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

By email: CreditReforms@treasury.gov.au

Thank you for the opportunity to provide input on the Treasury's Options Paper for regulating Buy Now, Pay Later (BNPL) in Australia.

Economic Abuse Reference Group

The Economic Abuse Reference Group (EARG) is a network of community organisations throughout Australia, which aims to influence government and industry responses to the financial impact of domestic and family violence (DFV). Members include family violence services, community legal services, financial counselling services and women's services. See <https://earg.org.au/about/>

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Financial abuse and BNPL

While many organisations in our network have broad concerns regarding BNPL, and some are providing their own responses, this submission will specifically focus on issues arising for consumers experiencing financial abuse and family violence.

We support Option 3, Regulation of BNPL under the *National Consumer Credit Protection Act 2009* (the Credit Act).

While no level of regulation will prevent all forms of financial abuse by perpetrators of family violence, regulation which includes licensing of providers and responsible lending standards does provide safeguards that will make it harder for BNPL to be used as a means of financial abuse, and improve options for redress when this occurs.

BNPL problems experienced by victim survivors

Our members have seen a sharp increase, over the past two years, of clients who have experienced financial abuse who have problems with BNPL debt.

Redfern Legal Centre, which runs a state-wide Financial Abuse Service providing family law, credit, debt and consumer law assistance to people who have experienced financial abuse in NSW, reports that over the last two years they have seen a significant increase in clients who have BNPL debts resulting from domestic and financial abuse. Many of these debts were incurred by their ex-partners opening BNPL accounts in their name without their knowledge.

WEstjustice, which runs a multidisciplinary legal and financial counselling clinic for people who have experienced family violence and financial abuse, reports seeing these clients presenting every week with BNPL debt and issues. Some of these clients have debts incurred in their name by their ex-partners and some are applications made by the victim survivor themselves because they have otherwise been left in poverty after leaving the abusive relationship.

A range of problems arise for these clients:

1. *Identity theft and fraud*

While any consumer could experience identify theft and fraud, victim survivors are at greater risk because it is often their partner (or ex-partner) who uses the victim survivor's personal identity information, which is typically known by spouses, to apply for credit in their name. The BNPL lending model facilitates identity theft and fraud because of frictionless online sign-up, and BNPL providers are not subject to responsible lending obligations under the Credit Act and may not undertake any credit checks or other affordability checks prior to providing credit.

Despite a report that BNPL has driven an increase in identify theft ([Reuters: Australia's BNPL boom pushes identity theft to record, data shows](#)), we suggest this is probably underreported because where the fraud is committed by a perpetrator of family violence, our clients are reluctant to report this to the credit provider. Victim survivors of family violence are also unlikely to make reports to the police where identity theft or fraud has been committed by their ex-partner, and in our experience such reports are unlikely to be taken seriously by the police. Many victim survivors do not realise they have BNPL debts in their name until their credit score has been tarnished or they are being pursued by debt collectors.

Case study: Identity theft and fraud

Abby* was in a domestic violence relationship where she experienced emotional and financial abuse for many years. When she decided to leave her partner, he threatened to send naked photos of her to her friends and family. The abuse continued even after Abby escaped the relationship and fled to another state. Months after she had relocated, her ex-partner forwarded her emails from a debt collector that had been sent to an email address set up in her name, chasing her for debts she knew nothing about. Her partner's email threatened that there were 'more to come'.

When Abby sought help from Redfern Legal Centre's Financial Abuse Service, she was stressed and afraid and didn't know where to turn for assistance. RLC assisted her to obtain her credit reports and request information from the debt collector and credit provider. This uncovered a pattern of BNPL accounts that Abby's ex-partner had fraudulently created in her name with various providers, using her personal details and an email address that he had created in her name. She had no knowledge these accounts existed until she was being chased by multiple companies to pay thousands of dollars that were owed on these accounts.

Engaging with the BNPL providers was very daunting for Abby as she was born overseas and relied heavily on interpreters and assistance from Redfern Legal Centre (RLC) to navigate her through resolving her dispute. When RLC assisted Abby to contact the BNPL providers and explain her situation, she was told that they required a police statement as evidence of fraud before they could move forward with their investigation and consider her complaint. In order to have the debts waived, the accounts closed and the listings removed from her credit report, she would have to make a report to the police.

When Abby went to the police to report the fraud, a male police officer interviewed her and took down very basic details of her situation. The police statement they provided to her stated that the “possible identity fraud” was committed online “by an unknown person” and that there would be no further investigation because “all reasonable enquiries” had been completed. The fact that Abby was a domestic violence survivor was not noted, despite the fact there was an Apprehended Domestic Violence Order in place to protect her from her ex-partner. The police noted that Abby was receiving assistance from RLC to seek account closures and debt waivers, and that the only purpose of Abby making a complaint to the police was to receive an Event number so the accounts could be closed. The police provided no further assistance for her matter and failed to make appropriate enquiries regarding the domestic violence she had experienced. The BNPL provider’s requirement for a police statement left Abby feeling retraumatised, as the police had not taken her situation seriously or shown any intention to investigate her ex-partner's fraudulent behaviour.

After protracted correspondence between RLC and the BNPL providers, they agreed to waive the debts and remove the enquiries from her credit reports. Her credit rating improved and she was able to escape the debts incurred by her ex-partner and move forward with her life.

*Name changed to protect client’s privacy and safety

2. *Unaffordable credit*

BNPL is often used by consumers who are in financial difficulty to pay for necessities. We often see this with our clients who are experiencing, or who have left, family violence circumstances. However, BNPL is a short-term solution, leaving the consumer with unaffordable debt. With payments being made via direct debit, these repayments are deducted from the person’s account automatically ahead of rent, food or other expenses, further reducing the person’s ability to pay for basic living expenses. We see clients going without essentials in order to service their BNPL repayments, or taking out additional loans just to repay their BNPL debts. The cycle often continues with increased use of more BNPL accounts until the consumer is in a debt crisis.

While BNPL can be used to pay for necessities in an emergency, our experience is that it generally leads to more serious financial issues and delays in victim survivors seeking help. There are other sources of immediate financial hardship assistance available to people in an emergency, such as No Interest Loan Schemes (NILS) offered by Good Shepherd and other non-profit organisations, which do not carry fees and risk sending people further into debt spirals. The availability of unregulated BNPL credit can mask consumers’ financial hardship and lead to delays in consumers seeking assistance from free services.

Furthermore, by using BNPL rather than mainstream credit, consumers may not be accessing their full entitlements or protections under hardship programs or discussing their options with their other credit providers, many of whom have a responsibility under law to offer support to those in financial hardship including family violence. Consumers may also be missing out on assistance to apply for government relief grants or receive concessions.

3. *Unsuitable credit*

Through coercion, a victim survivor may obtain BNPL for the benefit of their partner, which is clearly not for the victim survivor's benefit. Examples include clothing, shoes or larger purchases such as large appliances, flights and sports equipment, purchased by the partner or ex-partner. While it can be difficult for credit providers to identify who purchases are for, particularly smaller purchases, credit providers which are subject to responsible lending obligations often identify – through verifying the applicant's requirements and objectives and the affordability of the credit – that the applicant will not receive any benefit from the credit.

Our members see many victim survivors of family violence who have unsuccessful credit applications on their credit reports for credit cards or personal loans, because lenders have identified coercion and have rejected the application. The Australian Banking Association's [Industry Guideline on Preventing and responding to family and domestic violence](#), and the Banking Code of Practice, require member banks to consider whether the applicant will receive a substantial benefit from the credit.

Case study: Buy Now Pay Later accounts used in lieu of child support and set up in victim-survivor's name

Maria* had endured a period of sustained family violence. After the relationship ended, she was supposed to receive child support payments from her ex-partner, however he continued financially abusing her by not paying her. He told Maria that instead of paying child support he would allow her to use his Buy Now Pay Later accounts to purchase essential goods for their children.

Maria came to WEStjustice as she had started to receive demands of payment from two BNPL companies. Maria told us that her ex-partner (who promised to allow her to use his BNPL accounts in lieu of making child support payments) had set up the BNPL accounts in her name, and linked his bank account for repayment of the loans, telling her that he would be paying it off. He then contacted the BNPL providers and removed his card telling them it was fraud and to pursue Maria for repayment of the loans.

Maria's financial counsellor asked for more information regarding the accounts and was faced with significant barriers in obtaining any information, including refusals to provide statements of account.

This case study demonstrates how lack of proper checks and regulation can lead to fraudulently creating accounts and the wrong party being held liable for debt. It also highlights that BNPL companies lack appropriate channels for people to access hardship supports and get further information.

*Name changed to protect client's privacy and safety

4. *Multiple debts*

Multiple BNPL accounts can be opened with multiple providers, and there is currently no obligation for BNPL providers to consider how many other BNPL accounts a person has, or to factor that into affordability checks. One of our member's clients had 12 payments coming out of her bank account each month to different BNPL providers. This debt can quickly spiral, with some consumers taking out payday loans to cover their BNPL payments.

5. *Other issues are often combined with unaffordability*

Something we often see in cases of fraud or coercion is that the credit would have been unaffordable in any case, and while a lender may not always identify coercion, a lender subject to responsible lending obligations should have identified the lack of affordability at the very least.

6. *Hardship response and dispute resolution*

There are inconsistent responses to financial hardship issues and other issues affecting customers such as family violence. Publicly available information about BNPL providers' approaches to family violence and financial hardship varies greatly. Some BNPL providers do not mention family violence as a ground of hardship. Even where financial hardship teams exist, they are less mature and developed than other industries. The Buy Now Pay Later Code of Practice places the onus on consumers to disclose their vulnerability rather than giving BNPL providers a positive obligation to proactively identify vulnerability where there are potential warning signs, as the Banking Code of Practice does. This is problematic because many consumers experiencing vulnerability will not self-identify or disclose due to stigma and the fear of being excluded from accessing BNPL products in future.

Some BNPL providers are difficult for consumers and their advocates to contact because they do not have a phone number for their hardship team and only have web enquiry forms. This is particularly problematic for victim survivors of family violence who may only have particular times they can safely contact the provider, for example while the perpetrator is out of the house. Furthermore, BNPL companies often refuse to provide consumers and their advocates with critical documents used to uncover economic abuse, such as statements of account, and frequently refer consumers to download these themselves from the app, placing the responsibility wholly onto consumers. This is a subpar response, particularly for consumers who are less digitally literate, or for victim survivors of family violence whose perpetrators may have access to or control of the app.

Better responses are likely to result from Credit Act obligations including responsible lending obligations, ASIC regulation, an enforceable Industry Code of Practice, internal dispute resolution obligations and compulsory membership of an external dispute resolution scheme.

Case study: Unaffordable credit and delayed assistance

Samira* experienced family violence including being subjected to emotional, physical and economic abuse by her ex-partner. Samira and her children have been forced to flee multiple properties due to family violence and they are protected by a police-initiated Intervention Order. Despite this protection, Samira's ex-husband continued to commit economic abuse even after the relationship had ended. He placed all of Samira's income in accounts over which he had sole access and placed bills solely under Samira's name. As a result, Samira was in a situation of severe financial hardship and suffered numerous debts in her name which she had no means to pay.

As a result of the financial abuse and the significant amount of debt in her name, Samira felt she had no other option but to turn to BNPL to pay for essentials. She came to WEstjustice with no income, and she had received demands from a debt collector acting for a BNPL company with an outstanding debt of almost \$4,000 for two loans. The debt was listed as a credit default on her credit report along with a huge amount of credit enquiries which Samira instructs were her ex-partner attempting to apply for loans under her name.

Upon further investigation by WEStjustice, it was clear that Samira's income information was incorrect and inflated whilst her living expenses were significantly understated in her BNPL application, which had been completed with the assistance of a friend as she has limited proficiency in English. Had a proper suitability assessment been conducted it would have been apparent that Samira did not have adequate income to make repayments to the BNPL company. Whilst the BNPL credit may have assisted Samira in the short term, it ended with long term financial harm and meant that Samira delayed getting assistance from a financial counsellor, who could help her to apply for an appropriate Centrelink income and assist her to clear away other coerced debt that had been placed in her name. Samira experienced serious difficulties managing this situation, conveying that it stressed her out so much that it had impacted her ability to look for employment, gave her daily anxiety and inhibited her ability to sleep at night.

We also note that the BNPL provider is a signatory to the Australian Finance Industry Association's Buy Now Pay Later Code of Practice, which requires that BNPL providers must provide an outcome to a hardship request within 21 days. In this case it took the BNPL provider 67 days to provide an outcome despite repeated follow up from the financial counsellor. Due to the lack of enforceable provisions under the Code, we have found that many BNPL companies are not concerned about breaching it.

This case study demonstrates that a failure to properly assess an individual on their loan suitability can lead an individual to fall into a debt trap and can delay and prolong that person getting the appropriate supports they need to restore their financial safety.

*Name changed to protect client's privacy and safety

7. Family violence training and policies

There is a lack of training and understanding within BNPL providers about appropriately dealing with victim survivors of family violence. Some BNPL providers do not have hardship teams or family violence policies at all, and may mislabel coerced debts as financial stress or financial irresponsibility. Our members and clients have received inappropriate responses from BNPL providers when issues of family violence are raised, such as asking for unnecessary evidence, or insisting that a victim survivor provide a police report or intervention order to 'prove' that they have experienced family violence, even where an intervention order is not available in their circumstances. Some of our members have been successful in advocating for clients' debts to be waived, however responses are often excessively delayed. In some cases, our members have been ignored after raising issues of family violence and financial hardship and have never received an outcome from the BNPL provider.

In addition to full regulation under the Credit Act, there is a clear need for the BNPL sector to have industry-wide specific family violence guidelines which go above and beyond their requirements at law, as the banking sector has done with the Australian Banking Association's industry guidelines on family violence and financial abuse. There should be consistent approaches to family violence across the BNPL industry, including a clear process for waiving coerced debts, removing adverse information from credit reports, and commitments not to sell debts to third parties when the BNPL provider is on notice of family violence.

Regulating BNPL under the Credit Act

BNPL should be regulated the same as other forms of consumer credit, as proposed in Option 3.

For our client group, we would expect this to assist by:

- Requiring BNPL providers to assess ability to pay and suitability
- Giving BNPL providers an opportunity to identify fraud, identity theft or coercion at the time of application
- Access to effective dispute resolution and appropriate redress
- Regulation by ASIC, enabling the regulator to identify and respond to systemic issues
- More consistent responses to consumers in financial hardship and experiencing vulnerability.

Appropriate regulation under the Credit Act provides an opportunity to identify indicators of financial abuse and take appropriate steps to prevent it from occurring. When responsible lending is done correctly it can help to prevent financial abuse because the lender will make reasonable enquiries about the applicant's financial position and assess their requirements, objectives and financial situation. This process is an effective mechanism to expose undue influence, imbalance of bargaining power and the underlying dynamic behind economic abuse.

BNPL products being subject to responsible lending obligations will allow BNPL providers to better detect, prevent and, if necessary, compensate financial abuse. In credit products that are subject to responsible lending checks, our members see less fraud and identity theft because the lender is required to make reasonable enquiries about the applicant's requirements and objectives in applying for credit, and be satisfied that the applicant will receive a substantial benefit. Many of our members routinely help victim survivors obtain their credit reports, which often reveal fraudulent attempts to obtain credit by partners using personal information without their partner's knowledge or consent. Responsible lending obligations were likely the reason why those credit applications were rejected, therefore protecting the victim survivor from experiencing further financial abuse. Responsible lending obligations also provide redress to victim survivors who are coerced into taking out credit facilities from which they receive no benefit.

Anything less than the responsible lending obligations removes the opportunity for BNPL providers to verify consent for credit applications and identify whether the credit is for the consumer's benefit. This, along with the use of online applications and remote signing and consent in the BNPL space, removes opportunities to identify red flags for financial abuse.

Option 1 is insufficient because our members already see inconsistent responses across the BNPL industry, even among Code subscribers, as detailed in sections 6 and 7 above. Strengthening the Code and giving ASIC very limited regulatory power will not address the problems we have outlined above. The requirements to verify a customer's financial situation and check if the provision of credit aligns with the customer's needs and objectives are critical in identifying, preventing and responding to financial abuse and domestic violence.

Option 2 is insufficient because the 'scalable responsible lending obligations' would not require BNPL providers to verify the applicant's financial documentation or check that the credit meets their needs and objectives. These are the requirements that allow many credit providers to identify and prevent financial abuse occurring. Without them, BNPL products will remain a tool of economic abuse, identity theft and fraud.

Yours sincerely,
Economic Abuse Reference Group

Carolyn Bond AO
National Coordinator

Jasmine Opdam
National Coordinator
Acting Team Leader of Redfern Legal Centre's Financial Abuse Service NSW

earg@earg.org.au