National Australia Bank
395 Bourke Street
Melbourne VIC 3000

22 December 2022

Daniel McAuliffe
Director, Consumer Credit Unit
The Treasury
Langton Crescent
Parkes ACT 2600

By email to: creditreforms@treasury.gov.au

Dear Mr McAuliffe,

NAB submission in response to the 'Regulating Buy Now, Pay Later in Australia' options paper

National Australia Bank Limited (**NAB**) appreciates the opportunity to submit a response to Treasury's 'Regulating Buy Now, Pay Later in Australia' options paper. NAB has considered several different angles in forming our response, given our various interests in the BNPL sector.

In line with the high usage of this form of credit, NAB strongly supports the move to regulate BNPL products. We consider regulation essential, to ensure customer safety, a competitive and fair market, and safe growth of the sector. Of the options proposed in the paper, NAB considers that Option 2 is the most appropriate to achieve these outcomes, for the reasons outlined below.

We offer this position through two perspectives. Firstly, through the lens of a bank, whose customers hold accounts with various Buy Now Pay Later (**BNPL**) providers. We recognise how popular BNPL products are, with NAB research indicating approximately 1 in 5 Australians use a BNPL product, many holding multiple accounts across various providers, and 1 in 20 holding four or more.[1]

Secondly, we have considered our submission through the lens of a BNPL provider. In response to the demand from customers for BNPL products, we recently launched our 'NAB Now Pay Later' BNPL product. This received significant interest from a variety of demographics prior to its launch, reflective of the demand in the market for bank-issued BNPL products. At present, NAB Now Pay Later is an outlier compared to the majority of BNPL products as there are no account fees, no late fees, no interest and no international transaction fees. The product is an open loop proposition, compared with many other BNPL products which are closed loop and often impose costs of acceptance on merchants. [2]

[1] NAB Econom cs Consumer ns ght Report Buy Now Pay Later (June 2021) https //bus ness nab com au/nab consumer ns ght report buy now pay ater 46837

[2] As part of NAB s recent acqu s t on of the C t bank consumer bank ng bus ness, NAB has a so acqu red D ners C ub Pty Ltd, wh ch ssues 'SPOT', a BNPL product SPOT s not current y on sa e for new customers

Support for Option 2

A proportionate and practical approach

NAB welcomes the approach proposed in Option 2 to apply responsible lending obligations (**RLOs**) in a manner that is proportionate to the risk of the credit product. In comparison to 'traditional' forms of unsecured credit such as personal loans and credit cards, BNPL products are fundamentally different in nature and should not be regulated in the same way.

The majority of BNPL products provide significantly less credit than a customer may be approved for under a traditional credit card. For example, NAB Now Pay Later provides up to $1,000 credit; while the most popular non-bank issuers of BNPL products typically provide up to $2,000 or $3,000. This is compared with traditional credit cards, which typically carry a *minimum* credit limit of $1,000.

The repayment arrangements of BNPL are unlike a credit card, where an ongoing line of credit is provided, and many purchases can be repaid over an extended period subject to interest. The repayment arrangements of BNPL are also unlike a personal loan, where a customer generally has several years in which to repay with interest. The tenure of BNPL arrangements is in instalments, linked to specific purchases. For NAB Now Pay Later and the vast majority of BNPL products, these need to be repaid in fixed amounts in a matter of weeks.

It is the deferred debt, instalment arrangement that differentiates BNPL from revolving continuing credit products (as defined in the credit definition of the ASIC Act). As an instalment arrangement, BNPL is a simpler construct to a credit card as the total amount of the debt is segregated into equal repayments, even for larger limits. Customers with a credit card may continue paying the outstanding credit balance for years, if only paying the minimum monthly amount per monthly statement issued.

The BNPL product commits the customer to paying the full amount in typically 6 weeks or for larger limit products, 4 months, 6 months or 12 months. For credit cards this payment may be only partially made up to weeks after the transaction, depending on the statement cycle.

The shorter tenure and total balance repayment commitments for BNPL mean interest is not accumulating on the base amount outstanding on an ongoing basis. Instead, some providers may charge fees for the 'service' of the facility which functions like an instalment payment facility, noting that the NAB Now Pay Later product does not currently charge any such fees.

The differing nature of these credit and tenure arrangements is illustrated below:

> **Scenario 1:** In the context of NAB, customers utilising NAB Now Pay Later to make a purchase of $1000, split that purchase over a period of six weeks in four repayments: the first repayment of $250 (which is taken at the time of purchase), followed by three further repayments of $250 each fortnight, at which point the total amount will have been paid.
>
> **Scenario 2:** If a customer makes a $1,000 purchase using a 'traditional' line of credit such as a credit card, and the customer does not repay the amount in full in line with the statement cycle, the customer will typically incur interest charges, which may continue for an extended period of time if the balance remains either partially or fully unpaid.

The level of risk between these two scenarios is not the same, for either the bank, or the customer.

In Scenario 1, if a customer using NAB Now Pay Later misses a payment, they are blocked from making further purchases until the repayments owing have been made. In Scenario 2 however, a customer may be able to continue to make purchases on their credit card and incur further debt while still having a balance owing from their initial purchase. This carries a different level of risk for both the bank and the customer.

NAB agrees that BNPL providers must have the opportunity to determine whether BNPL credit is not suitable for a person, to prevent the risk to the customer of taking on debt that they may not be able to repay, and to prevent the risk to the bank of a customer defaulting. These risks are heightened for 'traditional' credit products, where a customer may have a $10,000 credit limit with an indefinite timeframe in which to repay. The rigorous assessment and checks that govern these 'traditional' products and are currently undertaken by NAB and informed by the RLOs, should remain in place.

However, NAB considers that it is not appropriate to apply the full extent of RLOs to BNPL products, given the tenure of the credit is shorter and for a fixed timeframe, and the available amount of credit is lower. The risk profile of a $10,000 credit card or personal loan, is not the same as a $1,000 BNPL product, and the level of affordability assessment that applies to this product class should reflect this.

A scalable solution

We see a clear and practical role for scalability in the application of RLOs to BNPL products (as outlined in the options paper), proportionate to the tenure and credit limit of the product.

For example, for a BNPL product with a low credit limit, a lighter touch assessment without document verification may be appropriate. For example, applications for NAB Now Pay Later are subject to a credit history and credit score check with credit bureaus, which provide insights into repayment history and a customer's ability to repay.

However, for a BNPL product with a higher credit limit, a broader financial assessment would be appropriate, in addition to a credit history check. For example, understanding income flow to support the limit proposed.

For BNPL products where an income and expense assessment is appropriate due to the size of credit limit and length of credit tenure and the BNPL provider is a bank holding an existing banking relationship with the customer, the scaled regulatory approach should be flexible enough to reflect the access the bank has to the customers' existing data. For example, visibility over salary credits into a transaction account and regular outgoing expenses. This flexibility would provide a more efficient and customer-centric application experience, based on financial information the bank holds for the customer.

A tailored and scaled application of RLOs should be accompanied by clear regulatory guidance from the regulator, to ensure BNPL providers have clarity on which aspects of RLOs are in or out of scope, and that these are being applied consistently amongst the various providers.

NAB would welcome the opportunity to further discuss scalable application of RLOs with Treasury, as the consultation process continues.

Consistency in fees and hardship arrangements

NAB sees a clear need for consistency across the BNPL sector regarding fees charged to customers.

There are no fees charged on NAB Now Pay Later, including no late payment fees and no missed payment fees. In comparison, across the current BNPL landscape these fees vary greatly in magnitude and frequency between providers. NAB strongly agrees with the proposal under Option 2 to introduce caps on the fees that can be charged.

We recommend capping fees in a manner that is proportionate to the amount of credit provided and the amount owing. For example, a $5 late payment fee on a product with a $500 credit limit, where the full $500 amount is owing, as opposed to a $50 late payment fee. Where a portion of the available credit was owing, the late fee could be tiered accordingly (for example, $2.50 if $250 is owing). Applying scalability and proportionality to fees would help to minimise consumer harm, particularly where customers may have BNPL accounts with several providers charging various levels of fees.

NAB also supports the proposal in Option 2 where products that charge late or missed payment fees would be subject to additional warning and disclosure requirements. This information could be denoted in a similar manner to minimum repayment advice on credit card statements, setting out what late fees would be charged if a customer missed a particular number of repayments, of a particular value.

It is important that there is also greater consistency in hardship arrangements across BNPL providers. NAB welcomes the proposal in Option 2 to amend the Credit Act to require BNPL providers to hold an Australian Credit Licence. This would require them to comply with obligations to provide appropriate hardship arrangements and dispute resolution services.

This creates a more level playing field between BNPL providers that are Australian Credit Licence (**ACL**) holders and those that are not ACL holders. It also provides greater consistency by ensuring that customers who find themselves in hardship are better supported and can access support that they may require earlier. The greater visibility that lenders have over a customer's financial situation, the greater support they are able to offer.

Mandatory CCR and BNPL

NAB also strongly supports the proposal for BNPL providers to hold an ACL or be a representative of an ACL holder, on the grounds that it allows for the future expansion of mandatory Comprehensive Credit Reporting (**CCR**) to all BNPL products, not only those issued by banks. We know that share this view not only with other banks, but with consumer advocacy organisations, financial counsellors and community organisations.

The expansion of CCR to all BNPL products would assist in reducing the risk of customer harm across the financial system, by providing clearer and more complete picture of a customer's financial position. Currently, if a new to bank customer has BNPL accounts with multiple providers that do not report to the credit bureaus, lenders are fully reliant on a complete disclosure from that customer regarding their existing credit, when assessing them for a product. If the customer does not disclose their BNPL accounts, it may result in a customer being approved for a product that may not be suitable for them, as the lender only has the customer's disclosure to rely on and cannot verify this information with the credit bureau.

NAB strongly recommends that Treasury considers the expansion of mandatory CCR to all BNPL products. At a minimum, Option 2 should not be amended to remove the requirement for BNPL providers to be ACL holders or representatives of an ACL holder, which would prevent the expansion of mandatory CCR in the future, to this product class.

NAB agrees with the proposal in Option 2 that credit limit increases should not be provided without specific instruction. This is consistent with the existing prohibition of this practice for credit cards.

Feedback on Option 3

As outlined above, NAB does not consider the full application of RLOs to be appropriate for BNPL, given the significant differences between 'traditional' credit products governed by RLOs, and BNPL products. NAB considers that bespoke affordability obligations should be tailored in a way that is proportionate and scaled to the tenure and credit limit of the product, rather than full replication of RLOs which are largely suited to secured lending and term loan unsecured credit contracts. The uniqueness of the BNPL offering warrants a particularly scaled assessment approach commensurate with the 'expense purchase' funding use of the instalment class of product.

For instance, in the context of Option 3, if a customer is applying for a BNPL product with a credit limit of $500, a full financial assessment would be required under application of the existing credit regime. The operational costs of facilitating this for a product with a low credit limit, given increasing automation, may discourage new entrants to the market and limit the ability of incumbent providers to innovate.

The regulatory approach to BNPL needs to be balanced. It should be robust enough to ensure that where BNPL providers may not currently have the right level of dispute resolution services, hardship support and customer standards, these providers are required to improve and become licensed.

However, it should not overregulate the sector and impose full level of financial assessment that is in excess of the risk of the credit provided, which would potentially limit the viability of some BNPL products and providers, and their ability to continue to innovate and bring new features to market. Fewer BNPL providers and less competition in the market could see customers turn to alternative, less regulated and more costly forms of credit, and cause further customer harm.

NAB considers that Option 2 provides a customer-centric regulatory approach that addresses both of these elements.

Feedback on Option 1

NAB does not consider Option 1 to be in the best interests of our customers, the financial services sector, and the community as a whole.

Regulation of the sector in line with Option 1 risks BNPL providers providing credit to customers who it may not be appropriate for or may not have the capacity to repay without hardship – noting that ambiguity exists in Option 1 on what level of dispute resolution and hardship services BNPL providers may be required to provide. Additionally, the proposals under Option 1 do not go far enough to protect customers from excessive late fees and charges, which can add to and increase customer harm.

As a bank, NAB is also concerned that Option 1 does not impose a requirement for BNPL providers to obtain an ACL, which in turn limits the ability for mandatory CCR to easily be expanded to non-bank BNPL providers in the future. As outlined above, banks are solely reliant on full and honest disclosure from customers on any BNPL products they may hold, given the majority of BNPL providers do not report product information to credit bureaus. This could lead to customers obtaining additional credit products that are not suitable for them, if the customer does not disclose their BNPL products and level of overall indebtedness at the time of a new application for credit.

From an implementation perspective, NAB also notes that the BNPL Code approach proposed in Option 1 is likely to create regulatory duplication for BNPL providers that are also signatories to the Banking Code of Practice such as NAB.

NAB is firmly of the view that the popularity and demand for BNPL products warrants a greater level of consumer protection than can be afforded by an Industry Code and the measures proposed in Option 1. Option 2 provides the ideal level of protection, without limiting accessibility to BNPL products.

Payments surcharging

In respect to payments surcharging, which was an issue raised in the options paper, NAB only provides an open loop BNPL proposition, which is subject to merchants passing on their cost of acceptance as part of the four-party model.

Treasury should consider allowing a more level playing field, between open loop BNPL products that are subject to surcharging and closed loop BNPL products which are prevented from surcharging to reduce any customer confusion, provide options to merchants (especially small businesses), ensure a consistent competitive market, and allow for further innovation to flourish.

NAB has appreciated Treasury's engagement with industry to date as it considers regulatory options for BNPL products. We look forward to continuing to support Treasury's work in bilateral discussions and through industry roundtables.

We would be glad to discuss any aspect of this submission further. Please do not hesitate to contact Lachlan Stewart, Senior Associate, Government Affairs & Public Policy at [redacted] or on [redacted] to arrange.

Yours sincerely,

[redacted]

Ethan Sun
Executive – Instalments, Loyalty & Propositions
National Australia Bank