Regulating Buy Now, Pay Later in Australia

Submission by the Australian Securities and Investments Commission

January 2023

Contents

Overview

1 The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to make a submission to Treasury on its review of the regulation of buy now pay later in Australia.

2 ASIC is the national conduct regulator for consumer credit, which includes oversight of credit providers, consumer lease providers and credit assistance providers offering consumer credit products.

3 ASIC administers the *National Consumer Credit Protection Act 2009* (National Credit Act), which includes the National Credit Code at Sch 1 of the National Credit Act.

4 This submission discusses:

(a) ASIC's role in regulating consumer credit and the buy now pay later industry (see Section A);

(b) the diversity of the buy now pay later industry and consumer harms (see Section B);

(c) key themes under consideration (see Section C); and

(d) the options proposed by Treasury and ASIC's preferred option for the regulation of buy now pay later (see Section D).

5 ASIC supports the guiding principles set out in Treasury's options paper *Regulating Buy Now, Pay Later in Australia* issued in November 2022 and has considered each of them in preparing this submission.

6 The ultimate consideration in this review should be driving better outcomes for consumers. The National Credit Act and National Credit Code give protections to consumers that are designed to mitigate the harms identified in the options paper, including unaffordable lending practices and the availability of complaints handling mechanisms and hardship assistance.

7 The options paper presents three possible options for the regulation of buy now pay later under different frameworks. Each framework provides different levels of consumer protection, enforcement mechanisms and approaches to assessing affordability. Each option has practical issues for implementation that the Government will need to consider.

Table 1: Options for regulating buy now pay later

Possible options	Framework and level of consumer protection	Enforcement mechanism	Approach to affordability assessments
Option 1	Consumer protections would be contained in a strengthened industry code. The current industry code does not provide all of the ordinary consumer credit protections.	This option is not enforceable by ASIC. An industry code would be self-determined and self-monitored: see implementation issues at paragraph 96.	This would allow flexibility for industry to determine how affordability assessments are conducted and how they are enforced.
Option 2	Providers would be required to be licensed, giving consumers some of the ordinary consumer credit protections. Responsible lending obligations would be modified. An industry code would provide some protections.	Most protections are enforceable by ASIC. There would be significantly decreased penalties for any protections provided under any enforceable code provisions.	Modified responsible lending obligations would be determined by the Government for buy now pay later: see implementation issues at paragraph 109.
Option 3	Ordinary consumer credit protections would be provided through the law, not an industry code.	Protections are enforceable by ASIC and consistent with functionally equivalent credit products.	Flexibility is provided under the current responsible lending obligations. Obligations can also be modified through the law where appropriate.

8 ASIC supports the adoption of Option 3 for the following reasons:

(a) In ASIC's view, credit products with similar characteristics and the same purpose and function should be treated the same way in the regulatory framework. Buy now pay later arrangements should be treated similarly to other financing options that are regulated under the National Credit Act and National Credit Code.

(b) Uniform regulation under the National Credit Act would bring a more consistent regulatory framework across all buy now pay later providers and a standardised regime that could be enforced by ASIC. Under Option 3, the various forms of buy now pay later products and arrangements can be incorporated in a coherent way into the existing regulatory regime for consumer credit with the same baseline protections under the National Credit Act and National Credit Code. ASIC's work to date suggests that there is generally little evidence to support reduced responsible lending obligations for buy now pay later providers. There is room in the existing regulatory framework for flexibility and further modification to lender obligations in appropriate circumstances.

(c) The harms identified in ASIC's work on buy now pay later arrangements suggest the starting point for consumer protections should be the same as credit products with comparable harms. The buy now pay later industry is still maturing, and these harms have not been measured across economic cycles. Any form of regulation needs to be fit for purpose across those cycles, and accommodating of continuing evolution of the products offered to consumers.

(d) As the regulator for all consumer credit products, consistency and uniformity of regulations and powers is a key consideration for ASIC. Option 3 keeps the primary mechanism for regulation in the law, not an industry code which the regulator has limited ability to enforce. Option 3 provides a consistent form of regulation across consumer credit products. Lender obligations are the same, consumer expectations are the same and ASIC's regulatory powers are the same.

9 ASIC acknowledges that Treasury is seeking stakeholder views on the options proposed in its paper. These options are concerned with the level of regulation required and the framework to deliver each of the options. The options paper does not consider the means required to implement each of the options. For each option, the Government will need to consider how buy now pay later is removed from the current exemptions or brought within the definition of regulated 'credit'.

10 It is also not yet clear how buy now pay later might ultimately be defined if the Government chooses to provide for any bespoke product-level modification of protections. The Government will need to consider whether the definition(s) are determined by reference to the particular exemption the provider relies on, the fees charged to its consumers or merchants (including missed payment fees) or the particular business model and how the provider delivers its product to consumers.

11 We consider there is substantial work ahead for Treasury, in consultation with the required stakeholders, to implement the chosen option. ASIC will further assist Treasury in that work.

A ASIC's role in regulating consumer credit

Key points

ASIC is the national conduct regulator for consumer credit under the National Credit Act and National Credit Code. However, the National Credit Act does not apply to buy now pay later arrangements.

ASIC can only intervene under the ASIC Act and design and distribution obligations under the Corporations Act, and cannot exercise any powers under the National Credit Act and National Credit Code.

The regulation of consumer credit in Australia

12 As the national conduct regulator for consumer credit, ASIC has oversight of credit providers, consumer lease providers and credit assistance providers offering consumer credit products.

13 The National Credit Act and National Credit Code contain significant protections for consumers, including the following:

(a) Credit providers must be licensed and comply with general conduct obligations such as to:

(i) act efficiently, honestly and fairly; and

(ii) have appropriate dispute resolution systems, including internal systems and being a member of the Australian Financial Complaints Authority (AFCA).

Note: See s47(1) of the National Credit Act.

(b) Credit licensees must meet responsible lending obligations and not enter into, or suggest or assist a consumer to apply for a credit product that would be unsuitable for the consumer.

Note: See Pt 3-2, Div 3 of the National Credit Act.

(c) Consumers experiencing circumstances where they consider they will be unable to meet their obligations under a credit contract can give their credit provider notice, and the consumer and credit provider may then agree to a change to the terms of the contract.

Note: See s72 of the National Credit Code.

14 ASIC is responsible for monitoring compliance with the mandatory comprehensive credit reporting regime as part of our broader mandate to administer the National Credit Act.

15 ASIC also monitors and enforces compliance with the design and distribution obligations in Pt 7.8 of the *Corporations Act 2001* (Corporations Act).

ASIC's current role in regulating the buy now pay later industry

16 Generally, the National Credit Act does not apply to buy now pay later arrangements. Accordingly, buy now pay later providers are not required to hold an Australian credit licence. This is because these providers:

(a) do not charge consumers for providing the credit, so the arrangement is not regarded as 'credit to which the Code applies' under s5 of the National Credit Code;

(b) offer a short-term credit contract that is exempt from the National Credit Code, because the contract does not exceed 62 days and there are caps on the maximum amount of credit fees and charges and interest charges that may be charged under the contract; or

(c) offer a continuing credit contract that is exempt from the National Credit Code, because they only charge fees (e.g. establishment fees, account-keeping fees) that cannot exceed $200 in the first year and $125 every subsequent year, regardless of the amount of credit provided.

Note: See s6(1) and 6(5) of the National Credit Code and reg 51 of the *National Consumer Credit Protection Regulations 2010* (National Credit Regulations).

17 However, buy now pay later arrangements are credit facilities under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). This means that ASIC can intervene where we identify misleading, deceptive or unconscionable conduct, or where there are unfair contract terms.

18 Buy now pay later arrangements are subject to ASIC's product intervention power and the design and distribution obligations in Pt 7.8A of the Corporations Act. These new regulatory tools, which focus on consumer outcomes and harms rather than prescriptive disclosure, play an important role in promoting good consumer outcomes.

19 Unlike the responsible lending obligations under the National Credit Act, the design and distribution obligations do not require an issuer to assess the suitability of products for the circumstances of individual consumers. Instead, the obligations require issuers to develop products (including their key attributes) that are likely to be consistent with the likely objectives, financial situation and needs of the class of consumers to whom the products will be distributed.

ASIC's work on buy now pay later

20 ASIC has produced two public reports on buy now pay later: Report 600 *Review of buy now pay later arrangements* (REP 600) in 2018 and Report 672 *Buy now pay later: An industry update* (REP 672) in 2020. We also monitored consumer experiences with a range of credit products, including buy now pay later arrangements, through our Financial Services Consumer Monitor (Consumer Monitor). ASIC continues to engage with buy now pay later providers on their compliance with the design and distribution obligations.

21 Given that the National Credit Act does not apply to buy now pay later providers, ASIC has limited information gathering powers to compel buy now pay later providers to share data and information about their buy now pay later arrangements. Instead, we have relied on voluntary cooperation from buy now pay later providers to assist with our work.

22 Information is collected at an aggregate level. Strengthened information gathering powers under the National Credit Act would give ASIC the ability to collect more granular information and data about buy now pay later arrangements, which would assist ASIC in its regulatory oversight role.

B The diversity of the buy now pay later industry and consumer harms

Key points

The buy now pay later industry is diverse, covering many different models, markets and consumers.

As part of our work in relation to buy now pay later arrangements, ASIC has identified three key areas of harm to consumers:

- missed payments;
- over indebtedness; and
- surcharging.

The buy now pay later industry is still maturing, and these harms have not been measured across economic cycles. Any form of regulation needs to be fit for purpose across those cycles.

Buy now pay later arrangements

23 In REP 672, we said that buy now pay later arrangements allow consumers to buy and receive goods and services immediately from a merchant, and repay a buy now pay later provider over time. The industry is constantly evolving with many diverse business models.

24 Buy now pay later products are alternatives to, and often compete with, a wide range of more traditional credit products, including small and medium amount credit contracts, credit cards and personal loans. Those traditional products are currently regulated and in some cases are subject to specific additional regulatory requirements.

Note: Some buy now pay later providers hold Australian credit licenses for other credit products that they issue: see paragraphs 120–122.

25 Buy now pay later arrangements can be a series of individual short-term arrangements, where a consumer can spend up to an account limit. Typically, these transactions are repaid over three or four instalments and spend limits can range from $600 up to $2,000.

26 Buy now pay later arrangements can also be a continuing credit contract facility where multiple purchases can be made up to the facility limit. These facilities can have maximum account limits from $1,500 up to $30,000.

27 In terms of fees payable by consumers, buy now pay later providers operate models where they do not charge consumers any fees, only charge consumers a missed payment fee, or charge consumers other types of fees such as an establishment fee and an account-keeping fee, in addition to a missed payment fee.

28 Buy now pay later providers are limited in the fees and charges they are able to impose on consumers. However, some providers are able to recover the cost of providing the credit by charging a fee to merchants they are partnered with—typically known as a merchant fee—when a consumer uses a buy now pay later payment method.

Buy now pay later is functionally equivalent to other forms of credit on the market with wide application and use

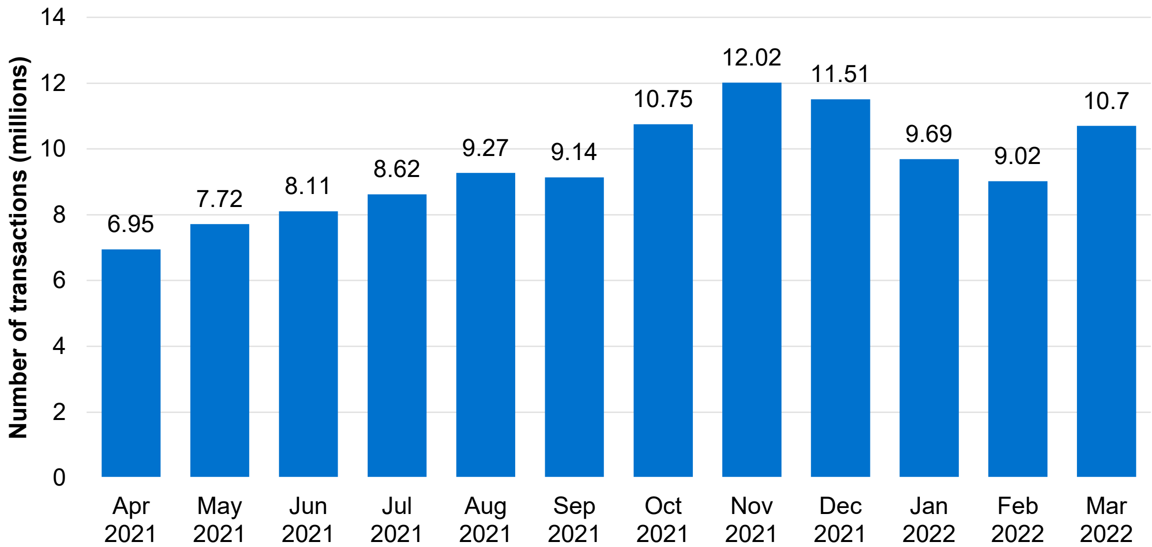
29 Buy now pay later arrangements are functionally equivalent to other forms of consumer credit on the market and have a wide application and use. Buy now pay later can be used to finance the purchase of many goods and services, from retail fashion items and household goods to services like dental care, mechanical repairs, and solar panel installations.

30 In REP 672, we noted that there were more than 6.1 million open buy now pay later accounts as at June 2019, representing up to 30% of the Australian adult population. More recently, the Reserve Bank of Australia reported that the value of buy now pay later transactions tripled over the previous two financial years to over $9 billion in the 2019–2020 financial year.

Note: The Reserve Bank of Australia's data is based on publicly listed information of buy now pay later providers, including international transactions.

31 Data collected by ASIC from a select group of buy now pay later providers to monitor the effects of COVID-19 showed a steady increase in transactions from April 2021 to March 2022: see Figure 1.

Figure 1: Number of transactions per month (millions)



Source: This data was sourced by ASIC from the following buy now pay later providers to monitor the impacts of COVID-19: Afterpay, Brighte, CBA (StepPay), Humm, Klarna, LatitudePay (including LatitudePay+), Openpay, PayPal (Pay in 4), Payright, Suncorp (PayLater), and ZipMoney. Four of the buy now pay later arrangements included in this data were not offered until after April 2021: PayPal Pay in 4 launched in May 2021, LatitudePay+ launched in July 2021, CBA StepPay launched in August 2021, and Suncorp PayLater launched in November 2021.

Note: See Table 2 for the data in this figure (accessible version).

32 The growth of the buy now pay later industry and new entrants to the market (including authorised deposit taking institutions) suggests buy now pay later arrangements are a mainstream form of credit, and for some consumers, a preferred form of credit.

Consumers who use buy now pay later

33 In REP 600, we found that a significant number (60%) of consumers who use buy now pay later arrangements are young—between 18 and 34 years old, which is also reflected in lower levels of income and employment among users.

34 Of the participants in our consumer research:

(a) 44% reported an annual income of less than $40,000;

(b) 39% had an income between $40,000 and $100,000; and

(c) 8% said they earned over $100,000.

Note: The remaining consumers did not provide an estimate of their income.

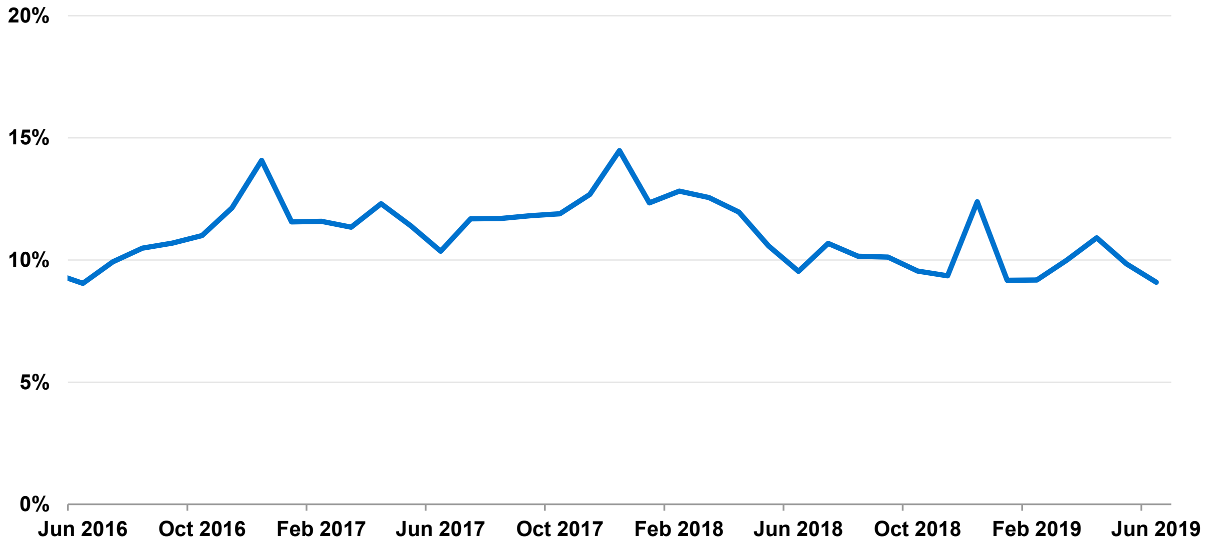
35 Most (65%) of the buy now pay later users in our consumer research described themselves as employed full time or part time. Of the users who earned less than $40,000 a year, 40% said they were either employed part time or students.

Missed payments

36 While buy now pay later providers do not charge interest, most do charge missed payment fees when a consumer misses a payment.

37 In REP 672, we found that the percentage of transactions incurring missed payment fees fluctuated between 9% and 15% each month from June 2016 to June 2019: see Figure 2. A survey conducted in October 2019 also found that 21% of consumers surveyed had missed a repayment in the preceding 12 months.

Figure 2: Percentage of transactions that incurred a missed payment fee (June 2016 to June 2019)



Source: This data was sourced by ASIC as part of its work on REP 672.

Note: Data from ZipMoney Payments and Payright was not included here as they charge missed payment fees at an account level, rather than transaction level. See paragraph 37 for a description of this figure (accessible version).

38 We also found that 45% of all transactions that incurred missed payment fees, incurred multiple missed payment fees. Where a consumer is charged multiple missed payment fees on a single transaction, those fees could equate to a substantive proportion of the overall debt.

39 ASIC understands that some buy now pay later providers cap the total amount of late fees a consumer may be charged under a buy now pay later arrangement. These caps are generally on a per transaction basis, and do not cap the total amount of late fees a consumer could pay over time across multiple transactions.

Over indebtedness

40 Data collected by ASIC for REP 672 and through the Consumer Monitor shows that some consumers experience financial stress under the surface to meet their buy now pay later commitments. For example, some consumers cut back on essentials, were late to pay other bills, were charged interest or were overdrawn on accounts used to repay buy now pay later arrangements, or had taken out additional loans to meet their buy now pay later commitments.

41 In REP 672, we found that one in five users reported going without, or cutting back on, essentials (e.g. meals) to make buy now pay later repayments on time. We also found that 15% of consumers surveyed said they had taken out an additional loan in order to make their buy now pay later repayments on time. Of the consumers who said they had taken out an additional loan in order to make their buy now pay later payments on time:

(a) 50% were aged between 18 and 29;

(b) 44% also held a small and/or medium amount credit contract;

(c) 68% also missed a payment with a buy now pay later provider; and

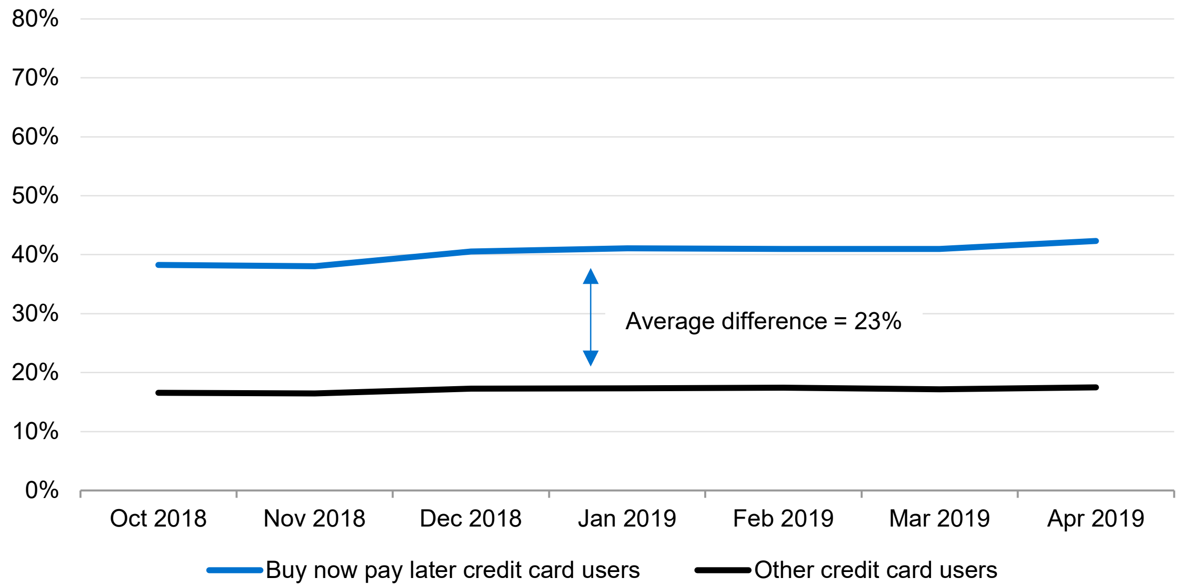
(d) 31% made at least six buy now pay later purchases in the last six months.

Note: Of the total survey population, 37% were aged between 18 and 29, 22% held a small and/or medium amount credit contract, 21% missed a payment, and 22% made at least six buy now pay later purchases in the last six months.

42 One in five consumers surveyed for REP 672 told us that in the last 12 months, they had missed or were late paying other bills in order to make their buy now pay later payments on time. These consumers missed paying things such as household bills (44%), credit card payments (32%), and home mortgage payments (22%).

43 We also found that buy now pay later users were more likely to use more of the credit limit available to them under their credit card. We found that between 38% and 43% of buy now pay later credit card users used over 90% of their allocated credit limit on their credit cards for each month from October 2018 to January 2019. In the same period, only 16% to 18% of other credit card users did so: see Figure 3.

Figure 3: Percentage of credit card accounts with over 90% use of credit limit (October 2018 to April 2019)



Source: REP 672

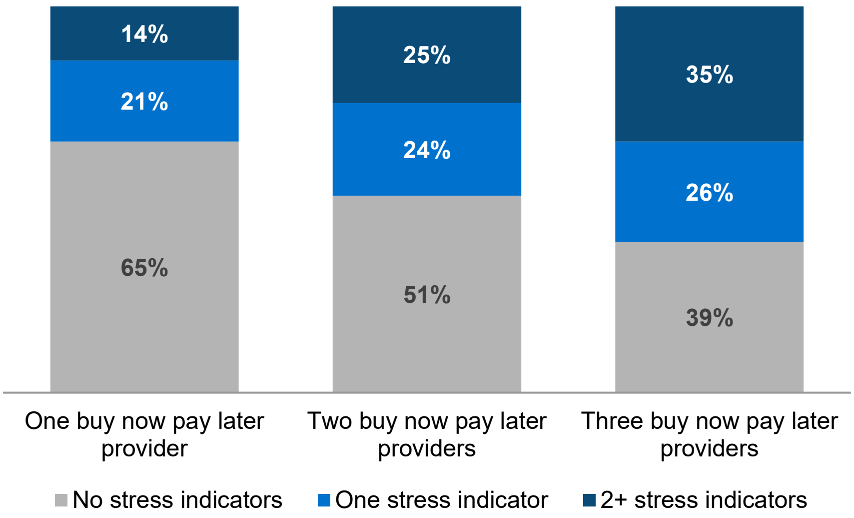
Note: While we requested data for payments that occurred from October 2018 to January 2019, this figure shows the period up to April 2019 to factor in credit limit use after the payment has occurred. See Table 3 for the data shown in this figure (accessible version).

44 Based on survey data collected through the Consumer Monitor between January 2020 and March 2022, around 20% of buy now pay later users reported going without essentials in the preceding 12 months. Compared to the total survey population (which included users of other credit products

such as credit cards, personal loans, and small amount credit contracts), buy now pay later users were more likely to have experienced financial stress in the preceding 12 months. Consumers with multiple buy now pay later arrangements or those who are habitual users of buy now pay later payment methods were also more likely to be under financial stress: see Figure 4.

Note: 'Financial stress' is based on consumers experiencing two or more of the financial stress indicators in the Household, Income and Labour Dynamics in Australia (HILDA) survey. The HILDA survey stress indicators include inability to pay utility bills, mortgage repayments, or rent, going without meals, inability to heat the home, and seeking help from friends, family or a welfare organisation.

Figure 4: Number of stress indicators based on the number of buy now pay later providers used in the last six months



Source: Consumer Monitor

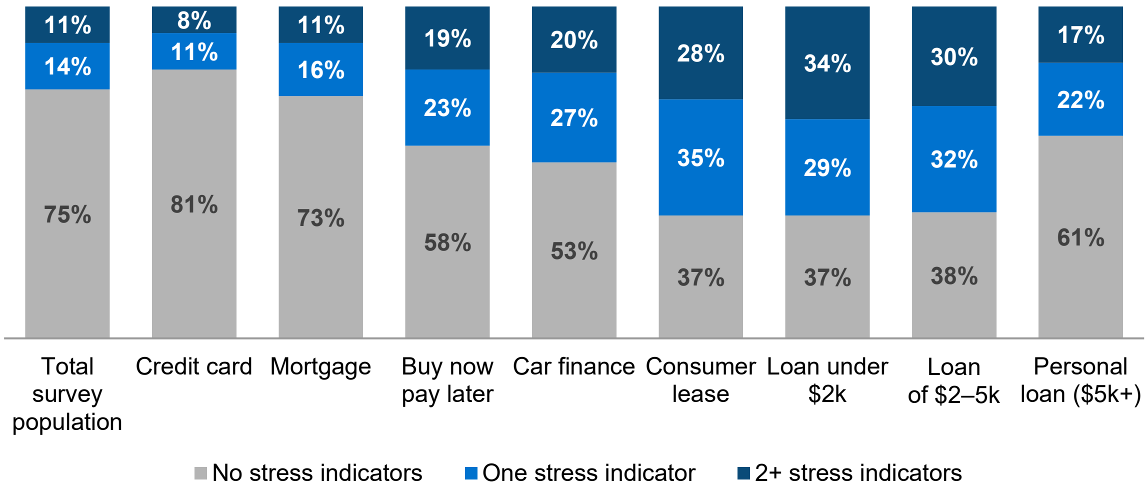
Base: Used buy now pay later in last six months (n=7,099). Period: April 2021 to March 2022.

Note: See Table 4 in the appendix for the data in this figure (accessible version).

45 In comparison to other credit products, buy now pay later use is increasing year on year while consumer lease use is down, and credit card use has decreased slightly each year. For the 12-month period between April 2021 and March 2022, buy now pay later users were more than twice as likely as credit card holders to have experienced two financial stress indicators in the last 12 months, at 19% and 8% respectively: see Figure 5. They were also more likely than the total survey population to hold multiple credit products (on average they held 2.8 credit products compared to 1.6 credit products for the total survey population).

46 ASIC's experience is that some consumers are preferencing their buy now pay later repayments over other liabilities, including other financial obligations, rent and utilities. This means the real incidence of financial hardship for buy now pay later arrangements could be higher, or consumers could be falling into arrears on other liabilities.

Figure 5: Number of stress indicators of users of each credit product compared to the survey population



Source: Consumer Monitor

Base: Total survey population (n=19,658). Period: April 2021 to March 2022.

Note: See Table 5 in the appendix for the data in this figure (accessible version).

Surcharging

47 In some buy now pay later business models, buy now pay later providers charge fees to their partnered merchants. The rate of the merchant fee varies between different providers and merchants.

48 Providers generally contractually prohibit merchants from increasing the cost of goods and services to the individual consumer where their buy now pay later arrangement is used (also known as ‘merchant surcharging’ or ‘surcharging’). Despite the contractual prohibitions in place, surcharging can still occur, and consumers could be charged more when using a buy now pay later arrangement.

49 It is difficult to obtain reliable data on when surcharging occurs, given that surcharges can be hidden, as well as the current limitations in our capacity to collect data from buy now pay later providers.

50 Surcharging may be hidden by:

(a) arguing that the particular good or service was unique to the consumer’s circumstances and therefore warranted a higher price;

(b) arguing that the higher fee was the result of negotiation rather than buy now pay later costs;

(c) only offering a quote for a buy now pay later arrangement, leaving the consumer with no way to detect whether an extra cost has been added to the cash price; or

(d) offering a ‘false’ cash discount to consumers, but no explicit surcharge for buy now pay later arrangements.

51 Surcharging can cause financial harm to consumers, as they are paying more for goods or services than they should reasonably expect to, or than they would have to pay if pricing was not affected by these practices. This impact is likely to disproportionately affect vulnerable consumers, such as those with poor financial literacy skills or those who cannot shop around to compare prices.

52 However, surcharging is not likely to occur across the whole buy now pay later industry, as it is difficult for merchants to surcharge in transactions where there is transparent and standardised pricing of goods and services.

Mitigating consumer harms

53 ASIC has reported against these consumer harms in a time of unprecedented economic conditions. Until recently, ultra-low interest rates have kept the cost of borrowing at record lows for business and consumers. Government stimulus to the economy has also supported consumer spending.

54 However, interest rates are rising with the official cash rate moving from a low of 0.1% in November 2020 to 3.1% as at December 2022. Inflation and the increased cost of living is adding pressure to consumer spending, and causing reduced savings and a greater level of debt. Average household debt grew by 7.3% in the 2021–22 financial year. Excluding offset balances, gross savings per household fell 2.6%. In the lowest income band, savings levels fell 61.3% in the 2021–22 financial year.

Note: See the Australian Bureau of Statistics' National Accounts website on distribution of household income, consumption and wealth (FY 2021–22) and accompanying media release for more detail.

55 The buy now pay later industry is still maturing, and these harms have not been measured across economic cycles. Any form of regulation needs to be fit for purpose across those cycles, and accommodating of continuing evolution of the products offered to consumers.

C Key themes under consideration

Key points

The options proposed by Treasury raise three key themes, which must be considered in each of the options:

- the role of industry codes;
- scalability of the responsible lending obligations; and
- licensing and ASIC's regulatory role.

The role of industry codes

56 ASIC's view—as expressed in Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183)—is that the primary role of a financial services sector code is to raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers: see RG 183.4.

57 ASIC considers that mature industries are probably the most suitable for some dimension of self-regulation, if they are underpinned and framed by clear and consistent legislative obligations and have effective sanctions for breaches of self-regulatory obligations.

58 We expect an effective code to do at least one of the following:

(a) address specific industry issues and consumer problems not covered by legislation;

(b) elaborate on legislation to deliver additional benefits to consumers; and/or

(c) clarify what needs to be done from the perspective of a particular industry, practice or product to comply with legislation: see RG 183.5.

59 To date, by voluntarily subscribing to the Australian Finance Industry Association's Buy Now Pay Later Code of Practice (BNPL Code), some buy now pay later providers have made efforts to offer some protections to their customers that are similar to those required of licensed credit providers under the law.

60 However, the BNPL Code is not an enforceable code, nor is it currently capable of being approved by ASIC: see paragraph 96.

61 Some of the standards in the BNPL Code include:

(a) being a member of AFCA;

(b) conducting tiered suitability assessments;

(c) having internal dispute resolution mechanisms in place;

(d) offering hardship assistance; and

(e) submitting to the Debt collection guideline published by the Australian Competition and Consumer Commission and ASIC.

62 However, these standards are not always on par with the standards required of licensed credit providers. They are also voluntary in nature and lack the weight of substantial enforcement mechanisms.

63 Whether protections are written into the law or in an industry code, in order to be effective, they require significant resources to monitor and enforce. ASIC's experiences with other codes in the financial services sector highlight different levels of compliance monitoring and different levels of resourcing. It would be difficult to guarantee that the BNPL Code is supported at an appropriate level.

64 Sanctions also vary among codes, but are generally limited to corrective action, training, warnings and public reporting.

65 Industry codes are generally limited in their ability to provide any consumer redress for breaches of the code. Some buy now pay later providers also subscribe to other industry codes such as the Banking Code of Practice, which emphasises different protections for consumers than those in the BNPL Code.

Scalability of the responsible lending obligations

66 The National Credit Act contains basic protections that help to ensure that a consumer can afford the credit being extended to them and that the consumer is not placed in a difficult financial situation.

The responsible lending obligations

67 As discussed in Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209), the responsible lending obligations in the National Credit Act set out several requirements that work together to help minimise the likelihood of consumers entering into unsuitable credit products or increasing a credit limit to a level that is unsuitable. These requirements are that:

(a) licensees are prohibited from engaging in the regulated conduct in relation to unsuitable credit products and credit limit increases;

(b) before engaging in the regulated conduct, licensees must assess whether a credit product or credit limit increase is unsuitable;

(c) before making the assessment or engaging in regulated conduct, licensees must gather certain information about the consumer, by making reasonable inquiries and taking reasonable steps to verify the information obtained; and

(d) if requested, licensees must give the consumer a written copy of the assessment (whether that request is made before or after the regulated conduct has been engaged in): see RG 209.7.

Note: See also s128–133 of the National Credit Act

68 The primary outcome sought by the responsible lending obligations is to minimise the risk that consumers:

(a) enter into, or are encouraged to enter into or remain in, an unsuitable credit product; or

(b) increase the credit limit of an existing credit product to a limit that is unsuitable: see RG 209.2.

69 The National Credit Act prescribes a test for unsuitability for lenders. A credit product will be unsuitable if it is likely that:

(a) the consumer will be unable to comply with their financial obligations under the product (e.g. they would not be able to make repayments as they fall due for the term of the product);

(b) the consumer will only be able to comply with their financial obligations under the product with substantial hardship; or

(c) the product will not meet the consumer's requirements or objectives, if the product is entered into or the credit limit under the product is increased: see RG 209.8.

70 If the prescribed test is met, credit providers must assess the credit product as being unsuitable, and credit providers must not enter into that product with the consumer: see RG 209.9.

71 The responsible lending obligations in the National Credit Act are flexible, and allow the provider to obtain information that is reasonable in the circumstances of the particular consumer, including:

(a) the amount and term of the credit that is to be provided: see RG 209.87–RG 209.89; and

(b) whether the consumer has existing liabilities and is experiencing any difficulty meeting existing debts (or conversely, managing existing debts without apparent difficulty): see RG 209.102–RG 209.105.

Modifying the responsible lending obligations and other consumer protections

72 Responsible lending obligations for buy now pay later providers could be modified depending on a number of potential risk factors such as:

(a) the consumer's financial situation, including the consumer's total financial obligations and performance under those obligations;

(b) the consumer's ability to meet the obligations under the proposed buy now pay later arrangement;

(c) the amount of credit to be provided to the consumer;

(d) the term of the credit provided to the consumer; and

(e) the potential recourse against the consumer for non-payment of their obligations under the proposed credit contract (including late fees and the costs of recovery and enforcement).

73 The Government has specifically recognised the potential for particular types of credit to cause harm for some consumers. They have sought to address that risk by imposing additional requirements for products such as reverse mortgages, small amount credit contracts, consumer leases, and credit cards.

74 In 2012, amendments to the National Credit Act introduced specific protections for reverse mortgages. These amendments included specific responsible lending obligations and a 'no negative equity guarantee', which capped the maximum amount of loss to the consumer.

Note: See the *Consumer Credit and Corporations Legislation Amendment (Enhancements) Act 2012* (Enhancements Act).

75 In 2012, the following amendments were made for small amount credit contracts:

(a) the presumptions of unsuitability, which presume that a small amount loan will be unsuitable if either:

(i) the consumer is in default under another small amount loan (the default presumption); or

(ii) the consumer has had two or more other small amount loans in the last 90 days (the multiple loan presumption);

(b) a cap on the fees and charges of the loan (an establishment fee of 20% of the amount of credit and a monthly fee of 4%);

(c) a requirement that consumers who default under a small amount loan must not be charged an amount that exceeds twice the amount of the loan;

(d) protections for consumers who receive 50% or more of their income under the *Social Security Act 1991*;

(e) a prohibition on charging an establishment fee if any of the credit is to refinance another small amount loan;

(f) a requirement to obtain and consider account statements covering the 90 days prior to the assessment; and

(g) a warning statement to be displayed advising consumers of the alternatives to a small amount loan.

Note: See the Enhancements Act.

76 There are specific regulatory requirements that relate to credit cards, including reforms which were introduced over 2018 and 2019. These reforms:

(a) require lenders to provide for credit card limit reduction and termination online, and restrict what credit card providers can do after such a request is made;

(b) prohibit providers from making unsolicited credit limit offers; and

(c) prohibit providers from charging interest on credit card balances retrospectively.

Note: See the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018*.

77 Further, from 1 January 2019, credit card providers were required to assess the suitability of new credit card contract or credit card limit increases based on the consumer's capacity to repay over a certain period. In *ASIC Credit (Unsuitability-Credit Cards) Instrument 2018/753*, ASIC prescribed a three-year repayment period to strike an appropriate balance between:

(a) preventing consumers from being in unsuitable credit card contracts; and

(b) ensuring that consumers continue to have reasonable access to credit through credit card contracts.

78 In December 2022, new laws were passed for small amount credit contracts and consumer leases that introduced increased protections for consumers using these high-cost consumer credit products. Protections include a cap on costs of a consumer lease and a protected earnings regime with payments under a small amount credit contract or consumer lease each limited to 10% of a consumer's net income.

Note: See the *Financial Sector Reform Act 2022*.

79 If modifications to the responsible lending obligations are considered for buy now pay later providers, more thought will be needed on whether there should be different modifications for different types of buy now pay later models according to the bespoke model and relative levels of harm that they do or may cause. As noted in paragraph 73 above, there are examples where additional requirements have been considered appropriate.

80 If there is a case for reduced responsible lending obligations, more thought should also be given to each of the requirements described in paragraph 67. For example, consideration should be given to whether there should be:

(a) a limited obligation on the kind of information that must be obtained about the consumer's financial situation, rather than applying the ordinary test of what is reasonable in the circumstances (e.g. the provider need only obtain a credit history report, and need only make additional inquiries if that report raises concerns about the consumer's capacity to meet repayments); or

(b) no need for the credit provider to assess whether further credit would be unsuitable for the consumer, and if so, in what circumstances this obligation should not apply or what alternative protections are needed for consumers.

Credit reporting

81 Generally, a buy now pay later provider does not assess what other financial obligations a consumer has, or the performance of their repayments under those obligations. The options paper suggests that a credit check may be part of a solution for lending under a certain threshold as a proxy for a consumer's credit risk.

82 A credit check can be an indicator of a consumer's ability to repay debt. However, there are limitations to the information available on the credit report about the consumer's actual financial obligations and limits, and the current performance of the consumer's obligations under those credit contracts. The level of information available to a lender is dependent on the level of participation the lender has in the comprehensive credit reporting regime.

83 Comprehensive credit reporting may be part of a solution for a prospective lender to obtain a picture of a consumer's financial obligations and performance under those obligations. However, ASIC notes the current limitations in participation by buy now pay later providers, with comprehensive credit reporting information contributed for only 10% of buy now pay later accounts, and the technical complexities in what information is available depending on how buy now pay later is treated under the National Credit Code.

Note: See Australian Retail Credit Association, *ARCA credit data fact base*, Vol. 10 (September 2022).

Licensing and ASIC's regulatory role

84 Licensing buy now pay later providers under the National Credit Act would expand the range of actions available to ASIC where we identify consumer harm. Currently, we can act against providers for breaches of the ASIC Act for misleading, deceptive or unconscionable conduct or the design and distribution obligations in Pt 7.8A of the Corporations Act. We can also use our product intervention powers, but only where we see a risk of significant consumer detriment from a certain provider or class of products.

85 If providers were licensed, ASIC could take action in a wider range of scenarios and consider a more exhaustive list of regulatory outcomes to prevent consumer harm (e.g. suspending or cancelling licences, banning persons for a wide range of misconduct, commencing civil or criminal proceedings for a wider range of conduct).

86 Using ASIC's compulsory information-gathering powers, we could collect more detailed information from providers to assess potential consumer harms. For example, requiring providers to provide transactional data would help us understand harms at the individual level rather than an aggregate level. This would allow us to identify the cause of harm more precisely, such as which product may have caused consumers to become overcommitted.

87 Licensees are obliged to provide certain data to ASIC that ensures we can more effectively monitor industry and detect and respond to consumer harm. The reportable situations regime came into effect on 1 October 2021 and requires licensees to report all reportable situations to ASIC in writing, including:

(a) significant breaches or likely significant breaches of 'core obligations';

(b) investigations into whether there is a significant breach or likely breach of a 'core obligation' if the investigation continues for more than 30 days;

(c) the outcome of such an investigation if it discloses there is no significant breach or likely breach of a core obligation;

(d) conduct that constitutes gross negligence or serious fraud; and

(e) reportable situations about other licensees.

Note: See s50A–50C of the National Credit Act.

88 Other regimes that deliver or are expected to deliver a rich source of data and that only apply to licensees include the data reporting framework for internal dispute resolution and ASIC's industry funding model.

89 We also note that while buy now pay later providers can participate in comprehensive credit reporting, there are currently limitations depending on whether a provider holds a credit licence and whether the National Credit Code applies to the product being offered. For example:

(a) credit information that shows whether a consumer is meeting their monthly repayment obligations (known as repayment history information) can only be reported if the provider holds a credit licence; and

(b) due to the operation of the hardship reporting rules in the *Privacy Act 1988*, a provider is currently unable to report financial hardship information for products that do not meet the definition of 'credit' under the National Credit Code.

D Analysis of the options and ASIC's preferred option for the regulation of buy now pay later

Key points

ASIC supports Option 3: Regulation of buy now pay later under the National Credit Act (including the National Credit Code).

In ASIC's view, credit products with the same purpose and function should start from the same place in the regulatory framework.

The National Credit Act and National Credit Code contain important protections for consumers. Where those protections are to be given to consumers, they should be given under the law in a consistent manner for a similar class of products, rather than through alternative mechanisms.

90 ASIC supports Option 3 presented in Treasury's options paper. Consumer harms identified in the options paper and this submission should be addressed through the application of the regulatory framework and consumer protections that exist for functionally equivalent products. These protections will be in the law and not an industry code, and enforceable by ASIC. There is room in the existing regulatory framework for flexibility and for further modifications to lender obligations in the appropriate circumstances.

91 There are practical difficulties with implementing Option 1 as discussed at paragraphs 96–101. If the Government considers implementing Option 2, further consideration will need to be given to how it would define and treat each of the different buy now pay later models under any modified regime.

92 For any of the options, the Government will need to consider whether and how buy now pay later arrangements are removed from the current exemptions in the National Credit Code or brought within the definition of 'credit to which the Code applies' under s5 of the National Credit Code.

Option 1: Strengthening the BNPL Industry Code plus an affordability test

93 The features of Option 1 proposed in the options paper include the following:

(a) Buy now pay later providers would not be required to hold an Australian credit licence.

(b) Buy now pay later providers would be required to perform some form of affordability check, which would be legislated in the National Credit Act.

(c) The primary tool for regulation would be an industry code that could be mandated by the Government, and approved by ASIC, with nominated provisions in the industry code enforceable by ASIC.

94 ASIC considers that mainstream credit providers, such as buy now pay later providers, should hold an Australian credit licence. The benefits of licensing buy now pay later providers are outlined in this submission at paragraphs 84–89.

95 The options paper lists a number of other protections under Option 1 that would form part of an industry code. Some of the protections listed are protections set out in the National Credit Act and the National Credit Code (for example, access and standards of dispute resolution and hardship practices). Where those protections already exist in law, they should also apply to buy now pay later providers under law. There are different enforcement mechanisms and penalties for obligations under the National Credit Act to those under an industry code: see paragraph 100.

Practical difficulties with implementing Option 1

96 Under the current law, ASIC is unable to approve the BNPL Code or declare any of the provisions to be enforceable code provisions. The current regime only allows these actions to be taken for a code which relates to Australian financial services licensees, Australian credit licensees, or in relation to a financial product in the Corporations Act, which does not include credit products.

Note: See s1101A of the Corporations Act and s238A of the National Credit Act.

97 Generally, where regulation is required to be enforceable through the courts by a regulator such as ASIC, the obligation should be contained in the primary statute or delegated legislation and not an enforceable provision in an industry code.

98 Having two streams of concurrent regulation may cause practical difficulties in updating and keeping both streams consistent over time. There is a further risk of inconsistency, with different drafting styles in provisions covering the same topic in an industry code compared to what is in the law, and different interpretations (intentionally or unintentionally) that may flow from those. This would impact enforceability of the protections and the achievement of those consumer protections.

99 Membership or subscription to an industry code is voluntary. Less than half of the current buy now pay later providers in the market are members of the BNPL Code. Under Option 1, the Government would make membership of a buy now pay later industry code mandatory. However, the mandatory code provisions currently only apply to the conduct of licensees or in relation to a financial product.

Note: See s1101AE of the Corporations Act and s238F of the National Credit Act.

100 If some of the provisions in an industry code were made enforceable under the enforceable code provisions, there would be significantly lower penalties for breaches, when compared to the civil penalty and criminal penalty provisions in the National Credit Act. For example, a failure by a credit licensee to comply with their general conduct obligations, carries a maximum civil penalty of 5,000 penalty units or $1,110,000. In contrast, enforceable code provisions are currently capped at 300 civil penalty units or $66,600.

Note: See s47(1) and 238D of the National Credit Act.

101 Consideration also needs to be given to how the buy now pay later industry would pay for the bespoke regulation that is required under a government mandated industry code. Under ASIC's industry funding model, only licensed credit providers pay for the regulation of the provision of consumer credit. Option 1 does not propose that buy now pay later providers also become licensed and so cannot be subject to industry funding levies.

Note: See reg 26 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

Option 2: Limited regulation under the National Credit Act, including licensing and scalable unsuitability test

102 The features of Option 2 proposed in the options paper include the following:

(a) Buy now pay later providers would be required to hold an Australian credit licence (or be a credit representative of a licensee) and subject to most of the provisions as licensed ordinary credit providers.

(b) Buy now pay later providers would be required to assess that buy now pay later credit is not unsuitable for a person, similar to the existing responsible lending obligations, scaled for risk to consumers.

(c) An industry code would be used to supplement consumer protections with parts of the code enforceable by ASIC.

(d) Fee caps for charges relating to missed payments would be required, combined with additional warning and disclosure requirements.

(e) Merchants who offer buy now pay later arrangements to consumers would not need to be an authorised representative of a licensee.

103 ASIC's primary objection to Option 2 is that an industry code should not be used to provide any of the protections available at law for functionally equivalent credit products. The options paper does not specify exactly which provisions would be included in the industry code.

104 Primary regulation should be contained in the law and enforceable through the courts. There is an existing legislative framework for functionally equivalent credit products and the protections in that framework—whether in their current form or modified as appropriate—should be applied to buy now pay later arrangements through the law.

Modified responsible lending obligations

105 Option 2 suggests reducing the responsible lending obligations for buy now pay later providers. Conscious decisions could be made by Parliament (or if through delegated legislation, overseen by Parliament) about how the law should be adjusted, both now and in the future. This would accommodate any different treatment of buy now pay later arrangements, or any other credit product, that is justified.

106 ASIC considers that there is little evidence to date to support reduced responsible lending obligations for buy now pay later providers. In fact, for some credit products, there are additional obligations under the National Credit Act, based on specific features of the product or the level of risk they pose to consumers: see paragraphs 72–80.

107 ASIC is of the view that the responsible lending obligations described in paragraphs 67–71 provide a baseline level of safeguards applicable to a broad range of consumer credit products. Buy now pay later arrangements should start from this baseline with careful consideration of whether modifications are warranted for some buy now pay later products, whether through enhanced or reduced protections.

108 ASIC’s Consumer Monitor data showed that buy now pay later users experienced financial stress indicators at levels higher than the average of the total population, but similar to other forms of regulated products (e.g. car finance and personal loans over $5,000). Users of consumer leases and small amount and medium amount contracts displayed higher levels of financial stress: see Figure 5. As described above, this drives the need for a higher standard of regulation above the baseline protections: see paragraph 106.

109 Under Option 2, it is not clear how buy now pay later will be defined or referenced in the legislation. How buy now pay later is defined will be the mechanism to provide for any bespoke product level modification that differs to the baseline protections. The Government will need to consider whether the definition(s) are determined by reference to factors such as the particular exemption the provider relies on, the fees charged to its consumers or merchants (including late fees) or the business model and how the provider delivers its product to consumers.

Other suggestions in Option 2

110 Option 2 suggests introducing a fee cap for missed payment fees for buy now pay later arrangements. As discussed in paragraph 72, the extent of late fees and other penalties against a consumer for non-payment would be a factor for the Government to consider if it was to modify responsible lending obligations for buy now pay later providers.

111 Option 2 suggests that merchants who offer buy now pay later arrangements to consumers would not need to be a credit representative of a licensee. In ASIC's experience many merchants who offer buy now pay later arrangements would fall under a number of exemptions contained within the National Credit Regulations, including for 'mere referrals' and the 'point of sale' exemptions if buy now pay later providers were required to hold an Australian credit licence.

Note: See regs 23 and 24 of the National Credit Regulations.

Option 3: Regulation under the National Credit Act

112 The features of Option 3 proposed in the options paper include the following:

(a) Buy now pay later providers would be required to hold an Australian credit licence (or be a credit representative of a licensee) and subject to the same provisions as licensed ordinary credit providers.

(b) Fee caps for charges relating to missed payments would be applied, combined with additional warning and disclosure requirements.

(c) An industry code would only be used to supplement protections not contained with the National Credit Act against harms that are particular to buy now pay later arrangements.

113 Option 3 is ASIC's preferred option. Under this option, buy now pay later providers would be required to hold a licence and the primary mechanism for regulation is the law, providing a consistent form of regulation across competing consumer credit products. Lender obligations are the same, consumer expectations are the same and ASIC's regulatory powers are the same. The benefits of this approach are discussed below.

Functionally equivalent products are treated the same

114 The wide use of buy now pay later arrangements as a means of financing purchases of goods and services supports the view that they should be treated similarly to other financing options that are regulated under the National Credit Act and National Credit Code: see paragraphs 29–32.

115 Buy now pay later arrangements have the potential to affect a consumer's overall financial situation and cause harm where the consumer is provided with credit that they cannot afford, or where making repayments under a buy now pay later arrangement means they default on other liabilities: see paragraphs 40–46. For this reason, we consider that these arrangements should be treated similarly to other forms of credit under the National Credit Act.

116 The National Credit Act and National Credit Code contain important protections for consumers as outlined in paragraph 13. Where those protections are to be given to consumers, they should be given under the law, rather than being replicated in an industry code.

117 ASIC acknowledges feedback from industry suggesting some existing buy now pay later arrangements might be difficult to maintain, or maintain in their current form, if existing credit regulation was imposed, particularly existing responsible lending obligations.

118 It is perhaps too early to confirm whether that is in fact the case and, if so, exactly how much those arrangements might need to change or whether those obligations could be met instead through changes to sales practices and processes. It is worth noting that other forms of credit traditionally available within a retail environment continue to be offered even after the introduction of responsible lending obligations. Further consultation may also identify modifications to the existing regulatory regime that could appropriately accommodate some existing arrangements.

Uniform regulation ensures consistent standards apply

119 We have outlined some of the key protections in the National Credit Act and National Credit Code (see paragraph 13) and the benefit of licensing buy now pay later providers (see paragraphs 84–89).

120 Some buy now pay later providers already hold an Australian credit licence because they issue other regulated credit products. But there is no obligation for them to apply the National Credit Act and National Credit Code to their buy now pay later arrangements. Some providers have told ASIC they do apply some parts of their regulated product procedures and compliance framework to these arrangements, but not all parts.

121 Currently, around half of buy now pay later providers either hold an Australian credit licence or are part of a group of companies that holds a licence. These providers include:

(a) Afterpay Australia Pty Ltd;

(b) ZipMoney Payments Pty Ltd;

(c) Brighte Capital Pty Ltd;

(d) Humm BNPL Pty Ltd (as part of Humm Group Ltd through Humm Cards Pty Ltd);

(e) Payright Limited;

(f) LatitudePay Australia Pty Ltd;

(g) Plenti RE Limited;

(h) Commonwealth Bank of Australia;

(i) National Australia Bank Limited; and

(j) Suncorp-Metway Ltd.

122 Uniform regulation under the National Credit Act—with some modifications as appropriate—would bring a more consistent regulatory framework across all buy now pay later providers and a standardised regime that could be enforced by ASIC.

Consumer harms can be addressed

123 Entering into a buy now pay later arrangement creates an obligation for the consumer to repay a certain debt over a fixed period. Credit limits for buy now pay later arrangements range from as low as $600 to as high as $30,000. The deferral of buy now pay later debt adds to a consumer's total financial holdings and can impact the consumer's overall financial situation: see paragraphs 40–46.

124 Based on data from the Consumer Monitor, between January 2020 and March 2022:

(a) 20% of buy now pay later users reported experiencing financial stress compared to 11% of the total survey population;

(b) buy now pay later users held more credit products than the total survey population; and

(c) buy now pay later users who missed at least one repayment in the last 12 months were more likely to have experienced difficulty in meeting their commitment (81% compared to 36% of those who met their minimum buy now pay later repayments).

125 Buy now pay later users who missed at least one repayment in the last 12 months were also more likely to display unhealthy spending habits, including reporting that they:

(a) struggled to keep track of what they owe;

(b) worried about meeting day-to-day expenses;

(c) made purchases they regretted; and

(d) spent more than they usually would.

126 Licensed credit providers are required to ensure that credit provided to consumers is affordable by completing an assessment of whether the new amount of credit is not unsuitable to the consumer. Before making the assessment, the credit provider is also required to gather financial information about the consumer including income, expenses, assets and other liabilities: see paragraph 67.

127 A buy now pay later provider may complete a credit check on the consumer, but generally will not make a full assessment of the consumer's financial situation, including inquiring or verifying whether they hold other credit

products and the consumer's performance of their obligations under those credit contracts. Understanding a consumer's financial situation is a key protection to ensure that they are not provided with unaffordable credit.

128 The exemptions under which buy now pay later providers operate require buy now pay later arrangements to operate at no upfront cost or low upfront cost to the consumer for the provision of credit. We also acknowledge that consumers are not charged interest on the amount borrowed under buy now pay later arrangements, so the cost to the consumer for such arrangements is generally limited to establishment fees, account keeping fees and missed payment fees.

129 While buy now pay later operates in this way for many consumers, the incidence of repeated late fees means that for some consumers the cost of the loan can still be significant. This is exacerbated where the consumer is repeatedly using the product, and even further where the consumer has accounts with multiple buy now pay later providers.

130 Option 3 suggests the introduction of a fee cap for missed payment fees. Late fee caps do exist for credit products where there is evidence of greater harms to a larger proportion of consumers who use these products, such as for small amount credit contracts: see paragraph 75. As described in paragraph 72, the extent of late fees and other penalties against the consumer is one factor to be considered if reducing responsible lending obligations for buy now pay later providers.

131 Buy now pay later arrangements have the potential to affect a consumer's overall financial situation and cause harm where the consumer is provided with credit that they cannot afford, misses their repayments or will default on other liabilities due to making repayments under a buy now pay later arrangement. For this reason, we consider that these arrangements should provide the same baseline protections as other forms of credit under the National Credit Act.

Appendix: Accessible versions of figures

Table 2: Number of transactions per month (millions)

Month	Number of transactions (millions)
Apr 2021	6.95
May 2021	7.72
Jun 2021	8.11
Jul 2021	8.62
Aug 2021	9.27
Sep 2021	9.14
Oct 2021	10.75
Nov 2021	12.02
Dec 2021	11.51
Jan 2022	9.69
Feb 2022	9.02
Mar 2022	10.7

Note: This table shows the data in Figure 1.

Table 3: Percentage of credit card accounts with over 90% use of credit limit (October 2018 to April 2019)

Category of consumers	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019
Buy now pay later credit card users	38.28%	38.06%	40.56%	41.07%	40.96%	40.95%	42.33%
Other credit card users	16.56%	16.48%	17.30%	17.36%	17.42%	17.19%	17.49%

Note: This table shows the data contained in Figure 3.

Table 4: Number of stress indicators based on the number of buy now pay later providers used in the last six months

Number of buy now pay later providers used in the last 6 months	No stress indicators	One stress indicator	2+ stress indicators
One buy now pay later provider	65%	21%	14%
Two buy now pay later providers	51%	24%	25%
Three buy now pay later providers	39%	26%	35%

Note: This table shows the data contained in Figure 4.

Table 5: Number of stress indicators of users of each credit product compared to the survey population

Credit product	No stress indicators	One stress indicator	2+ stress indicators
Total survey population	75%	14%	11%
Credit card	81%	11%	8%
Mortgage	73%	16%	11%
Buy now pay later	58%	23%	19%
Car finance	53%	27%	20%
Consumer lease	37%	35%	28%
Loan under $2k	37%	29%	34%
Loan of $2–5k	38%	32%	30%
Personal loan ($5k+)	61%	22%	17%

Note: This table shows the data contained in Figure 5.

Key terms

Term	Meaning in this document
AFCA	Australian Financial Complaints Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
BNPL Code	An industry code of practice for buy now pay later providers announced by the Australian Finance Industry Association on 29 January 2020, and which came into effect on 1 March 2021
buy now pay later arrangement (arrangement)	An arrangement that allows consumers to buy and receive goods and services immediately from a merchant, and repay a buy now pay later provider over time
buy now pay later provider (provider)	An entity that provides buy now pay later arrangements to consumers
Enhancements Act	*Consumer Credit and Corporations Legislation Amendment (Enhancements) Act 2012*
Consumer Monitor	ASIC's Financial Services Consumer Monitor, which was conducted between January 2020 to June 2022 to provide a whole-of-wallet understanding of the financial products Australian consumers hold and recent decisions regarding these. It included measures relating to a range of credit and insurance products.
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
design and distribution obligations	Obligations on financial services firms to appropriately design products for and direct distributions towards the right consumers Note: See the Product Regulation Act and Pt 7.8A of the Corporations Act.
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	National Credit Code at Sch 1 of the National Credit Act
National Credit Regulations	*National Consumer Credit Protection Regulations 2010*
product intervention power	The intervention power that allows ASIC to make certain orders if it is satisfied that a credit product has resulted in, or will or is likely to result in, significant detriment to consumers Note: See the Product Regulation Act.

Term	Meaning in this document
Product Regulation Act	*Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*
REP 600 (for example)	An ASIC report (in this example numbered 600)
responsible lending obligations	The legal obligations set out in Ch 3 of the National Credit Act
RG 183 (for example)	An ASIC regulatory guide (in this example numbered 183)
s5 (for example)	A section of the National Credit Act (in this example numbered s5, unless otherwise specified)