

ARA SUBMISSION

BUY NOW PAY LATER REGULATORY REFORMS

APRIL 2024

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments on how to most effectively regulate Buy Now, Pay Later (BNPL) products in Australia, in response to the Commonwealth government's proposed amendments to the *National Consumer Credit Protection Act 2009* and the *National Consumer Credit Protection Regulations 2010*.

The ARA is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

In principle the ARA supports the Governments proposed amendments to the *National Consumer Credit Protection Act 2009* and the *National Consumer Credit Protection Regulations 2010* to bring BNPL into the existing regulatory framework for other credit products.

The ARA broadly supports the submission made by the Australian Financial Industry Association (AFIA) and makes the following additional comments from the perspective of retailers. We believe retailers can provide unique perspectives in relation to BNPL, given their relationships with BNPL providers and their customers who use a BNPL service to make a purchase.

The main concerns for our sector were that any changes would be hard to implement, hard to manage and reduce consumer choice.

However, the proposed amendments have shown to be flexible, adaptable and proportionate to the risk of consumer harm, striking a balance between protecting consumers without reducing choice, competition or innovation across the BNPL sector.

BNPL plays an important role in the retail industry and contributes \$18.4 billion to retail sales. We believe that the proposed changes will not only enhance consumer trust, but also secure the BNPL sector for the future.

The ARA welcomes the following measures in the proposed legislation:

- The recognition that scalable obligations should apply to products depending on their size, risk level and target markets. For example, the draft amendments differentiate between BNPL products offering \$20,000 loans for niche products like solar panels, compared to \$150 for a pair of jeans – as would be a common use case in our sector. The Government rightly refers to this as a 'modified' and 'proportionate' approach.

- The exemption of BNPL products from certain obligations that may not be appropriate given their unique characteristics is welcomed. For instance, the exemption from requirements related to interest rate comparisons is justified when BNPL products don't involve interest charges.
- The provision of multiple pathways for BNPL providers to comply with obligations under the Credit Act is crucial due to the diverse business models within the BNPL sector. This flexibility acknowledges the need to accommodate different approaches while ensuring regulatory compliance.

We believe retailers should be able to offer choice to their customers in all areas of their business, including payments. Provided that 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 the option of, and flexibility around, passing on any costs, BNPL products will most likely continue to grow in popularity. Not all merchants will or should pass on these costs, but we believe they should have the ability to do so.

The ARA emphasises the vital importance of simplicity and transparency in pricing, both for merchants and consumers. We advocate for a review of the surcharging framework to ensure it continues to meet the needs of all stakeholders, fosters sustainable business practices, and aligns with evolving consumer expectations in today's digital payments landscape.

In the interests of transparency, the ARA discloses that it has commercial arrangements with BNPL provider Afterpay as well as American Express. However, none of our partners have informed this submission.

Thank you again for the opportunity to provide a submission on the proposed amendments to the *National Consumer Credit Protection Act 2009* and the *National Consumer Credit Protection Regulations 2010*. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.