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Consumer Credit Unit
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The Treasury
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ARA SUBMISSION TO TREASURY REGARDING REGULATING BUY NOW, PAY LATER IN AUSTRALIA

INTRODUCTION

The Australian Retailers Association (ARA) welcomes the opportunity to provide comment to the Treasury on its options paper on regulating Buy Now, Pay Later (BNPL) in Australia.

The ARA is the oldest, largest and most diverse national retail body, representing a \$400 billion sector that employs 1.3 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.

The ARA recently made a submission to the Australian Financial Industry Association (AFIA) regarding its review of the BNPL Industry Code.¹ Both submissions have been informed by consultation with our members, including the ARA's Advisory Committee on Payments. Much of the commentary made in the AFIA submission aligns with the principles and recommendations outlined herein.

In this submission to Treasury, we provide a retail industry perspective on the BNPL, noting that retailers can provide unique perspectives given their relationships with both BNPL providers and their customers who use a BNPL service to make a purchase.

We note that while the customer also has a contractual relationship with the BNPL provider in relation to the payment transaction, the retailer retains a strong reputational interest to the customer to ensure that BNPL services are being offered in a responsible, fair and ethical way.

Further, we note that BNPL providers report that 95% of customer payments are made on time and that they are making up to 90% of their revenue from merchant fees, rather than from consumer fees or penalties for non-payment.²

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

¹ ARA submission to AFIA: [Policy | Australian Retailers Association](#)

² [Afterpay co-founders Nick Molnar and Anthony Eisen want buy now, pay later regulations to apply equally to all BNPL products \(afr.com\)](#)

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.

PRINCIPLES

Given the complex and competing commercial interests involved in the payments ecosystem, including BNPL services, the ARA adopts a principled approach to developing any policy position on issues involving payments.

1. Transparency and choice

Customers and merchants should have full visibility of fees and charges that may apply to any payment service to inform their choice to use that payment service. Likewise, merchants should also have the option to pass on any associated costs to consumers, in a transparent manner.

2. Credit services must be provided responsibly, in a fair and ethical way

Payment services that extend credit to the consumer must be provided in a way that is responsible, fair and ethical and meets all regulatory and legal requirements.

3. Customer experience should be efficient and universal

While simplicity, transparency and affordability are fundamental from the customer perspective, it is also important that the customer experience is as efficient as possible. Similarly, it is important that there is a level playing field to ensure that a customer's online experience is equivalent to the in-store process and that the regulatory framework is competitively neutral to ensure this.

RECOMMENDATIONS TO TREASURY

The ARA recommends that the AFIA Industry Code on BNPL should be strengthened and applied to all BNPL offerings in the market, to provide the requisite level of protections to both consumers and merchants.

We therefore support further consideration of Option One, to strengthen the Code and support it with an affordability test, in preference to legislative reform to regulate BNPL under the Credit Act.

As Treasury's Options Paper states, the exemptions in the *National Consumer Credit Protection Act 2009* (the Credit Act) were never intended to allow BNPL products to operate outside of the requirements of the Act, prompting this review.

The ARA takes the view that any regulation of BNPL should be focussed on necessary protections to protect harm to consumers or detriment to merchants, in accordance with the principles outlined above.

The ARA's view is that from both a merchant and consumer perspective, simplicity and transparency of pricing is fundamentally important. We therefore believe that a review of the surcharging framework to ensure it remains fit-for-purpose, promotes sustainable business models and is consistent with consumer expectations in the modern, increasingly digital payments market, would be appropriate.

Recommendations made about the Code:

The ARA's recommendations in relation to how the Code can be improved were included in our submission to AFIA and are outlined again below:

1 Build awareness with consumers and retail staff

The Code requires merchants partnering with BNPL providers to meet minimum standards in relation to training staff and ensuring customers awareness. Feedback from industry members highlights the need for more training to build awareness about these minimum standards.

The ARA recommends that merchants are better supported with information resources for both staff and consumers to ensure the Code requirements are being met.

2 Provide greater support for complaints management

The Code has a requirement in relation to responding to customer complaints in a timely manner. However, retailers find that this is not supported adequately by BNPL providers, with most only offering automated responses to customer or merchant queries.

The ARA recommends that the Code require BNPL providers to offer improved dispute resolution services to customer and merchants, with defined service levels and accessible options for customer contact.

3 Provide transparency around BNPL costs

Under the Code, retailers are not able to pass on any surcharge to recover the costs associated with BNPL services. This presents an inherent risk that businesses may increase prices generally to recoup these costs, at the expense of providing transparency to consumers.

The ARA recommends that this review of the Code considers ways to improve transparency around the costs of providing BNPL services, including costs that may or may not be passed onto end consumers.

In the interests of transparency, the ARA discloses that it has strategic partnerships with BNPL provider Afterpay as well as American Express and Mastercard. None of our strategic partners have informed this submission.

Thank you again for the opportunity to provide a submission to the Treasury. We look forward to further engagement as a decision is made on the various options canvassed in the paper.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

Yours sincerely,



Paul Zahra
Chief Executive Officer