



Mr. Robb Preston
Assistant Secretary
Consumer Credit Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: CreditReforms@Treasury.gov.au

Dear Mr Preston,

Re: Regulating Buy Now Pay Later (BNPL) in Australia - Options Paper

eBay Australia welcomes the opportunity to respond to the Treasury's Regulating BNPL in Australia Options Paper ("the Paper"). As our submission will outline, eBay appreciates the drivers behind this review and supports a regulatory framework which appropriately balances consumer protection while expanding consumer choice and accessibility to finance options.

About eBay Australia

For more than 25 years, eBay has enabled commerce and economic opportunity for individuals, entrepreneurs, businesses and organisations of all sizes. Globally, there are more than 1.7-billion listings on eBay sites and 135-million active consumers.

Operating in Australia for more than 20 years, eBay is Australia's largest online marketplace. Each month almost 11 million Australians visit ebay.com.au.

Our role as a marketplace is to facilitate a safe and trusted way for businesses and consumers to transact with confidence. While responsibility for listing on our platform remains with the individual or business that originally listed the item, we support sellers and consumers with a range of services, guarantees and feedback opportunities to ensure transactions can be undertaken safely.

It's important to emphasise, eBay is a pure third party online marketplace, meaning eBay does not sell any items appearing on our marketplace.

One of the services that we offer sellers and buyers is the flexibility to utilise buy now pay later when transacting on ebay.com.au. Afterpay and, more recently, Zip Pay are enabled for most purchases on ebay.com.au¹.

For both Afterpay and Zip, eBay meets the merchant fee for sellers. With a marketplace that is predominantly small to medium business, this is an important service offering as some sellers may not choose to utilise these payment options if required to meet these costs².

As noted by the Australian Finance Industry Association,³ growth in BNPL as a payment option reflects a clear shift in consumer preferences for online transactions, zero interest products and better management of cash flow. This is particularly the case for younger consumers with approximately 50 percent of BNPL users aged 18-24 first using a BNPL service in 2021. For retailers wishing to engage with these customers, providing payment options which reflect consumer demand is essential.

As with any financial product, BNPL can present risks for consumers. While it is appropriate that regulatory intervention occurs to ensure consumers are appropriately protected, this needs to be proportionate to risk and reflect established frameworks and steps industry has taken to address potential consumer harms.

Australia has been at the forefront of the emergence of BNPL innovation. Providing a regulatory framework that offers both protection for consumers and capacity for industry to innovate is critical to ensuring benefits from payments innovations can be realised.

The Paper presents three (3) potential options for regulating BNPL in Australia. Our position in relation to these options is as follows:

- **Option 1 - Strongly supported**
- **Option 2 - Supported (with modifications)**
- **Option 3 - Not supported**

We provide more detail on our views on these options below.

Option 1

This option proposes the existing BNPL Industry Code (the Code) be strengthened and a bespoke affordability test under the *National Consumer Credit Protection Act 2009* (the Credit Act) be established to provide a scalable and efficient means for BNPL operators to assess the appropriateness of a BNPL product for a consumer before it is offered to them.

¹ Certain categories of items on eBay are restricted from using these payment options see: <https://www.ebay.com.au/help/buying/paying-items/paying-zip?id=5345> / <https://www.ebay.com.au/sellercentre/afterpay>

² Merchants are generally restricted under contract from passing these fees onto consumers

³ See AFIA, [The Economic Impact of Buy Now Pay Later in Australia](#), June 2022 p. 24

eBay strongly supports this approach.

The Code reflects the maturity of BNPL operators in Australia and their commitment to addressing potential consumer harms. Industry led, it established a framework of leading business practices across the sector covering issues including complaints handling, hardship provisions and disclosure obligations. AFIA claims that currently 95% of all Australian BNPL accounts are covered under the Code.

Under this option, the Code would be revised to a government-industry co-regulatory approach. It would see the provisions of the Code strengthened to address other concerns that have been raised in relation to BNPL including excessive consumer fees and charges, refund and chargeback processes.

Aspects of the Code would also become ASIC enforceable. This would provide robustness to the commitments made by industry and provide consumers with greater levels of confidence when utilising BNPL services.

While specifics of the bespoke affordability test are not provided within the options paper, it would be appropriate (where a suitable monetary threshold is applied) that such a test would not include requirements to verify a customer's financial situation or that the provision of credit aligns with an individual consumer's financial needs and objectives.

We strongly support this approach as it presents a flexible, efficient and scalable regulatory solution and provides ASIC a stronger role to enforce the Code's provisions. Regulatory intervention should reflect lived realities and in circumstances where observable consumer complaints in respect of BNPL are extremely infrequent⁴ a more cautious regulatory approach should be undertaken. Option 1 best reflects this approach.

Option 2

This option proposes limited BNPL regulation under the Credit Act. This would include a requirement for BNPL providers to hold and maintain an Australian Credit License (ACL) and meet a number of modified Responsible Lending Obligations (RLOs).

eBay supports this approach, with modifications.

While we believe Option 1 presents the most appropriate regulatory response for BNPL regulation, Option 2 provides a suitable level of flexibility for BNPL operators while further strengthening regulatory controls.

⁴ Noting data from ASIC's Consumer Monitor Report, the Options Paper stated: *During the 2020-21 financial year, AFCA received 767 complaints about BNPL products, representing only 0.01 per cent of the 5.9 million active accounts during that period* p.14

Although BNPL operators would be required to hold an ACL under this option, sensibly these arrangements would be calibrated to the level of risk of BNPL products and services. For most BNPL operators exemptions from reference checking, and other obligations that do not relate to issues identified in the BNPL business practices would be appropriate.

Similarly it's appropriate that BNPL operators be required to meet a modified set of RLOs which may include verification of financial statements.

While we are in general support of Option 2, we believe further flexibility should be provided under this Option in relation to consumer spending limits. Although it's generally appreciated that consumers should be in a position to refuse an increase in spending limit, this doesn't reflect the approach of BNPL providers to apply incremental increases (and decreases) to users over time as they build familiarity and confidence in how BNPL works.

Applying such requirements to BNPL may create unnecessary friction in online retail transactions and potentially lost sales as consumers abandon a cart as they take steps to update their spending limit. It would also have a perverse outcome for consumers as it would no longer be feasible to start new BNPL customers on low spending limits and gradually increase limits based on real repayment data.

An approach that could alleviate concerns would be to allow BNPL providers to provide advice in an initial disclosure statement that, with a consumer's agreement, the operator could increase a consumer's purchase limit over time to a maximum threshold (with the threshold stated within the Industry Code). Any amounts above this threshold would however require explicit instructions from the consumer.

With this modification provided, we would be happy to support Option 2.

Option 3

Under this option BNPL products would be treated similarly to other credit products regulated under the Credit Act. This would mean that BNPL providers would need to comply with regulations, such as the RLOs and all credit licensee obligations.

eBay does not support this approach.

As stated earlier in this submission, regulation of BNPL should both provide consumers with appropriate levels of protection while enabling the capacity for industry to innovate. While BNPL products cover a wide range of service offerings there are clear distinctions between BNPL and general credit products. Simply imposing the regulatory framework for credit products on to BNPL would not reflect the lived reality with these products and could create significant and unnecessary costs on providers, consumers and retailers.

We thank you again for the opportunity to raise these matters. If the Treasury wishes to discuss these matters further, please feel free to contact the writer via laitken@ebay.com or +61 423 356 092.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L. Aitken', is centered on a light gray rectangular background.

Luke Aitken

**Head of Government Relations and Public Policy
eBay Australia and New Zealand**