response to further data under a new regulatory regime.

Importantly with any BNPL product using dynamic spending limits, customers should be able to set their own spending limits that are lower than what they would otherwise receive from a BNPL provider. Afterpay already allows our customers to set their spending limits below (but not above) the level determined by our credit risk policy.

4. Consumer fees and charges

Afterpay's approach to fees and charges

Afterpay generates the vast majority of its revenue from merchant fees and our best customers are those who pay on time. Our product is designed to be free to consumers, provided on-time repayments are made. Where consumers do miss a repayment Afterpay applies a small, capped fee, set out in Afterpay's Terms of Service:⁷

We acknowledge the research undertaken by Curtin University ("Curtin") in July 2022 contained in the Options Paper. However, the methodology used in the research is inconsistent with the Afterpay model (as well as the models used by most Australian BNPL providers). Curtin's analysis considered the effective annual interest rate by applying late fees over 10 fortnightly repayments – Afterpay has a maximum of 4 fortnightly repayments, meaning that the alleged effective annual interest rate of "28.25 per cent for Afterpay" is inaccurate and inflated and the real effective rate is significantly lower.⁸ Afterpay provides a simple, transparent and zero-cost (provided on-time payments are made) product to consumers who are turning away from credit cards due to their high cost and revolving nature. Research by Accenture estimated that in 2020, Australian Afterpay customers saved over \$110 million when compared to traditional credit cards.⁹

⁷ Afterpay, [Product Terms of Service](#), 2022.

⁸ Australian Treasury, BNPL Options Paper (p 15).

⁹ Accenture, Economic Impact of Afterpay report, 2021.

Importantly, when an Afterpay customer fails to make a repayment, their account is frozen and that consumer is prevented from using Afterpay; a product feature which completely eliminates the risk of consumers falling into a debt spiral – the kind of which credit card providers rely on. The late fees paid by customers on Afterpay comprise less than 10% of total Afterpay revenue.¹⁰ This low number, viewed in the context of Afterpay's global success (and the widespread popularity of BNPL among consumers), evidences consumer belief that Afterpay's fees and charges are proportionate, fair and transparently applied. This is further supported by Afterpay's complaints data – with only 5% of all complaints relating to late fees and charges – a number that translates to 1 customer fees complaint for every 130,000 Afterpay users.

The BNPL Code of Practice presents a regulatory foundation for fees and charges

The BNPL Code currently mandates a range of actions required from BNPL providers in relation to fees and charges. This includes that late fees are “fair, reasonable and capped.”¹¹ The BNPL Code has proven to be successful in this regard, as millions of consumers across Australia choose to use Afterpay and other BNPL providers whose conduct is governed by the BNPL Code. It is also worth noting that additional consumer protections exist (over and above the BNPL Code) in Australian Consumer Law. In recognition of this, should more detailed requirements around fees and charges be considered, the existing BNPL Code presents a strong foundation to build upon.

As a first step, adherence to the BNPL Code's requirements around fair fees and charges should be mandatory. Not all BNPL providers have signed up to the BNPL Code. The Options Paper suggests that a reason for this may be some industry members' hesitations around a fee cap “hindering competition where all providers will charge the maximum permitted amount.”¹² With respect to all BNPL industry participants, this is a poor argument to avoid fee caps, as it ignores all other factors that contribute to competition like product quality, product design (e.g. repayment term and loan amounts), and number and variety of merchant partners – all factors that already contribute to the significant diversity of providers within the BNPL industry in Australia.

5. Credit reporting

The existing credit reporting system was not designed with BNPL in mind

BNPL providers like Afterpay have designed products that are fundamentally different to traditional credit products and as such do not fit within the existing credit reporting regime. This includes the fact that Afterpay:

- Starts a customer on a low initial spending limit that only increases gradually with proven on-time repayment behaviour;
- Provides dynamic spending limits, which may increase or decrease depending on the customer's repayment performance;

¹⁰ Afterpay Limited [FY21 Annual Report](#).

¹¹ AFIA, [BNPL Code of Practice](#).

¹² Australian Treasury, BNPL Options Paper (p 15).

- Does not provide a guaranteed line of credit;
- Primarily used for small-value transactions, with an average order size of around \$150 and a total limit of \$3,000;
- Has a short repayment period (maximum of 8 weeks) and offers the ability to repay early at no cost; and
- Prevents a customer from spending as soon as they are in arrears.

Afterpay's product, with its built-in consumer protections, should not be subject to mandatory credit reporting. The Options paper makes an important point "... BNPL debts only represented 0.3 per cent of all unsecured debt in personal insolvency cases".¹³

Maintaining voluntary credit reporting for BNPL will protect consumer outcomes and maintain consistency with the broader credit sector

In 2018, the Consumer Action Law Centre outlined one of the key risks of a comprehensive credit reporting regime: "We may see an influx of expensive priced-for-risk products, like credit cards charging up to 50 per cent per annum, for those deemed not to be good payers".¹⁴ This fear is relevant in considering whether mandatory credit reporting should apply to BNPL providers. Instead of allowing companies like Afterpay to continue lowering the cost of credit while maintaining consumer protections through product design, mandatory credit reporting will see consumer outcomes deteriorate significantly in Australia as consumers are forced to turn to increasingly high-cost options.

In an era where customer data is of critical value, and credit bureaus are seeing their business models threatened by new platforms and initiatives such as Open Banking, it is understandable that representatives of the credit reporting sector are advocating for BNPL's inclusion in the credit reporting system. BNPL data would add value to the data sets of credit bureaus, while allowing the bureaus the right to charge BNPL providers - and the rest of the financial services sector - for the privilege of accessing this data.

In research conducted by JWS Research for Afterpay on consumer attitudes towards credit reporting, only 3 in 10 Australians believed credit checks should apply to BNPL, with consumers considering credit checks unnecessary for small transactions like those they made using BNPL.¹⁵ Consumers argued that credit checks, designed for larger loans available on credit cards, personal loans, mortgages and auto loans, would not accurately reflect their ability to pay back small BNPL debts over shorter periods of time.

Although it is true that the diversity of the BNPL sector means that some providers participate in credit reporting (and in some cases hold an Australian Credit Licence), the primary objective of regulatory reform is to appropriately balance consumer protections (including responsible lending), innovation and financial inclusion – and this can be done by the BNPL industry without mandatory credit reporting and the associated compromised consumer outcomes.

¹³ Australian Treasury, BNPL Options Paper (p. 12).

¹⁴ Ross Gittens, [there's good and bad in credit reporting](#), 2022.

¹⁵ JWS Research, BNPL Consumer Research Report, 2021.

6. Product disclosures

Afterpay provides clear and comprehensive information to consumers about the product before asking them to confirm acceptance of our Terms of Service. This includes information on the terms under which we are offering the service, the conditions that the consumer has to meet, including payment dates and costs, and any fees associated with missed payment. A key reason for Afterpay's existence is that it has provided clearer and more accessible information to customers to help them manage their budget effectively when compared to traditionally regulated credit products that are incentivised to allow customers to revolve in debt.

Afterpay's model provides consumers with the relevant information at the most salient point in the consumer journey. Because our product is simple and transparent, we do not have voluminous disclosures or legalese that risks overwhelming the customer. Finally, this approach complies with standards on BNPL advertising which specifically provide that advertisers should take care to ensure that marketing for such products makes it clear that they are a form of credit and does not state or imply that they are not. Afterpay is also supportive of the introduction of a tailored regime that looks to apply consistency in terms of point of sale disclosures to BNPL customers.

7. Customer onboarding and sign-up process for BNPL products

Afterpay carries out the relevant identification and AML verification checks on consumers as part of our onboarding process

As noted in the Options Paper, the simple and easy to use customer experience of many BNPL products is seen by consumers as a key benefit. However, it has been suggested that the ease of use of BNPL products is a cause for concern.

It is important to note that Afterpay carries out the relevant identification and AML/CTF verification checks on consumers when they open an account with us. This reflects the fact that all BNPL products are subject to the legal regime administered by AUSTRAC, which is no different to the regime that applies to other financial service providers. Although traditional credit providers may conduct additional affordability checks on customers at the point of application, these checks also frequently occur electronically, and are no more capable of preventing those who are determined to engage in financial abuse.

Afterpay provides consumers with information and 'friction' in every single transaction, not just at the point of sign up

It is important to note that Afterpay provides the same information throughout the customer journey each time a customer opts to use the Afterpay product to complete a transaction. At every transaction the consumer is provided with:

- Information on the full cost of the purchase;
- The repayment schedule including dates and exact payments due on those dates;

- Essential information about the nature of the product and any rights and responsibilities associated with our Terms of Service, including the risk of late fees;
- A link to the full terms and conditions;
- A check box to be completed by the customer to confirm that they accept the terms of the agreement;
- A confirmation button to confirm purchase; and
- Email confirmation immediately after the transaction which contains all of the information listed above, as well as further details on what to do if they need to return or require a refund for any items.

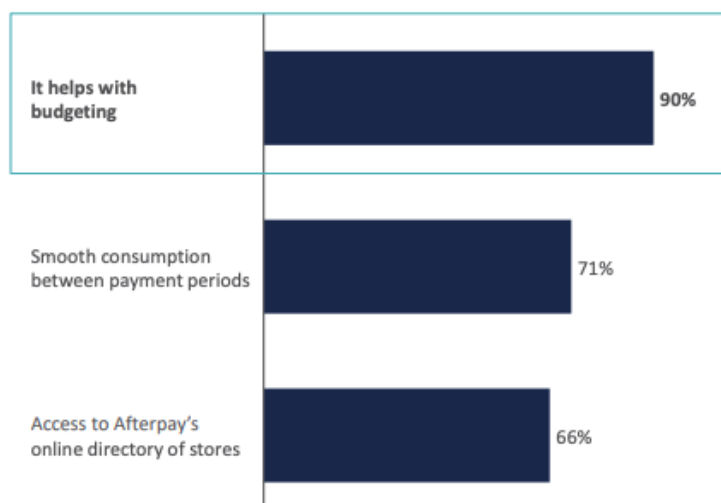
The above process demonstrates that the transactional 'friction' is applied to every customer transaction made via Afterpay, not just at the initial sign-up stage. In addition, the existence of the ongoing relationship allows customers to better understand product features, compared to a traditional consumer credit product where the provider and customer may only interact once. We think that providing clear contractual information is important and would welcome requirements to be mandated in this regard.

The vast majority of Afterpay customers are mindful about their purchasing habits. Mandating clear and transparent communications can help further promote this across the BNPL sector.

Accenture research shows that the majority of customers are mindful of their purchasing habits. Customers use Afterpay as a tool to help them spread the costs of items and better manage their finances.¹⁶ 90% of Afterpay consumers value Afterpay's help with budgeting as an important product feature.¹⁷

Attributes of Afterpay's service that users deem important

*% of survey respondents who considered attribute as fairly or very important, 2020
n=620*



¹⁶ Accenture, [The Economic Impact of Afterpay in Australia](#), 2020.

¹⁷ Afterpay BNPL Consumer Research Report, Mandala, December 2022.

Furthermore, it is clear that where customers are unable to access other forms of credit, when used responsibly, Afterpay offers significant benefits in allowing them to access short-term, interest-free credit to meet their everyday needs. In 2020 alone, Afterpay customers saved over \$110 million when compared to traditional credit cards.¹⁸

We believe mandating clear and transparent communications will provide further confidence to BNPL customers. Tailored requirements will ensure that, for example, BNPL providers act responsibly to ensure that a new customer can only borrow small amounts until they are able to demonstrate that they have the capacity to take on a higher spending limit. Similarly, if a customer misses a payment, BNPL providers should be required to take appropriate action such as immediately suspending them from the platform until any overdue payments are met.

BNPL customers should be able to check their balances at any time, either online through a website or via an app. A customer's account page should provide details of all of their purchases including when payments are due and how much they will be. Responsible lending should also involve providing customers with the option to move payment dates, pause payments to manage a returns process, or change their preferred payment option for each order. These functions provide customers with control of their payments and allow them to see, at a glance, their outstanding BNPL commitments and a level of transparency and access that does not exist with many traditional credit products.

We believe that Afterpay's existing processes, such as smart and continuous monitoring of a customer's repayment behaviour, coupled with the clear and accessible information, provides greater benefits and protections to consumers than many traditional, regulated credit products. BNPL products are designed to support low value purchases over a short period of time, and our customer interventions and communications are geared towards preserving the integrity of this model.

These outcomes are borne out in the evidence across the BNPL sector. Research by RFI Global and BIS Oxford, sponsored by the Australian Finance Industry Association, found that:¹⁹

- Australian consumers like using BNPL because it gives them more control over their money, with 54% saying it helps them manage their cash flow and 49% saying it helps them feel in control of their spending.
- 83% of Afterpay customers use our service because of its product features, citing "it helps me manage my budget", "I prefer paying in instalments" and "I don't want to incur interest costs".

¹⁸ Accenture, [The Economic Impact of Afterpay in Australia](#), 2020.

¹⁹ Australian Finance Industry Association, [The Economic Impact of BNPL in Australia](#), 2022.

8. Advertising and marketing principles

Afterpay ensures that we are meeting high advertising standards that do not put the consumer at risk. The BNPL industry is already subject to the same Australian Consumer Law requirements contained in the ASIC Act as all other financial product providers, and under the BNPL Code, BNPL providers are required to meet the standards set out in ASIC's Regulatory Guide on advertising, RG 234. Consistent with these requirements, Afterpay promotes and advertises its BNPL product appropriately across different channels.

In relation to the promotion of Afterpay by our merchant partners, we have a compliance framework in place to ensure that all forms of merchant advertising in respect of our BNPL product are appropriate. Our Marketing and Sales teams are given regular training either in-house or via online external courses, on advertising standards.

9. Use of BNPL for essentials and gift cards

As noted in the Options Paper, the use of BNPL for essentials such as purchasing groceries and paying bills does occur, although it represents a fraction of the spending by Afterpay customers. However, it is important to note that the use of credit cards for such purchases has been a decades-long practice for a large proportion of consumers. Many of these consumers will be paying interest rates of 20% or more on these purchases. As BNPL products present a far lower cost option than credit cards for the majority of consumers, their use for such purchases should be less concerning.

The Options Paper notes that the use of BNPL to purchase gift cards has raised concerns with some stakeholders. One option to help address this would be to prevent gift cards from being the first purchase on any new BNPL account as part of an updated BNPL Code. Afterpay only allows customers that have an established repayment history with us to purchase gift cards.

10. Managing refunds and returns and fraud protection

Afterpay makes information readily available to customers if they wish to make a return or request a refund. Afterpay's app and our website holds information about customers' transactions – including a reminder of when payments are due, the returns process and our Terms of Service. This provides customers with access to relevant information instantly and continuously, allows consumers to move a payment date, or notify us of a return, at the click of a button. When we are notified of a return, Afterpay automatically pushes the next instalment payment date back by two weeks, to allow the customer time to return their goods and have a refund processed by the relevant merchant. This feature is used by thousands of consumers every month. As a result, Afterpay does not experience a large volume of issues relating to refunds and returns.

Importantly, Afterpay and other BNPL transactions are linked to customers' existing debit or credit card (e.g. Visa, Mastercard). This means customers receive the same protections relating to refunds and returns that are offered via their card (such as chargeback protections).

BNPL products have also been shown to provide customers with greater confidence regarding their purchases with retailers they may be unfamiliar with. In research conducted for Afterpay by JWS in 2021, 82% of consumers named “protection against dodgy / fraudulent merchants” as a priority reason for why they used Afterpay.²⁰ Afterpay gives consumers a sense of comfort when they transact as:

- Afterpay protects consumer data and personal information
- Afterpay vets transacting merchants on its platform
- Afterpay is responsible for transferring funds to the merchant, rather than the consumer
- Afterpay is responsive, and acts in the consumer’s interest if fraud does occur or the merchant fails to deliver purchased products.

11. Supplementary reforms

The BNPL industry and the BNPL Code have introduced standards beyond that which is currently being delivered by the traditional credit industry. The Options Paper is an important opportunity to not only review what the future regulatory framework should be for BNPL, but also how this emerging new sector can help inform and improve standards in the broader consumer credit regulatory framework. Opportunities for this include:

Gambling should be banned across all consumer credit products – not just BNPL

The current BNPL Code has been effective in protecting consumers by mandating a ban on BNPL for gambling – something credit cards do not do and is not required under the *National Consumer Credit Protection Act 2009* ('NCCP Act'). There is no reasonable justification for the use of high-interest credit cards for gambling, the harms of which are self-evident and widely acknowledged.

Greater scrutiny of traditional credit products is required through the Design and Distribution Obligations ('DDO') framework

The DDO is a regulatory framework that seeks to ensure that consumers are sold products that are suitable for their needs. It does this by requiring financial product issuers and distributors to identify an appropriate target market for their products, and ensure that their product(s) are distributed to the target market. The DDO framework already applies to BNPL and Afterpay has taken the development of and compliance with its Target Market Determination very seriously as part of this.

²⁰ JWS Research, BNPL Consumer Research Report, 2021.

There are a number of existing traditional credit products that are only viable when they are regularly misused by customers. For example, credit card providers are only able to sustain their business models by relying on customers that do not benefit from so-called interest-free periods and instead revolve in debt at interest rates of 20% or more. This is why credit card providers track the “revolve rate” on their credit card portfolios closely, as it is a key metric which drives the profitability of credit card businesses. It is difficult to reconcile how such products align with the objectives of the DDO and we welcome ASIC’s greater scrutiny of how credit card providers are complying with the DDO framework.

12. Options for regulatory intervention

Afterpay has not been subject to the NCCP Act to date because we do not charge consumers interest or other credit fees for accessing our service. This is an important distinction that is often lost in the current debate around regulation. The high cost of consumer credit has been a longstanding concern for policy makers, as it significantly impacts financial wellbeing and reduces the capacity of consumers to withstand financial shocks in a way that low value and low risk BNPL products do not.

Traditional credit products can charge interest rates of 20% or more and trap consumers into a cycle of revolving debt, while payday lending products are subject to additional regulation due to the even higher costs associated with these products. BNPL presents substantially lower risk of harm to consumers when compared to traditional credit products and it is Afterpay’s evidence-based view that a tailored regulatory regime is therefore appropriate.

Consequently, Afterpay supports Option 1 and aspects of Option 2 as part of an evolved regulatory regime for BNPL. Many of the issues raised in the Options Paper are largely addressed by the existing regulatory framework applicable to BNPL products when combined with the BNPL Code. These include hardship and complaints handling, fees and charges, advertising and marketing practices, as well as scams and fraud. We believe mandating the BNPL Code for all BNPL providers, potentially as a condition as part of a new requirement to hold an Australian Credit Licence, would address the bulk of concerns surrounding these issues.

In regards to affordability assessments, Afterpay’s view is that its existing product and policies, supported by the BNPL Code, are already delivering better outcomes. We believe the status quo has demonstrated its ability to prevent consumer harm, and to produce outcomes that are superior to those achieved by traditional credit products.

Any evolution of the current affordability assessment framework should be carefully calibrated to avoid unintended consequences. We do not believe credit checking requirements should be mandated for low cost and low risk BNPL products that include the product-design safeguards that we have described above. We would support changes to the existing thresholds within the BNPL Code (for example, reducing the initial threshold for new customers down from \$2,000 to \$1,000). For existing BNPL customers, we believe spending limits of up between \$1,000 and \$3,000 should be available so long

as customers are demonstrating strong repayment history. Above \$3,000, we are supportive of additional requirements such as credit checks.

While we do not believe that prescriptive affordability assessments should be mandated for low-value BNPL products, any additional requirements should avoid creating unnecessary regulatory uncertainty. We therefore acknowledge the merits of a “safe harbour” approach, and would welcome further engagement with Treasury on what a safe harbour could look like.

In tailoring the affordability assessment regime for BNPL products more broadly, we believe credit checks may have a role to play but there should also be recognition of new tools, such as New Zealand’s Paywatch initiative and Open Banking. Over time, such tools can continue to address concerns about the small proportion of vulnerable consumers that may experience over-borrowing when using multiple BNPL products.

Afterpay recognises that some stakeholders have advocated for the full application of the NCCP Act for BNPL (Option 3). Afterpay believes that fit-for purpose affordability assessments as well as mandating the BNPL Code (potentially as part of a new licensing condition for BNPL providers) would address the key concerns raised relating to consumer protection. Importantly, the effectiveness of this approach can then be monitored with adjustments made when and if required. This represents a prudent, graduated and evidence-based approach to establishing a regulatory regime for a new and evolving sector.


Conversely, a blanket application of the NCCP Act for BNPL (Option 3) represents a disproportionate and damaging response that is not reflective of the evidence of consumer harm in the BNPL sector. Although some commentators have suggested that the NCCP Act already takes a principles-based approach and applies the concept of scalability in relation to affordability assessments, the application of the NCCP Act would inevitably increase the costs of compliance for BNPL providers. Although some of the regulatory uncertainty associated with the RLO provisions is capable of being absorbed as a cost of doing business for traditional credit providers that provide large loan amounts or charge high rates of interest, this is not the case for BNPL providers that offer very low-risk and low-cost products.

Introduction of Option 3 would result in perverse consumer outcomes whereby both customers and BNPL providers would have very little incentive to use or offer low-limit and low-risk BNPL products. Instead the category would inevitably skew towards higher loan limits and interest bearing products as there would be no proportionality in affordability assessments and regulatory burden between product types.

Conclusion

Thank you for the opportunity to make this submission. We look forward to ongoing engagement with Treasury. Please do not hesitate to contact us if you require further input or clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Saadat', is displayed on a light gray rectangular background.

Michael Saadat
International Head of Public Policy