

Good Shepherd response to the Treasury Laws Amendment Bill 2024: Buy Now, Pay Later

April 2024

Good Shepherd welcomes the release of the Treasury Laws Amendment Bill 2024: Buy Now, Pay Later (the draft laws), and applauds the Australian Government for regulating Buy Now Pay Later (BNPL) as credit.

About Good Shepherd

Good Shepherd aspires for all women, girls and families to be safe, strong, well and connected. We are Australia's oldest charity working to support women and girls experiencing abuse and disadvantage. Good Shepherd provides place-based, integrated services in the areas of family violence, financial insecurity, and youth disadvantage. Through our Financial Independence Hub and No Interest Loan (NILs) programs we assist women and families around Australia to build financial wellbeing.

Why BNPL regulation is needed

Good Shepherd's practitioners repeatedly see the harms of unregulated BNPL supply. A Good Shepherd perspective on the use and harms of BNPL is set out in our *2022 Safety net for sale* report.¹ As this report explains, unconstrained BNPL supply causes financial harm, and creates an avenue for financial abuse. Almost 70% of surveyed Good Shepherd practitioners had seen BNPL-related financial abuse among clients with BNPL debts. Financial abuse via BNPL can be perpetrated through coercion (i.e. where a person is forced to open a BNPL account for the benefit of the perpetrator), or by fraudulently opening an account in the name of someone else, without that person's knowledge or consent.

The draft laws should be designed to prevent financial abuse via BNPL, and ensure victim-survivors can access timely remedies when financial abuse does occur, consistent with the National Plan to End Violence against Women and Children 2022-2032, and the National Strategy to Achieve Gender Equality.

BNPL is a highly gendered phenomenon tied to women's economic insecurity. At Good Shepherd, the groups with the highest BNPL use are women, single parents (most of whom are women), younger people, and those on low incomes.² This is also true of the broader community. Using 2021 transaction data of over 800,000 BNPL users at a major Australian financial institution, a University of Sydney study found that of these users:

- 63% were women

¹ Good Shepherd (2022) *Safety net for sale: The role of Buy Now Pay Later in exploiting financial vulnerability*.

² Ibid.

- the average age was 33 years
- 40% had more than one BNPL account – these users were more likely to be from a lower socioeconomic area and receive income support.³

Family violence victim-survivors feature among BNPL customers. In the general population, 1 in 4 women have experienced violence by an intimate partner or family member, and 1 in 6 women have experienced economic abuse by a partner.⁴ Statistically, it is therefore likely that a BNPL provider will be engaging with a customer who has experienced family violence.

This submission

In this submission we focus on key improvements that can be made to the draft laws to better protect our clients from financial abuse and hardship, and to ensure they can obtain remedies and redress in cases of family violence. We recommend:

- requiring disclosure of choice of lending regime and suitability assessment policies
- removal of the presumption that BNPL products under \$2000 are suitable for the requirements and objectives of the customer
- verification of customer income
- proper credit checks
- removal of features that promote BNPL account increases
- improved remedies in cases of family violence.

We also reiterate recommendations for policy measures beyond this regulatory reform process. As Good Shepherd recommends in the *Safety net for sale* report, tackling harmful BNPL use means addressing the drivers of that use, alongside introduction of regulatory protections. Our practitioners continue to see clients using BNPL because they lack adequate incomes, including social security incomes. BNPL use is evident in situations of family violence. In the absence of proper financial supports, women are resorting to debt in order to relocate, refurnish their homes, and meet their children's needs. When child support is withheld (a form of financial abuse in itself), women turn to BNPL to feed themselves and their children. We reassert our recommendations for:

- increases to JobSeeker and related working-age payments
- doubling of the Escaping Violence Payment from \$5000 to \$10,000 to bring it into line with Victoria's Flexible Support Packages
- consideration of the economic effect of family violence in family law decision-making, and measures to prevent deliberate misuse of family law proceedings to further drain victim-survivors of financial resources.⁵

³ Boshoff E, Grafton D, Grant A and Watkins J (2022) 'Buy Now Pay Later: Multiple accounts and the credit system in Australia', <https://dx.doi.org/10.2139/ssrn.4216008>.

⁴ Australia Bureau of Statistics (March 2023) [Personal Safety, Australia](#).

⁵ Confidential Good Shepherd submission to Exposure Draft: Family Law Amendment Bill (No. 2) 2023.

Require disclosure of lending regime and suitability assessment policies

Recommendation 1: Require BNPL providers to publicly disclose their suitability assessment policies, and whether they have elected to follow the full or tailored responsible lending obligations.

The draft laws give BNPL providers the option of following either the full responsible lending obligations (RLOs), or a tailored RLO regime that will apply to BNPL/low-cost credit contracts. BNPL providers will also have to develop suitability assessment policies.

BNPL providers⁶ should have to publicly disclose these policies, and which RLO regime they have elected to follow, on their websites and in other public communications. This information needs to be readily available to our practitioners, so they can assess whether a client has been irresponsibly provided with BNPL under either the full RLO regime, or the tailored RLO regime for BNPL.

This transparency is also important for Australian Securities and Investments Commission (ASIC) monitoring and enforcement, and Australian Financial Complaints Authority (AFCA) identification of systemic issues in the BNPL sector. To assess the new laws' performance, research, regulatory and complaints bodies must be able to identify any association between choice of RLO regime, the standard of a provider's suitability assessment policy, and:

- rates of lending to financially vulnerable customers, based on a BNPL provider's target market and/or provider data about these customers
- default rates
- financial hardship rates
- customer experiences of financial abuse associated with BNPL, i.e. coercive or fraudulent BNPL debts (revealed through internal or external complaints)
- internal and external (AFCA) complaint rates
- ASIC enforcement action.

Remove presumption of suitability for BNPL products under \$2000

Recommendation 2: Remove the presumption that BNPL products under \$2000 are suitable for the requirements and objectives of the customer.

The draft laws feature a problematic presumption that BNPL products under \$2000 are suitable for the requirements and objectives of the customer. The \$2000 threshold means this presumption will apply to the overwhelming majority of BNPL products.⁷

The presumption of suitability is problematic for several reasons. First, it implies that BNPL products under \$2000 are low risk. Any credit products under \$2000 have the potential to

⁶ For simplicity, a reference to BNPL providers in this submission is a reference to licensees that provide 'low cost credit contracts' under the draft laws.

⁷ Parliament of the Commonwealth of Australia, House of Representatives (2024) Exposure Draft Explanatory Materials – Treasury Laws Amendment Bill 2024: Buy Now, Pay Later.

cause hardship for people on very low incomes of around or less than \$1000 per fortnight (that is, most social security incomes). This risk arises even if no interest is charged, or only low effective interest rates/default fees are charged. Suitability must be assessed on a case-by-case basis, and a presumption of suitability works against this.

Second, the presumption creates opportunities for financial abuse. Good Shepherd practitioners report that BNPL products under \$2000 are attractive to family violence perpetrators. Financial counsellors in our Financial Independence Hub program routinely assist family violence survivors who have multiple, abusive BNPL products in their names, including accounts under \$2000. The requirements and objectives limb of the RLOs can help to detect and prevent this financial abuse. Any weakening of this limb via the presumption of suitability limits the chance of identifying whether a BNPL product benefits the applicant, or someone else. The utility of a full requirements and objectives check is recognised by the Australian Banking Association's *Industry guideline on preventing and responding to family and domestic violence* (ABA Guidelines).⁸ This requires banks to consider whether an applicant will receive a substantial benefit from a credit product, including 'general use' credit cards that operate in a similar way to BNPL products.

Third, the presumption of suitability introduces an unnecessary risk of non-compliance and harm. The presumption may create confusion, or be misused by BNPL providers whose business models operate at the margins of responsible lending laws. Less responsible BNPL providers may rely heavily on the presumption, exploit its legal ambiguity, cause financial hardship, and evade enforcement action.

Require income verification

Recommendation 3: Require BNPL providers to verify a customer's income, regardless of the amount of the BNPL product.

We strongly support BNPL providers having to enquire about a customer's income and expenses to assess affordability. However, under the draft laws, a BNPL provider can rely solely on unverified income and expenses information provided by the customer if the circumstances support this. The lack of verification requirements under the tailored RLO regime for BNPL fundamentally undermines a responsible lending regime of any kind. A lack of verification means customers can inadvertently misrepresent their income and expenses, and BNPL providers can exploit this situation.

A lack of income verification makes it easier to perpetrate financial abuse by fraudulently opening a BNPL account without a person's knowledge or consent. Income verification, via payslips or other means, would create a hurdle to financial abuse, making it more difficult for a perpetrator to fraudulently open an account.

⁸ Australian Banking Association (2021) *Industry guideline on preventing and responding to family and domestic violence*.

Require proper credit checks

Recommendation 4: Require BNPL providers to report and obtain Consumer Credit Liability Information.

We support the introduction of credit checks but are concerned that only a negative credit check is required for BNPL products under \$2000 (i.e. information about defaults and other negative credit events). The suitability of a BNPL product cannot be assessed unless the provider has a full picture of all credit liabilities. These liabilities include other BNPL products, credit cards and consumer leases. BNPL providers should therefore have to obtain Consumer Credit Liability Information (CCLI) when assessing the suitability of BNPL products under \$2000.

Multiple, unmanageable BNPL accounts are a significant issue among Good Shepherd clients with BNPL debt. In 2022, 84% of surveyed practitioners reported that clients with BNPL debt had tried to manage the debt by opening additional BNPL accounts, leading to an unmanageable debt spiral.⁹ Compounding debt hastens the decline into deep financial hardship for clients who are already in a financially precarious state. Good Shepherd practitioners also see clients with multiple, financial abuse-related BNPL accounts and other credit obtained through coercion or fraud. Credit checks based on CCLI provide an opportunity to identify ‘red flags’ in credit reports, which can then be sensitively explored with the customer. This could potentially avert approval of more abusive BNPL debt.

However, this approach depends on BNPL providers being mandated to participate in the credit reporting regime. Good Shepherd practitioners see clients who have numerous BNPL accounts, but these liabilities do not always appear on credit checks because BNPL providers are not captured by the reporting regime. We understand voluntary reporting by BNPL providers is very patchy. The lack of mandated reporting is another design flaw that allows family violence perpetrators to conceal financial abuse via BNPL. The proliferation of abusive debt is not fully visible to potential lenders, and not fully visible to victim-survivors and their advocates when accessing credit records.

Avoid a BNPL lending regime that promotes account increases

Recommendation 5: Prevent BNPL providers conducting suitability assessments for amounts higher than the initial credit limit.

Recommendation 6: Reduce the assessment validity period.

Along with other consumer and community organisations, we previously recommended a prohibition on unsolicited offers to increase account limits, similar to other credit

⁹ Good Shepherd (2022) *Safety net for sale: The role of Buy Now Pay Later in exploiting financial vulnerability*.

products.¹⁰ This protection is not provided under the draft laws. Instead, the BNPL provider only has to seek the consent of the customer to an account increase. The draft laws are currently designed to promote account increases, even if this conflicts with the requirements and objectives of the customer, and any changes in their financial circumstances. These features should be removed.

First, the suitability of a BNPL product should be assessed at the amount the customer requests, not at a higher amount than the initial credit limit (as the draft laws propose). Assessing at a higher amount contradicts the stated requirements and objectives of the customer, and is in conflict with this limb of the RLOs. Good Shepherd works with clients who are restoring their finances after hardship and family violence. BNPL providers should respect their agency in determining an affordable BNPL amount. This is especially important for family violence survivors who were burdened with coercive debts of various kinds during abusive relationships, whereby their financial agency was undermined and disrespected.

Second, it is inappropriate for a suitability assessment to be valid for 2 years, and cover increases up to the assessed amount within that period. People's financial circumstances can change very quickly, particularly at a time when essentials like rent, mortgage, energy, food and petrol costs are heightened and volatile. Incomes can also be volatile when people are in short-term, insecure work.

Each of these features (initial assessment at a higher amount, and a 2-year assessment validity period) also make it easier to sustain and worsen financial abuse, by coercing victims into increasing account limits without the barrier of a new suitability assessment.

Improve family violence remedies

Recommendation 7: Examine whether mandated family violence assistance standards should be introduced for BNPL providers and other creditors under the national credit regulatory regime.

We are very pleased that BNPL providers will be subject to the hardship requirements under the *National Consumer Credit Protection Act 2009*, which will create a regulated right to BNPL hardship assistance in cases of family violence and other circumstances. At present, Good Shepherd practitioners seek remedies for clients in financial hardship and financial abuse/family violence situations, but these remedies are provided on compassionate grounds and rely on the goodwill of the individual BNPL provider.

We are also pleased that BNPL providers will be required to have internal dispute resolution processes and be members of AFCA, as Australian Credit Licensees. This establishes an important complaints and resolution pathway for our clients.

¹⁰ Joint consumer submission to Treasury: Regulating Buy Now, Pay Later in Australia – Options Paper, December 2022.

The next, immediate step is for the BNPL sector to introduce family violence guidelines under the Buy Now Pay Later Code of Practice. These should include a requirement that BNPL providers have a family violence policy; staff training in family violence and trauma-informed practice; and dedicated assistance for customers experiencing family violence. Policies and guidance under the Code of Practice should align with the ABA Guidelines.

The guidance should contain a clear and consistent position that evidence of family violence (for example, intervention orders, police reports, or caseworker verification) should not be requested or required of victim-survivors when disclosing family violence and seeking relief such as debt waiver. Requesting this type of information is highly inappropriate and perpetuates harm. Good Shepherd practitioners report that BNPL providers and other creditors request this type of evidence. It may be dangerous for a person to retrieve documentary evidence, and victim-survivors do not necessarily have access to these documents (for example, where they are fearful of reporting to police or seeking an intervention order). Other industries have departed from this harmful practice. Energy retailers operating in the National Electricity Market must follow regulated family violence assistance standards, including that they do not require documentary evidence of family violence in order to assist customers.¹¹

Treasury should examine whether mandated family violence assistance standards should be introduced for BNPL providers and other creditors under the national credit regulatory regime.

¹¹ See Australian Energy Market Commission (n.d.) [Protecting customers affected by family violence](#), AEMC website, accessed 22 March 2024.