



Regulating Buy Now, Pay Later in Australia

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Our commitment to inclusion

The Salvation Army Australia acknowledges the Traditional Owners of the land on which we meet and work and pay our respect to Elders, past, present and future.

We value people of all cultures, languages, capacities, sexual orientations, gender identities and/or expressions. We are committed to providing programs that are fully inclusive. We are committed to the safety and wellbeing of people of all ages, particularly children.

Our values are:

- Integrity
- Compassion
- Respect
- Diversity
- Collaboration

Learn more about our commitment to inclusion:
salvationarmy.org.au/about-us

The Salvation Army is an international movement and our mission is to preach the gospel of Jesus Christ and to meet human needs in his name without discrimination.





Introduction

The Salvation Army thanks the Commonwealth Government and the Treasury for the opportunity to provide feedback on the options paper regarding the regulation of the Buy Now, Pay Later (BNPL) sector in Australia.

The Salvation Army is one of the largest providers of financial counselling in the country. Our Moneycare financial counselling services operate in every jurisdiction and provides free guidance through our trained counsellors to anyone in need of improving their financial wellbeing. In this capacity we help a large number of individuals who are in financial stress by delivering a range of free and confidential services, including financial counselling, financial capability support, financial literacy and capability workshops, and microfinance.

We are delighted that the Commonwealth Government and the Treasury have taken this active step to improve the soundness of Buy Now, Pay Later (BNPL) lending practices, and to reduce the harm that individuals experience as a result of these types of debts. The Salvation Army has seen numerous scenarios where individuals chose BNPL financing on purchases which has led to them entering into unmanageable debt.

It is our opinion that the sector is in desperate need of reform. The BNPL lending model has been very effective in Australia at creating access to short term credit. However, the ease with which people can access this line of credit due to limited regulation has also created a scenario where vulnerable individuals can find themselves in unmanageable debt.

The Government's willingness to take steps to regulate this market is a welcome change. We do understand the government's consideration of all stakeholders perspectives in suggesting a compromise position, but it would appear that there is an attempt to generate a 'Goldilocks' scenario, with a middle of the road option that others may conclude is 'just right'. Although The Salvation Army would disagree that either Option 1 or Option 2 are 'just right', we are still heartened to see that these 'too soft' options are being entertained. Even the more modest levels of consumer protection in Options 1 and 2 will provide positive, although insufficient, regulatory oversight within the sector.

Ultimately, it is the opinion of The Salvation Army that the most appropriate regulatory intervention is Option 3, with full regulation of BNPL as a form of credit to be enacted. Any carve outs of exemptions from Responsible Lending Obligations (RLOs), or exemption from controls which apply to all other forms of credit through the *National Consumer Credit Protection Act 2009* (The *Credit Act*), would be ineffective at protecting vulnerable, and targeted, individuals from the severe financial repercussions that BNPL debt can generate.



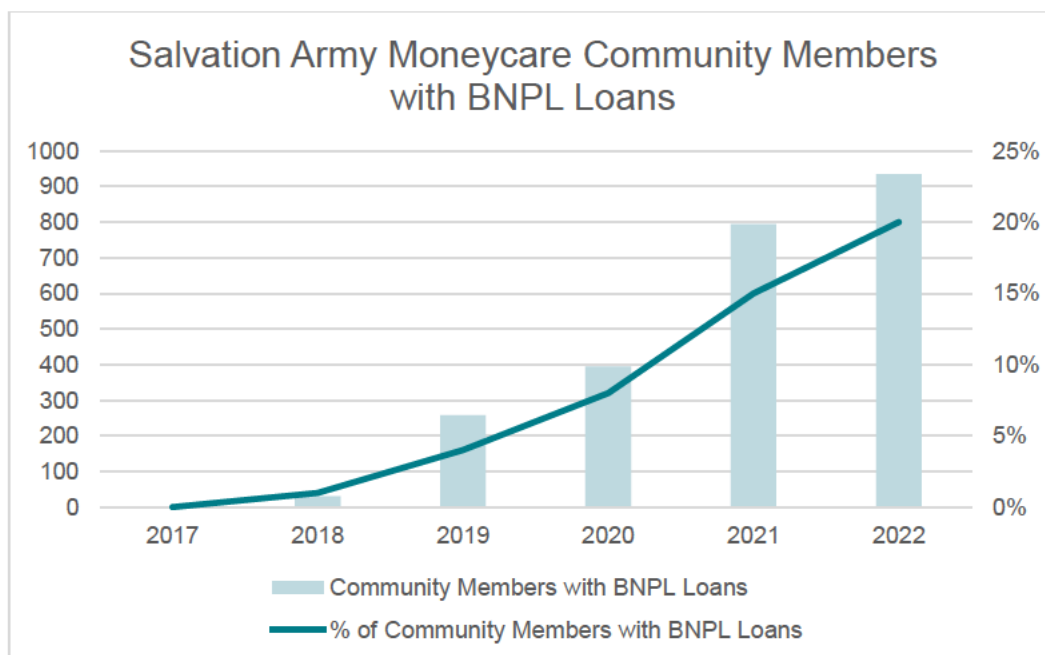
Guiding Principles

The principles set out in the options paper provide a solid basis for the conceptualisation of the regulation necessary in the BNPL sector. However, combining what should be the paramount consideration, the need to protect individuals from harm caused by BNPL debt, with the goal of ensuring continued, easy access to BNPL products, weakens what should be the primary consideration.

The purpose of all Commonwealth financial regulation must be to prevent harm to individuals. If this purpose is muddled with the goal of 'not treading on the toes' of lenders, it undermines the exercise. A simple, yet important change to the guiding principles should include emphasising, the critical goal to minimise harm to consumers as a stand-alone principle.

Other than this, the other goals, including maintaining accessibility to BNPL where it is appropriate for the consumer, are important. Innovation within the market, and a broader understanding of the regulatory implications upon other forms of credit are also critical. The Salvation Army is delighted to see the passage of the *Financial Sector Reform Bill 2022*, which enlivens the sound recommendations of the Small Amount Credit Contracts (SACCs) Review of 2016. Any improved regulation within the BNPL sector without improved regulation of SACCs risks shifting community members from one form of hazardous credit, to another. An expedited and matched improved regulation of BNPL with SACCs improves the effectiveness of both, and provides greater protection for vulnerable individuals.

Figure 1:



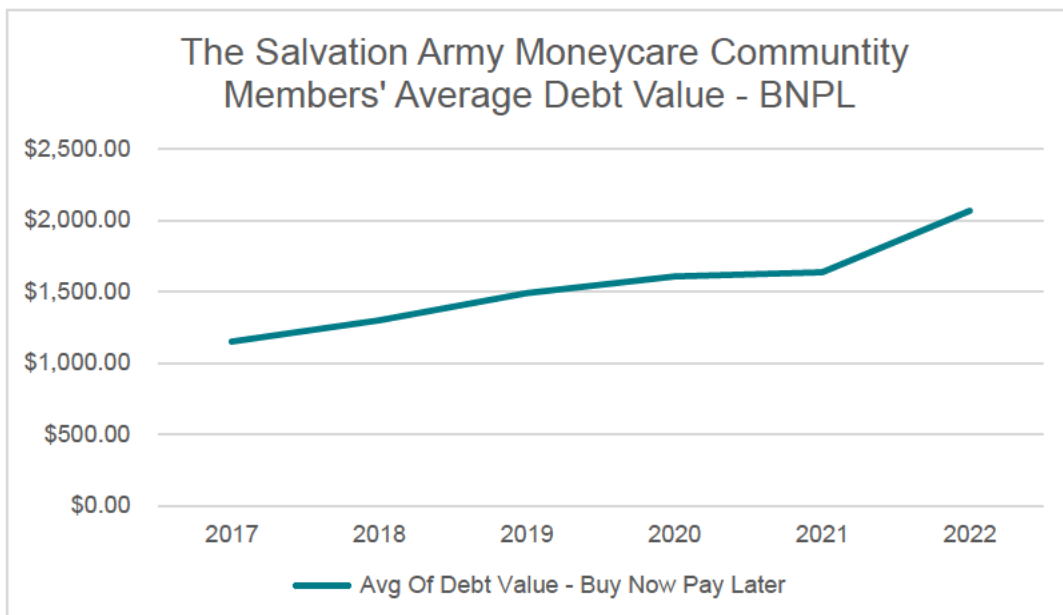


Individuals

The Salvation Army can provide numerous examples of scenarios where BNPL loans have been entered into by individuals with little oversight of the lender, and where they are deeply inappropriate for the borrower.

With the rise in the number of providers of BNPL loans, as well as increased cost of living pressures, The Salvation Army has seen a growing number of individuals approaching our services who have at least one BNPL loan (Figure 1). There has also been a steady growth in the size of these debts since 2017, along with a far more significant uptick in 2022, possibly associated with the rising cost of living pressures seen since that year (Figure 2).

Figure 2:



The concerning ubiquity of these instruments, is coupled with the number of people who do not identify them as a debt. On numerous occasions community members are unaware that BNPL are in fact debt, and fail to provide the information without specific prompting. This highlights the need for additional consumer protections in accessing BNPL products, as not understanding a debt is a critical sign of not being well suited to the instrument.

There is also a disturbing rise in the number of people who are utilising BNPL to purchase necessities such as food and to pay for things such as utilities. Lenders may promote this as an example of the hole in the lending market their instruments fill.

Yet this speaks to the success of BNPL marketing, including at point of sale; pushing people into debt and undermining emergency financial relief and payment programs which are significantly better suited to the consumers' needs.





Chelsea's* Story

Chelsea* was referred to The Salvation Army's Moneycare Service by Centrelink because of several Buy Now, Pay Later and payday loans that she could not repay.

Chelsea is a single mother of 4 children, whose income was reduced due to a reduction in child support. She stated she was evicted recently (due to the owner wanting to sell the property) and had to use all her savings to relocate.

A money plan was developed reflecting a fortnightly deficit. Together with the financial counsellor, Chelsea identified the priority which was getting her debts under control as well as setting a goal to increase her income to be able to afford to pay off her debts.

Over the next 3 weeks, Moneycare worked with Chelsea, assisted her with self-advocacy to set up hardship variations repayments with her creditors. She was successful in establishing minimum repayment plans with all her lenders. During this time, Chelsea gained casual employment which has contributed to a financially stable position.

* Not her real name.

Joe's* Story

59 year old Joe* came to Moneycare after taking out a small BNPL loan to pay for food, which quickly blew out into a significant debt.

Joe was desperate for food, and he thought BNPL was the only way to secure food for a couple of weeks. Living in shared accommodation at the time and with multiple health issues, Joe was already in financial hardship when he was granted a BNPL loan to the amount of \$250.

For the first few months, Joe was unable to pay anything back. When he was able to make small repayments, the disproportionate late payment fees of \$101 a month had already built up. Even after the principal amount was paid, Joe was still left facing a bill that totalled \$1244.60.

Joe's Moneycare financial counsellor advocated on his behalf to the BNPL lender, providing evidence of Joe's financial hardship, and managed to have the debt waived. Joe was also supported with additional financial counselling support and advice on other options to consider before taking out a loan for basic necessities, including accessing The Salvation Army's emergency relief service.

* Not his real name.





Glennis'* Story

When 52 year old Glennis* was hospitalised and rehabilitating, she was forced out of the workforce and onto government payments. With a noticeable reduction in income, she was finding it difficult to cover her rent, basic living expenses and food for her family. In order to get by, Glennis entered into a range of BNPL contracts, which rapidly plunged her into debts she could not keep up with.

Describing feeling “stressed, overwhelmed and embarrassed” when she realised she could not afford her repayments, Glennis says she was not aware of any other options to quickly get what she needed other than through BNPL providers.

Glennis sought the help of a Moneycare financial counsellor at the beginning of 2022, when things became too much.

Glennis says *“My Moneycare financial counsellor has been able to get discounts on total owing on some of my debts, along with extension in timeframes on monthly payments.”*

Her financial counsellor also referred Glennis to emergency relief through The Salvation Army for food, fuel and financial support.

While she has received much-needed assistance, Glennis admits she is still feeling stressed and depressed due to the nature of her financial hardship. As she says, she would not have had any trouble covering her financial commitments if her health hadn't impacted her ability to work.

* Not her real name.



The Way Forward

As stated above, The Salvation Army considers regulating BNPL products with the same rigor as other credit instruments, including full compliance with RLOs, to be the most appropriate action in this instance. As such, Option 3 presented in the options paper – regulation of BNPL under the *Credit Act* - is the best way forward.

RLOs have been a highly effective method of ensuring that individuals are less likely to be placed in unmanageable debt. This protection is one The Salvation Army has been advocating for many years, and we are pleased the Commonwealth Government has put forward this level of regulation as an option within the options paper.

The critical element of the third option which places it above the others is the specific reference to the need for the lender to be satisfied that a 'BNPL is not unsuitable for a person in accordance with the RLOs.'

This requirement has proven to be a highly effective method of protecting vulnerable and targeted individuals in other forms of lending, and exemptions from this requirement present a significant risk in all other forms of credit where it is not mandatory. Although a high bar, this protection is not unduly onerous upon lenders and is highly successful at shielding borrowers from risk. Where lenders have failed to comply, The Salvation Army has had great success in advocating to have unsuitable debts through other lending practices waived. Exempting BNPL credit from these requirements presents risks to consumers.

The complexity of lending arrangements are such that there is significant informational asymmetry between the borrower and the lender. This is coupled with the fact that research suggests as many as 45 per cent of individuals cannot demonstrate basic financial literacy.¹ As such, it is the strong belief of The Salvation Army that the requirement for a BNPL lender to be satisfied that their product is suitable for a consumer is a vitally necessary protection for the sector.

The Salvation Army has also seen Suitability and Objectives checks, which are mandated within RLOs, be a highly effective method of detecting when fraudulent and coercive debts are being taken out before they are incurred. These checks provide another opportunity to verify that the person taking out the debt is doing so willingly, and in their own name. Further, were a lender has not conducted these checks, we have had success at nullifying debts entered into in abusive scenarios. Applying these requirement on the BNPL sector would provide a critical protection for victim-survivors of coercive control and economic abuse becoming saddled with BNPL debt.

¹ Preston, A. (2020, March). *Financial Literacy in Australia: Insights from HILDA data*. University of Western Australia Business School. https://research-repository.uwa.edu.au/files/73668586/Financial_Literacy_in_Australia.pdf.



Why not Option 1 or Option 2?

As stated above, the willingness of the government to participate in additional regulation of the BNPL sector is welcome. All the options, including the minimalist strengthening of the code in Option 1, represent a step forward. Critically, the need for the lender to be satisfied that the loan is not unsuitable for the consumer, as is the case with RLOs, is a fundamental requirement which The Salvation Army considers necessary to protect consumers.

Option 1 outlines a vague notion that a BNPL lender would be required to 'check that a BNPL product is not unaffordable to a person before lending to them'. This is then clarified to exclude the need to check the consumer's financial situation, not their compatibility of the BNPL product to their needs and objectives. This is insufficient to provide any meaningful protection for vulnerable consumers.

Strengthening 'various provisions of the Industry Code', including to address excessive fees, marketing and mitigating risks associated with scams, domestic violence, coercive control and financial abuse can be more effectively and comprehensively performed through incorporating BNPL into the *Credit Act*. Doing so allows for the Act's mechanisms for consumer protection, dispute resolution, and the higher suitability and identity checking provisions, which are well understood and effective, to be evenly deployed to the BNPL credit market.

The suggested changes in Option 2 present a step forward, including the suggestion of an RLO-like framework. The high regard with which the RLOs are held has been evident from the Royal Commission into Banking, as well as the strong opposition to removing RLOs made by the previous Government through the *National Consumer Credit Protection Amendment Bill 2020*.

Further, the scope for irresponsible lending under reduced obligations outlined in Option 2 makes this option an unnecessary halfway point on the journey to inevitably extending more complete regulatory frameworks to the BNPL sector. The Salvation Army believes that swift action to extend RLOs, as well as all dispute resolution and oversight within the *Credit Act*, will prevent vulnerable consumers from becoming trapped in unmanageable debt due to unregulated lending in the BNPL sector.

Recommendations

- That BNPL lenders and instruments are regulated in line with the full capacity of the *National Consumer Credit Protection Act 2009*.
- The Commonwealth conduct the regulatory and legislative changes outlined in Option 3 of the options paper within the first half of the 2023 legislative session.

The Salvation Army again thanks the government and Treasury for the opportunity to provide feedback on the regulation of the BNPL sector, and for the constructive options of tighter regulation put forward in the options paper. We restate our belief that the most suitable form of regulation of the sector is to bring it in line with all other credit instruments, and the associated regulatory framework which has proven to be effective and popular within the *Credit Act*.





About The Salvation Army

The Salvation Army is an international Christian movement with a presence in more than 130 countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army Australia provides more than 1,000 social programs and activities through networks of social support services, community centres and churches across the country.

Programs include:

- Financial counselling, financial literacy and microfinance
- Emergency relief and related services
- Homelessness services
- Youth services
- Family and domestic violence services
- Alcohol, drugs and other addictions
- Chaplaincy
- Emergency and disaster response
- Aged care
- Employment services

As a mission-driven organisation, The Salvation Army seeks to reduce social disadvantage and create a fair and harmonious society through holistic and person-centred approaches that reflect our mission to share the love of Jesus by:

- Caring for people
- Creating faith pathways
- Building healthy communities
- Working for justice

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

Further Information

The Salvation Army would welcome the opportunity to discuss the content of this submission should any further information be of assistance. Further information can be sought from Major Paul Hateley, National Head of Government Relations, at government.relations@salvationarmy.org.au or on [REDACTED].

