



Exposure draft

*Treasury Laws Amendment Bill 2024: Buy
Now Pay Later*

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Equifax welcomes the release of the exposure draft *Treasury Laws Amendment Bill 2024: Buy Now Pay Later* and the associated *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2024* [the **draft Bill**].

Equifax's 23 December 2022 submission to the *Regulating Buy Now, Pay Later in Australia* consultation paper outlined five principles for reform:

- 1. The regulatory framework for BNPL must not impede BNPL's automated, low-friction, origination experience.*
- 2. Like other credit products, there needs to be insight into BNPLs' wider impact on people & the economy. This can be achieved via BNPL providers reporting on a range of metrics to either ASIC or Treasury, who in turn should publish aggregated insights.*
- 3. The regulatory framework should enable and support contribution of credit reporting information; this helps other credit providers to better assess credit enquiries from people who are, or are at risk of, becoming over committed.*
- 4. Contribution of credit reporting information, including repayment history information, lifts financial inclusion of consumers, particularly those who lack significant information on their credit report and may struggle to access mainstream credit ("known as a thin file").*
- 5. The introduction of a regulatory framework for BNPL should not impede further credit innovation*

Having reviewed the draft Bill, Equifax considers the provisions go a significant way to meeting these principles.

In particular, Equifax welcomes the Exposure Draft *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2024* (**Regulations**) and their recognition of credit information in the modified responsible lending obligations proposed for Low Cost Credit Contracts (**LCCC**), encompassing buy now pay later (**BNPL**) contracts.

The modified provisions would require a credit enquiry with a credit reporting body (**CRB**) when assessing an applicant for a LCCC, or an increase to the credit limit of an LCCC.

Depending on the value of the contract, this check may be a “negative” enquiry, revealing previous enquiries, or if the value of the contract be \$2,000 or greater, a partial enquiry, revealing an applicant’s consumer credit liability information.

In both instances, enabling enquiries (“negative” or “partial”) and the corresponding contribution obligations under reciprocity obligations (pursuant to the Principles of Reciprocity and Data Exchange (PRDE) in relation to CCLI, or under contractual reciprocity arrangements with CRBs where only “negative” information is required), would, in Equifax’s view, be practicable for LCCC providers to implement.

“Negative” CRB enquiries have been conducted for more than half a century in Australia, and partial enquiries can be enabled for BNPL providers in a similar fashion to what is used by the telecommunications sector.

Regarding the proposed “negative” enquiries under regulation 28HAD(2) of the Regulations, Equifax notes that the list of categories of “negative” credit information which a LCCC provider must seek to obtain in respect of contracts with a value of less than \$2000, does not include credit information referred to in section 6N(e) of the *Privacy Act 1988* (Cth) (the **Privacy Act**), namely:

“the type of consumer credit or commercial credit, and the amount of credit, sought in an application:

(i) that has been made by the individual to a credit provider; and

(ii) in connection with which the provider has made an information request in relation to the individual;”

Such credit application information forms part of the information ordinarily supplied by a Credit Provider (**CP**) to a CRB at the time of making an “information request” referred to in section 6N(d) of the Privacy Act, and is provided in turn by a CRB to a CP as part of the “negative” credit information supplied in response to an “information request”. Therefore, Equifax submits that it would be appropriate for the credit application information referred to in section 6N(e) of the Privacy Act to be included as part of the “negative” information to be sought by a LCCC provider under regulation 28HAD(2).

Equifax also welcomes the Regulations Exposure Draft Explanatory Statement’s recognition of derived credit information (that being, for example, credit scores) as a means of validating information provided by an applicant for a LCCC (regulation 28HAD(5): The licensee must also seek to obtain certain information about the consumer that the licensee “*reasonably believes*” to be substantially correct).

The accuracy and predictiveness of derived credit information, such as credit scores and score bands, continues to grow with the inclusion of information, like repayment history, and evolving data scoring techniques, to the benefit of both consumers and credit providers.