



NATIONAL AUSTRALIA BANK SUBMISSION

Buy Now Pay Later regulatory reforms

April 2024

Introduction

National Australia Bank (NAB) appreciates the opportunity to provide a submission on the exposure draft legislative package for Buy Now Pay Later (BNPL) reforms.

This submission builds on NAB's previous submission to Treasury's 'Regulating Buy Now, Pay Later in Australia' options paper and subsequent engagement with Treasury. As a member of the Australian Banking Association, NAB is also supportive of its submission.

NAB is broadly supportive of the proposed amendments to the *National Consumer Credit Protection Act 2009* and the *National Consumer Credit Protection Regulation 2010*. We support the regulation of BNPL products, the introduction of modified Responsible Lending Obligations (RLOs) and designation of BNPL products as part of the Low Cost Credit Contract (LCCC) product class.

As with our submission to Treasury's previous consultation on BNPL, NAB's position is informed by two perspectives:

- Firstly, as a bank that has many customers holding accounts with various Buy Now Pay Later providers; and
- Secondly, as a BNPL provider, via 'NAB Now Pay Later'.

Executive summary

NAB's submission focuses on areas where the draft legislation could be improved – specifically, the need for clarity regarding the modified RLOs, as well as the applicability of certain credit-related documents to LCCC products.

- While NAB understands the intention behind the principles-based approach to modified RLOs, the provision of further direction would allow LCCC providers to apply these with greater confidence and consistency for the benefit of consumers.
- NAB requests clarity regarding expectations of the methods of income and expense verification informed by the examples contained in the Explanatory Statement, and the need to ensure these are proportionate to the risk and credit limit of a particular LCCC product.
- To ensure the intended regulatory approach remains relevant in the years ahead, NAB recommends that Treasury consider setting the threshold amount in regulation rather than prescribing in legislation, to allow it to be amended more easily.

NAB understands that Treasury's intention is for the legislation and regulation to be technology neutral in its operation. Given the digital-first nature of many LCCC products in market, we strongly support and welcome this approach, which also aligns to customer expectations.

NAB Now Pay Later

NAB Now Pay Later (NNPL) has been available to customers since October 2022. It is different to most LCCC products as it has no late fees or interest and the product is open-loop (accepted anywhere Visa is accepted) compared with closed-loop products that generally impose the cost of acceptance on merchants.

Currently, NNPL is only available to customers holding an active NAB transaction account. NAB account history factors into the assessment process for NNPL applicants, ensuring that the product is appropriate and suitable, and that they have the capacity to repay.

If a customer misses a repayment on a payment plan, their NNPL facility is blocked from making any further purchases until the missed repayment has been made. The hardship support measures which NAB makes available to traditional unsecured credit customers, are also available for NNPL customers if required.

The current maximum available limit for NNPL ranges between \$500-\$2,000. NNPL purchases are made in four repayments over a six-week period, with the first repayment made at the time of purchase. NAB verifies the customer has funds available in their linked NAB transaction account for the first repayment, before the purchase can be made. The remaining repayments can be paid off earlier with no penalty or additional charge.

These features already address many of the considerations for the modified RLO framework for LCCC products.

Responsible Lending Obligations

Scaled RLOs

NAB's believes that RLOs should be able to be applied in a manner that is proportionate to the risk of the product, including the methods of obtaining information to comply with these obligations.

NAB holds some concerns regarding the ways that income and expenses information is indicated to be shared with LCCC providers in the Explanatory Statement.

The Explanatory Statement uses examples where customers provide an LCCC provider with income and expense information via payslips, bank statements and by sharing their banking data with the LCCC provider via a third-party data service.¹

As RLOs are scaled to the risk of the product, this scaling should encompass the income and expense verification requirements that support those RLOs. For many customers applying for an LCCC product with a low credit limit, the collection of bank statements and payslips may not be necessary. NAB considers that customer disclosure of income and bundled expenses (distinct from categorised expense data), the results of a negative credit check and assessment of existing customer history (where held) would likely to be sufficient in this circumstance.

¹ Explanatory Statement, *National Consumer Credit Protection Act 2009, National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2024*, pages 3-4.

NAB considers that further clarity or amendments to this part of the Explanatory Statement would be beneficial. The nature, operation and risk of a deferred-debt LCCC product with a low credit limit is significantly different from a traditional credit card, where a greater level of documentation and verification is warranted.

Application of modified RLOs

NAB acknowledges that a principles-based approach has been taken for the modified RLOs, to give LCCC providers flexibility to apply them in a manner that is tailored to their product and target market.

It will be challenging to apply the modified RLOs without further direction in the regulation as to what the objective test of ‘reasonable enquiries and reasonable verification’ of a customer’s financial situation may constitute in different scenarios. This is particularly relevant in scenarios with differing levels of existing customer information and history.

Clarity regarding the potential use and role of benchmarks such as the Household Expenditure Measure (HEM) in assessing likely expenditure for a customer would also be of significant benefit to LCCC providers seeking to apply the modified RLOs. This includes the applicability of benchmarks when differing levels of existing information is held, and for different credit limits.

NAB acknowledges the challenge in wanting to provide a flexible, principles-based approach and being overly prescriptive. Greater direction in the regulations would provide clarity and confidence for LCCC providers to adopt the modified RLOs.

Of further benefit would be clarity regarding when collection of information alone is considered appropriate, as opposed to collection *and* additional verification of this information, particularly for lower credit limits e.g. \$500.

NAB also notes that under the proposed legislative approach, mandatory comprehensive credit reporting will not extend to all LCCC providers. This continues to present a challenge for providers seeking to accurately verify other LCCCs a customer may have, should the customer fail to disclose these, as LCCCs may not necessarily appear on a customer’s credit report. Where LCCC providers choose not to share this information with credit bureaus, it heightens the potential for poor customer outcomes.

NAB acknowledges that the separate Independent Review of Australia’s Credit Reporting Framework is underway, and this issue may be better addressed through that review.

Unsuitability threshold

NAB supports the establishment of a limit below which a rebuttable presumption exists that the credit meets a consumer’s requirements and objectives (and is therefore not unsuitable). This limit is proposed to be \$2,000.

NAB recommends that Treasury considers an alternative approach to setting this limit, such as via regulation rather than prescribing it in legislation.

While \$2,000 may be considered a suitable threshold in the current period, it is foreseeable that future economic conditions could result in a situation where \$2,500 or \$3,000 may be a more appropriate future limit.

Entrenching any limit in legislation would make this difficult to adjust in the future.

NAB recommends Treasury considers alternative approaches to set this limit that provide the flexibility to adjust it as required.

Credit related documentation

As drafted, the legislative amendments indicate that LCCC providers will be required to provide customers with a range of credit-related documentation, similar to ‘traditional’ credit card products.

A significant number of LCCC products in market are ‘digital-first’, facilitating online or app-led applications and use of their product. As a result, NAB considers that the legislation should reflect the way most consumers use and obtain information about their LCCC account.

While NAB currently provides customers with information regarding their product, payments and account, the utility and customer benefit of providing some of the additional credit documentation in their current form is less clear.

For example, the requirement to issue a customer with a statement (in its current form) does not clearly translate to the way that many LCCC products are structured. For example, NNPL transactions apply to a particular purchase that is repaid over a fixed six-week period, as opposed to a continuing credit contract that may potentially always have a balance. Customers can make additional, earlier repayments to their NNPL account and are not bound to the six-week period.

The real-time, digital nature of the product means that issuing a traditional credit statement for an NNPL account would be of limited utility, as customers interact with the product solely through their NAB app. The app provides a real-time view of upcoming payments and their due dates. The requirement to include this information in a static document sent to a customer, would not provide customers with additional information that is not already available in their app. This is not only the case for NNPL, but for a broad range of LCCC products in market.

NAB considers there would be benefit in section 33 of the *National Credit Code* being amended to provide a modified version of a ‘traditional’ statement to accommodate the deferred debt model of many LCCC products. This would provide more relevant credit information for customers to manage their active plans and repayment schedules for purchases. In addition, the requirement for ‘traditional’ statements to include a minimum repayment warning, does not correlate to many LCCC products including NNPL, where fixed repayments are made over a set period, and customers have the option to pay these off earlier. Instead, amendments to section 33 could require digital delivery of a repayment plan once a purchase is settled, containing the repayment dates and amounts for each instalment that is to be paid.

Similarly, NAB's understanding is that LCCC providers will be required to issue a financial table to customers. Where LCCC products do not impose late fees or other credit fees and charges, the majority of fields in this table will be left blank. Similarly, LCCC products do not have a standard minimum repayment amount, as repayments vary depending on the value of the purchase and split of repayments. As a result, this document would be of limited utility to customers. Amendments to section 17 of the *National Credit Code* would allow this format and content of this document to be tailored to the different types of LCCC contracts in the market. For some instalment type LCCC arrangements, the credit guide issued under the *National Consumer Credit Protection Act* along with the product terms would provide the relevant contractual disclosure, given origination of the product sets out the credit limit and any applicable fees.

Similarly, we consider that the Form 5 Information Statement required to be issued under the *National Consumer Credit Protection Regulations*, would benefit from amendments to make it more relevant and applicable to LCCC products.

Requiring traditional credit documentation such as statements and financial tables to be issued in their current 'traditional' form has the potential to result in consumers receiving documentation about their product that is less applicable and relevant to their product, and risks causing consumer confusion.

Conclusion

LCCC products make up a significant proportion of the unsecured credit market in Australia. NAB welcomes and supports measures to ensure that these provide a safe and secure form of credit for consumers.

NAB has greatly appreciated Treasury's efforts and consultation to date to ensure that LCCC products are regulated in a way that protects and makes sense for consumers and allows for continued innovation and development of this product class.