

21 December 2022

Mr Daniel McAuliffe  
Director – Consumer Credit Unit  
Financial Systems Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Via email: [CreditReforms@treasury.govt.nz](mailto:CreditReforms@treasury.govt.nz)

Dear Mr McAuliffe

### **Laybuy submission to The Treasury's Options Paper: Regulating Buy Now, Pay Later in Australia**

1. Laybuy welcomes the release of the Australian Government's Options Paper, which explores three options to enhance regulation of the Buy Now, Pay Later (BNPL) sector in Australia.
2. By way of introduction, Laybuy is a New Zealand-based BNPL provider operating in New Zealand, the United Kingdom and Australia. While we are one of the larger providers in New Zealand and the United Kingdom, our presence in the Australian market is smaller.
3. Our payment platform allows consumers to purchase a product or service and spread the cost across six weeks with weekly payments. Consumers are required to pay 1/6 of the purchase at the point of sale. Like other similar BNPL products, Laybuy provides consumers with a low level of interest-free credit.
4. We welcome moves by the Australian Government to strengthen the regulatory framework of the BNPL sector in Australia and write in support of the Australian Finance Industry Association (AFIA) submission.
5. Laybuy strongly supports the AFIA BNPL Industry Code and is advancing its application to be a signatory to the Code. We anticipate this process to be completed in the first half of 2023. While not yet a signatory to the Code, we are pleased to advise that we already align to its key commitments.

### **Consumer benefits of BNPL**

6. BNPL is the world's fastest growing payment method, with BNPL payments expected to quadruple by 2026<sup>1</sup>. While nearly 40% of Australian consumers report having used BNPL at least once, the sector is still considered to be in its infancy. In fact, BNPL is

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<sup>1</sup><https://www.globaldata.com/media/banking/buy-now-pay-later-global-transaction-value-reached-120-billion-2021-according-globaldata/>

forecast to achieve a 24 percent compound annual growth rate (CAGR) between 2021 and 2028, when gross merchandise value in Australia expected to reach \$72.5 billion<sup>2</sup>.

7. Our aim is to provide consumers with access to low-cost credit, providing them with the ability to spread their payments without the fees and interest charges associated with traditional forms of consumer credit. We believe this makes BNPL an attractive alternative to credit cards for many consumers, with more than half of Australian consumers reporting they prefer BNPL over credit cards because they pay no interest<sup>3</sup>.
8. We therefore welcome the acknowledgement in the Options Paper that new credit products such as BNPL can offer consumers a cheaper and easier-to-access form of credit when compared to traditional forms of credit such as credit cards, payday loans and consumer leases.
9. BNPL services are more disciplined than a credit card. At the time of entering a BNPL transaction a consumer will be required to review, authorise and confirm the repayment schedule. Repayments are made automatically, ensuring the purchase is paid off in full in the agreed period.
10. The economic benefit of BNPL to merchants should also not be underestimated. Allowing customers to spread their payments helps drive new sales, lifts customer conversion rates and increases average order values. It is estimated that a net \$2.13 billion in new revenue is generated by merchants offering BNPL in Australia, with an average increase in revenue of \$25,880 per merchant<sup>4</sup>.
11. In addition, and as acknowledged in the Options Paper, BNPL increases competition in the consumer credit market. This competition is not only driving innovation and new products, but also likely to be placing downward pressure on transaction costs for merchants and consumers as providers of consumer credit compete for market share.

### **A proportionate regulatory response**

12. We acknowledge that regulations have not kept up with the new technology and innovation that has been experienced in the consumer credit market in recent years. While this innovation is delivering enormous benefits to both consumer and merchants, it does present a risk of consumer harm if appropriate safeguards are not put in place.
13. For this reason, Laybuy strongly supports the development of a regulatory framework that balances the benefits of BNPL with the risks of consumer harm. It is important, however, that the regulatory response be proportionate, setting minimum standards for the sector while also protecting the unique utility of the product.
14. Of the three options presented in the Options Paper, Laybuy favours Option One – *strengthening the BNPL Industry Code with an affordability test*. This option would see the Government and industry working together to address gaps within the current AFIA BNPL Code and see an affordability test legislated under the Credit Act.
15. We believe this option adequately addresses the issues raised in the Options Paper via a strengthened Code, while the proposed new affordability assessment would mean that

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<sup>2</sup> Research and Markets, "Australia Buy Now Pay Later Market Report 2021: BNPL Payment Adoption to Grow by 24 percent to 2028", September 23, 2021

<sup>3</sup> [https://afia.asn.au/files/galleries/AFIA\\_BNPL\\_Research\\_Report.pdf](https://afia.asn.au/files/galleries/AFIA_BNPL_Research_Report.pdf)

<sup>4</sup> Ibid



providers are required to check that their product is not unaffordable for a person before offering it.

16. We are committed to working in collaboration with the Government, AFIA and the sector to strengthen the industry code so that it adequately addresses the concerns outlined in the Options Paper. We agree that the Code should be mandated for all BNPL providers and that its provisions be enforceable by ASIC.
17. We are pleased to note that this Option also aligns with the guiding principles put forward in the options paper for regulating BNPL and which we agree with, namely:
  - It improves consumer protections by addressing the main instances of consumer harm
  - It provides adequate flexibility so that new providers can enter the market or new products can be developed
  - It supports competition and the interests of consumers, merchants and providers
  - It is enforceable.
18. Like AFIA, Laybuy also supports aspects of Option Two – *limited BNPL regulation under the Credit Act, including licensing and scalable unsuitability test*. This option proposes partly bringing BNPL within the Credit Act, including licensing providers and a sliding “unsuitability test”.
19. It is noted that under Option Two, providers would be required to assess that BNPL credit is not unsuitable for a person, not increase consumer spending limits without explicit instructions and cap fees for charges relating to misses or late fees. We note a number of requirements under Option Two are already covered by existing industry codes.
20. We welcome Treasury’s recognition that in terms of a suitability assessment, this should be scaled to the level of risk of the BNPL product. We agree that this Option would require the removal of prescriptive requirements, such as verifying a person’s financial documentation and checking that the BNPL credit aligns with the person’s needs and objectives, for it to be a workable approach.
21. Laybuy does support mandatory credit reporting. This would ensure future credit providers have greater visibility of a consumers’ financial position, which would greatly reduce the risk of further credit being extended to consumers who cannot afford it. We currently credit check every new customer via our integration with credit bureau Experian.
22. We do not support Option Three – *Regulation of BNPL under the Credit Act*. This Option would not only put Australia out of step with regulatory approaches being progressed in other jurisdictions, but it would also place onerous obligations on providers for little benefit.
23. Option three would see BNPL treated like other credit products, and this fails to recognise its unique characteristics. Option Three would impose significant compliance costs on the sector that its business model was not built for. The result would likely see providers exit the Australian market, impacting competition to the detriment of consumers and merchants.



## Conclusion

24. We thank the Treasury for the opportunity to comment on the Options Paper and have welcomed the considered proposals put forward. We support the AFIA submission, and we believe Option One is the optimal option. We support aspects of Option Two. We do not support Option Three.
25. We have welcomed the opportunity to engage in this consultation and look forward to continuing to work with officials as they progress this important piece of work. We believe Australia can be a leader in the development of a world-leading regulatory framework for BNPL.
26. Finally, we remain committed to working collaboratively with AFIA, the Government and stakeholders to progress a regulatory framework in Australia that reduces the risk of consumer harm while protecting the unique utility of BNPL.

Yours sincerely



Gary Rohloff  
Managing Director  
Laybuy



