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

By email: CreditReforms@treasury.gov.au

Dear Treasury

Regulating Buy Now, Pay Later in Australia – Options Paper

PayPal appreciates the opportunity to provide this submission in response to the *Regulating Buy Now, Pay Later in Australia Options Paper (the Options Paper)*.

PayPal particularly welcomes the focus in the Options Paper on the importance of striking the right balance between consumer protection and confidence in buy now, pay later (BNPL) and ensuring innovative and competitive alternatives to traditional credit remain available to Australian consumers.

We acknowledge the regulatory challenges identified in the Options Paper and note the importance of ensuring any future regulatory framework is proportionate, flexible, and competitively neutral, reflecting the variety of BNPL solutions available in the Australian market with different business models and risk profiles, target markets and opportunities for further responsible innovation and competition.

About PayPal

PayPal has remained at the forefront of the digital payment revolution for more than 20 years. By leveraging technology and strategic partnerships to make financial services and commerce more convenient, affordable, and secure, the PayPal platform is empowering more than 430 million consumers and merchants in more than 200 markets to join and thrive in the global economy.

About PayPal Australia

PayPal has been operating in Australia since 2005. PayPal Australia enables transactions, online and offline, for Australian businesses, from sole proprietors, small and medium businesses through to established large merchants, while protecting the personal financial information of our more than 9 million active user accounts. PayPal is passionate about innovation in payments and is excited about the myriad of benefits that can be delivered to Australian customers and the economy more broadly.

The PayPal platform, including the PayPal digital wallet, PayPal Credit, including Pay in 4 (BNPL) and PayPal Working Capital (merchant loans), Braintree (payment platform), and Hyperwallet (payout platform)

enables Australian customers and merchants to receive money in more than 100 currencies, withdraw funds in 56 currencies and hold balances in their PayPal accounts in 25 currencies.

Paypal is a long-term, well-regulated participant providing a range of products and services across the Australian payments ecosystem. PayPal Australia is subject to oversight by a number of Australian regulators including APRA, as a Purchased Payments Facility licensee, ASIC, as an Australian Financial Services Licensee and AUSTRAC in respect of Australia's AML/CTF framework. This is in addition to the consumer protections that apply generally to consumers overseen by the Australian Competition and Consumer Commission.

About PayPal Pay in 4

In response to consumer and merchant expectations for choice and flexibility in how payments are made, PayPal has offered a BNPL product, PayPal Pay in 4, to our eligible Australian customers since July 2021.

PayPal Pay in 4 was the first BNPL product offered in the Australian market with no consumer fees including, no late fees, no interest and no sign up or account keeping fee. Additionally, PayPal Pay in 4 may be offered to Australian customers by PayPal merchants at no additional cost beyond their agreed PayPal rates.

PayPal Pay in 4 can be used for purchases between \$30 and \$2,000. It enables eligible Paypal accountholders to split the cost of eligible purchases into four interest-free payments over six weeks, consisting of an initial 25 percent payment at the time of purchase and three further fortnightly payments. PayPal Pay in 4 is not available for certain purchases including gambling, financial trading, person-to-person transfers, not-for-profit donations, Foreign Exchange.

Customers are also able to repay the full amount of a PayPal Pay in 4 transaction at any time, without any additional fees or charges.

PayPal's trusted security and protections apply to PayPal Pay in 4 and eligible transactions are covered by PayPal's Buyer Protection should a purchase not arrive, be damaged or significantly not as described.

Responsible evaluation of consumer eligibility

As a responsible payments platform, PayPal has safeguards in place to help ensure that eligibility is considered prior to a consumer being able to see PayPal Pay in 4 as a funding option in their PayPal wallet and then being approved for PayPal Pay in 4.

Every applicant for PayPal Pay in 4 is assessed for their eligibility at the time of application using PayPal's own data and underwriting models. However, we may also make an information request to a credit reporting body (CRB) where deemed necessary to make an informed underwriting decision. For example, if the customer is new to PayPal or has limited transaction history via PayPal.

Only customers with an Australian PayPal Account in good standing (i.e. verified in line with PayPal's 'Know Your Customer' obligations, not in negative balance or restricted) see PayPal Pay in 4 as an option in their PayPal wallet at checkout for eligible purchases. If an accountholder is ineligible, PayPal Pay in 4 will not be presented as a funding option in their PayPal wallet.

Consumer mechanisms to support on-time repayment

PayPal assists customers to make their repayments on-time with several reminders and notifications which are automatically sent to customers. In addition, where an installment fails, PayPal will automatically reprocess the payment two days after the due date. This is to help automate the payment process in case

customers have missed the reminders and notifications, but now have adequate funds to make the payment.

PayPal Pay in 4 standard reminders:

- A reminder is sent 3 days before a payment is due to help customers avoid missing payments.
- If a payment is missed, a notification is sent telling the customer the payment has failed and asking them to log in to check their payment method or make a payment.
- If the payment is still outstanding after 2 days, we retry by automatically reprocessing the payment.

As soon as a PayPal Pay in 4 repayment is missed, further PayPal Pay in 4 credit is unavailable for that customer until their balance is paid. The purpose of this is to help customers avoid accumulating further outstanding payments.

If, after the automatic reprocessing, a payment remains unpaid, we will work with the customer to understand when they can pay.

PayPal Pay in 4 use of external credit checking and reporting

While PayPal predominantly uses its own PayPal account data to present, approve or decline PayPal Pay in 4 for PayPal customers, an external CRB is used to supplement the information and support the underwriting decision when required.

PayPal notifies customers during the checkout flow when there is a need to conduct a credit check and customers can choose either to give consent (to a credit check) or pay another way. If a customer does not provide their consent, a credit check is not undertaken, and the customer can select an alternative funding method for their purchase. The customer can find our CRB's contact details and information about PayPal's credit reporting practices on our website.

Where an external credit check is made and the outcome is a decline, we will send an email to the customer as per regulatory requirements. PayPal also reports default information on its PayPal Pay in 4 accounts (e.g. overdue amounts which have met all regulatory requirements) to the CRB it uses for its credit checks. We believe this supports the entire BNPL sector and ultimately, reduces the risk of consumers overextending themselves.

Ongoing review of the suitability of PayPal Pay in 4

In addition to reviewing PayPal accounts for eligibility and assessing credit risk before offering customers PayPal Pay in 4, PayPal also reviews the PayPal Pay in 4 service on an ongoing basis to make sure it remains suitable for customers.

This includes monitoring of default and loss rates associated with PayPal Pay in 4 to help ensure the effectiveness and sustainability of the internal PayPal underwriting and risk modelling framework, as well as the effectiveness of the use of the external CRB. PayPal Pay in 4 is subject to the Design and Distribution Obligations, including a Target Market Determination, which includes effectively monitoring metrics to support the provision of PayPal Pay in 4 to suitable customers.

To date our approach to eligibility and credit risk assessment has led to very low rates of default which is a good result for both PayPal and our PayPal Pay in 4 customers.

PayPal's hardship and complaints process

Our website contains information for PayPal Pay in 4 customers who are facing financial hardship and includes contact details for PayPal, the National Debt Helpline and Financial Counselling Australia. We ask that customers who are experiencing financial difficulties contact us so we may work with them individually. We do not promote PayPal Pay in 4 or offer it in wallet to those customers who have told us that they are experiencing financial difficulties or to customers who have missed a repayment, until the outstanding balance is paid.

Compliance with ASIC's Regulatory Guide 271 and applicable privacy legislation dictates our complaints management processes. We are a member of the Australian Financial Complaints Authority (AFCA) and in relation to PayPal's Design and Distribution Obligations, any significant increase in the number of consumers with PayPal Pay in 4 who enter into collections or hardship programs and complaints (internal or made to AFCA), are review triggers for the product's Target Market Determination (TMD).

Responses to Issues Paper Questions

Can you provide examples of other areas of consumer harm or industry behaviour this paper has not discussed?

What are the main contributors of consumer harm?

As a BNPL provider, PayPal has seen limited evidence of consumer detriment through use of our product. The characteristics of PayPal's BNPL product – appropriate credit eligibility assessments, low value, a clear application experience, automated payments, lifecycle communications, no interest, no late fees and no account set-up or ongoing fees for customers – means that some of the sources of detriment explored in the Options Paper appear to have been mitigated in relation to PayPal Pay in 4. The simplicity of the product, limited ability to incur escalating debt balances and relatively low exposures suggest that there is evidence these products offer a better alternative to, and are inherently less risky than, many regulated credit products in the market.

We also note more broadly an area not covered in the Options Paper is the potential consumer detriment associated with the increased frequency of credit checks for relatively small amounts and the likely resulting adverse impact on a responsible BNPL user's credit score if absence of an appropriate BNPL credit reporting framework.

What evidence supports this view?

As noted earlier, to date our approach to eligibility and credit risk assessment has led to very low rates of default.

Additionally, PayPal Australia conducts annual research with 1,000+ consumers 18-75 years old, and 400+ businesses that sell online, to understand trends in eCommerce within Australia and create the PayPal eCommerce Index. The research is produced by PayPal Australia and conducted by ACA Research.

As part of the 2022 research¹ which was in field 15 June to 13 July 2022, questions regarding use of and attitudes towards BNPL services were asked of consumers. The results showed that:

- 20 percent of Australians had used a BNPL service within the last 6 months;

¹ PayPal eCommerce Index – 2022 Trend Report Australia, available on request.

- One-in-eight (13 percent) of these Australian BNPL users reported they have moved to using PayPal Pay in 4 online specifically because it has no late fees; 33 percent of Australian BNPL users said they prefer to use a BNPL service with no late fees; and
- 36 percent of Australian BNPL users agreed that BNPL is a better option for consumers than credit cards.

Are the guiding principles appropriate and fit for purpose to inform the development of a BNPL regulatory Framework? What other factors should be considered?

PayPal welcomes the approach taken by Government in the Options Paper and is supportive of the guiding principles outlined for an approach to regulating BNPL. Responsible innovation is at the forefront of what PayPal does and we believe it is important that any future regulatory framework, should also include the principle of ensuring the ability for all participants to continue to innovate to deliver safe, efficient, sustainable and desirable BNPL solutions to Australian consumers, ensuring they have choice in how they pay.

There is no standard BNPL product or business model. The characteristics of BNPL providers' products differ in various ways, including but not limited to target market (e.g. here are providers seeking to specialise in higher value transactions or particular merchant categories), the structure of credit (e.g. running account or fixed sum), the repayment term length, transaction eligibility and thresholds, merchant pricing, consumer pricing (including late fees), ability to shop through an app or account, online or in-person, use of tokenisation (e.g. virtual cards) to allow products to be used anywhere and other features.

We consider it is critical that any future regulatory framework be proportionate relative to other consumer lending products, competitively neutral, whilst still allowing for innovation with respect to BNPL products, allow freedom of choice for consumers, reflect the principle of 'same risk, same regulatory outcome' and is compatible with the broader reforms to the Australian payments regulatory framework currently being considered by the Government.

Of the three options below, which option do you think is most appropriate? Would you change any aspects of that option?

PayPal supports the introduction of a tailored, proportionate and thoughtful regulatory framework for the BNPL sector via the National Consumer Credit Protection Act (**the Act**) to achieve the Government's objective to deliver greater consumer protections and reduce the risk of consumer harm in proportion to the risks of the BNPL product while continuing to afford consumers choice and flexibility in how they pay, including BNPL solutions.

PayPal's submission is that elements of all three options outlined in the Options Paper could be considered.

We do not believe that the full application of existing obligations that apply to more complex, open-ended and higher value forms of credit regulated under the Act should be extended in full to BNPL products. Additionally, while we support the role of voluntary industry –self-regulation in developing industry best practice, we believe it is more appropriate for both consumer and industry certainty and competitive neutrality that the minimum expected standards are contained within formal regulation.

We submit that elements of the existing credit regulatory regime which could be tailored to apply to BNPL could include:

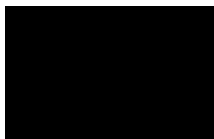
- The requirement for an Australian Credit Licence with general obligations calibrated to the level of risk of BNPL products and services as canvassed by the Options Paper.

- Proportionate suitability assessments, with smaller transactions below a threshold exempt from the requirement to assess suitability. We agree that prescriptive requirements such as requesting and verifying financial documentation and checking if credit provision aligns with personal needs and objectives should not be applied to BNPL products below a certain value.
- Above an appropriate threshold, we believe it would be important that any obligation to assess suitability should permit flexibility for BNPL providers to use innovative data sources, including internal data and note that over time, data accessed via the Consumer Data Right as it continues to expand may deliver additional sources of data that can support BNPL underwriting decisions. Such an approach would assist in ensuring the costs of any increase in requirements around suitability do not make the provision of BNPL products commercially unviable.
- PayPal recognises the importance that credit reporting plays to support sustainable lending across BNPL and the broader credit ecosystem. We agree that is appropriate for BNPL providers to engage more meaningfully with the credit reporting regime, however, we agree with the position taken in the Options Paper that participation in Comprehensive Credit Reporting should remain voluntary.
- We believe there is merit in further consideration of the development of a bespoke BNPL credit reporting framework to avoid adverse outcomes for consumers from high frequency credit checking (and potential adverse impacts to their credit score) and to ensure that the costs typically associated with engaging in the credit reporting regime do not make the provision of BNPL products commercially unviable.
- In relation to spending limits, we believe it is important to note a key difference between PayPal's Pay in 4 solution and traditional revolving lines of credit. Unlike many traditional credit products, including credit cards, which offer consumers an open line of credit with an indefinite time horizon, PayPal Pay in 4 is a credit payment option for single point in time transaction with a set time horizon and lower level of exposure. An assessment of eligibility is made on each single transaction compared to an open line of credit for an extended period of time.

We note that Treasury has outlined next steps in the Option Paper and that it is anticipated it will undertake further targeted consultations with stakeholders to refine these options ahead of any government decision.

PayPal would welcome the opportunity to engage with Treasury as the consultation process continues and would be pleased to discuss any aspect of this submission in further detail. Should you wish to do so, please contact Holly Dorber, Director, Government Relations Australia ([REDACTED] or [REDACTED]).

Yours Sincerely



Andrew Toon

General Manager, PayPal Australia