

Consumer Credit Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: creditreforms@treasury.gov.au

Dear Sir/Madam,

RE: Submission regarding ‘Regulating Buy Now, Pay Later (BNPL) in Australia’

Thank you for the opportunity to provide feedback with respect to the ‘Regulating Buy Now, Pay Later (BNPL) in Australia’ options paper. The Council of Small Business Organisations Australia (COSBOA) welcomes your consultation process and appreciates your efforts to improve the regulation of consumer credit in Australia.

The Council of Small Business Organisations Australia (COSBOA)

COSBOA is the national peak body representing the interests of small business. Collectively, COSBOA’s members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

As a collaboration of peak organisations across a wide range of industries, COSBOA acknowledges small and medium sized enterprises (SMEs) are major contributors to the Australian economy. SMEs employ 68% of Australia’s workforce. In GDP terms, SMEs together contribute 56% of value added. Small and medium businesses are therefore key partners in rebuilding Australia’s economy as Australia emerges from the COVID-19 pandemic.

Credit provision

COSBOA notes credit products such as Buy Now, Pay Later (BNPL) allow consumers to purchase goods and services over a period of time for a fee or charge. These types of products often result in cheaper and more accessible forms of credit for consumers, compared with payday loans and equipment lease agreements. As a more accessible option, BNPL may increase competitive pressure on other forms of credit and drive increased business for merchants.

BNPL is not currently regulated under the *National Consumer Credit Protection Act (2009)* due to it typically falling under the exemptions available to certain types of credit in Schedule 1 of the Credit Act (The National Credit Code). BNPL products operating within these exemptions are not subject to responsible lending standards or other requirements of the Credit Act, and an Australian Credit License is not required by BNPL providers.

COSBOA notes the potential for consumer harm created by this regulatory gap. We welcome the current review of the BNPL regulatory environment, which is congruent with other reviews being undertaken in the United Kingdom and New Zealand.

Small business perspective

Many businesses who utilise BNPL are small businesses who retain a strong reputational interest to their customers to ensure that BNPL services are offered in a responsible, fair and ethical manner. Small businesses should be able to offer choice to their customers in all areas of their business, including payment terms and credit arrangements. This is particularly important in the current post COVID-19 climate where small businesses are working hard to rebuild and grow with expanded customer loyalty initiatives and innovation through digitisation.

Our members, the Australian Retailers Association (ARA), advise that provided the regulatory framework promotes a sustainable business model, particularly in relation to surcharging so that costs associated with BNPL are transparent and merchants are given flexibility with respect to passing on any costs, a growth in BNPL popularity is likely to continue. COSBOA agrees with this proposition, acknowledging that not all merchants will pass on costs, however we support their ability to choose what is right for their particular business model and circumstances at any point in time.

COSBOA supports the ARA's principled approach to issues involving payments, including transparency and choice with full visibility and disclosure of fees and charges so that informed choices may be made. It is imperative that small businesses are fully informed about all fees and charges so they retain the option of passing on any associated costs. The responsible, fair and ethical provision of credit services that meets all regulatory and legal requirements is also paramount, as is the customer's experience and efficient engagement with a small business.

Merchant solutions

Merchants obtain significant benefits from accepting cards and particularly from credit products such as American Express or BNPL. Merchants are now looking for solutions that provide simplicity, certainty and functionality as opposed to being focused solely on price. This is demonstrated by the growth of small merchant plans and the uptake of payment aggregators such as Square or Stripe. Any amendments to the regulatory framework would impose significant costs to industry. It is therefore recommended that any examination of BNPL surcharging should form part of a broader review ensuring surcharging is fit for purpose in the contemporary payments landscape.

Regulatory approach

COSBOA supports a regulatory approach that is committed to innovation in payments and financial services. An ideal regulatory approach would be targeted, scalable and promote market competition. Any proposed regulatory changes to regulate BNPL should reflect a proportionate and risk-based approach that is consistent across the entire credit and lending ecosystem. Regulation should target market participants who are engaging in 'undesirable' conduct, and should not disproportionately and adversely affect those who are not engaging in undesirable conduct or do not have market power. Small businesses should be provided with more education, resources and tailored support to better understand and comply with their regulatory obligations.

Regulation relevant to credit reporting requirements should also be considered from a whole-of-government approach to ensure consistency with other key government priorities such as the Consumer Data Right.

Credit reporting framework

A robust consumer credit reporting system is a central component of delivering positive consumer outcomes, and it is therefore recommended that BNPL be required to participate in the existing credit reporting framework.

Credit providers report customer information on a monthly basis including product type, limit amount, open date, close date, repayment history and name, date of birth, address as well as hardship enrolment status. Due to the data reciprocity principle of the credit bureau, BNPL providers who do not report on this data would not have access to this information to assist at the point of assessment. Approximately half of BNPL issuances are not reported through the credit bureau. This data would improve the ability to properly assess an individual's financial position. For BNPL providers who do currently report, inconsistencies and irregularities exist such as reporting under personal loan trade type, misreporting of inquiry or tradeline information, and term line inconsistencies. The standardisation of data standards for BNPL reporting, such as ARCDs, would help to address these issues.

Recommendations

COSBOA recommends regulating BNPL under the *National Consumer Credit Protection Act (2009)*, including the requirement for providers to comply with responsible lending obligations.

A review of exemptions provided under Schedule 1 of the Act should also occur to ensure BNPL providers do not exploit vulnerable small business consumers.

A revised complementary Code of Practice should be introduced, including improved dispute resolution services for customers and small businesses.

The revised Code's implementation should be supported by a greater investment in education, training, resources and tailored support for small businesses to help them understand and comply with their regulatory obligations. These resources should be provided in clear, easy-to-understand English and a variety of other languages and formats to assist individuals from Aboriginal and Torres Strait Islander communities, individuals from other culturally and linguistically diverse (CALD) communities, individuals with disabilities, and individuals with other communication barriers.

Summary

COSBOA welcomes your consultation regarding the 'Regulating Buy Now, Pay Later in Australia' (BNPL) options paper. We appreciate your efforts to improve the regulation of consumer credit in Australia. We trust our recommendations will assist in this regard. We advocate for continued small business stakeholder consultation in relation to BNPL and the development of a more effective regulatory approach.

On behalf of our members, I sincerely thank you for the opportunity to participate in this consultation process.

Yours sincerely,



Matthew Addison
Chair
Council of Small Business Organisations Australia (COSBOA)

9 January 2023

About COSBOA

Small business in Australia is the backbone of the economy. We harness its diversity and provide its people with a voice, distinct from big business.

Established in 1979, the Council of Small Business Organisations of Australia (COSBOA) is a member-based not for profit organisation exclusively representing the interests of small businesses.

The capability, representation and reach of COSBOA is defined by a mix of over 40 national and state-based association members. COSBOA's strength is its capacity to harness its members views and to advance consensus, across policy areas that are common to many. Our member organisations work behind the COSBOA secretariat, to assist us with policy development and to guide our advocacy - not just for small business but also for the benefit of the Australians they employ.

In this capacity, COSBOA makes submissions and representations to Government including its agencies, on issues that affect small business and in pursuit of good.