Good Shepherd
Australia New Zealand

Good Shepherd response to Treasury Options Paper for regulating Buy Now Pay Later in Australia

December 2022

Good Shepherd welcomes the release of Treasury's Options Paper for regulating Buy Now Pay Later in Australia ('Options Paper').

Good Shepherd is one of Australia's oldest charities focused on the needs of women and families. We are a major provider of family violence services, and financial services such as financial counselling, financial capability, and No Interest Loans.

Good Shepherd recently published a report on BNPL, entitled 'Safety net for sale: The role of Buy Now Pay Later in exploiting financial vulnerability'. The report uses unique client data and practitioner insights to highlight the drivers and harms of BNPL, particularly among women, younger people, sole parents and family violence victim-survivors. The report includes quantitative data, derived from a survey of 33 Good Shepherd Financial Counselling and Capability practitioners.

In this response we draw upon our report to answer the questions raised in the Options Paper.

We also note that Good Shepherd is a signatory to the joint submissions by the Financial Rights Legal Centre and the Economic Abuse Reference Group.

Questions 1 and 2: Can you provide other examples of consumer harm or industry behaviour this paper has not discussed? What are the main contributors of consumer harm? What evidence supports this view?

Good Shepherd data shows the following significant harms are experienced by our clients when using BNPL.

Accumulation of debt for essentials

At Good Shepherd, 75% of surveyed practitioners report that they see BNPL use for children's needs such as clothing and baby products, followed closely by furniture and household appliances (68%), and food/groceries (66%). Other common items purchased with BNPL include utilities (44%) and transport and petrol (34%).

The use of BNPL for essentials is driven by insufficient income support payments and wages; limited awareness of or barriers to accessing more affordable options, such as No Interest Loans; the seamless integration of BNPL into merchant payment systems where essentials are being sold (e.g. the Woolworths 'PayPal Pay in 4' option); and the deliberate marketing of BNPL as a viable and affordable payment method for essentials such as utilities by BNPL providers.

This harm is therefore partly caused by the absence of appropriate regulation, including restrictions on the sale of BNPL products for certain goods and services, and an inadequate social safety net.

Financial abuse and economic insecurity in the context of family violence
Good Shepherd practitioners report that women are accumulating unmanageable BNPL debts after fleeing family violence and needing money for basics to establish new and safe homes.

While we are not suggesting that BNPL providers knowingly issue debt to women who are experiencing violence, women are a primary target of BNPL providers, and also significantly more likely to experience family violence than men. When combined with a lax regulatory regime that can easily create or compound financial hardship, BNPL has the potential to create very real, long-term harm to victim-survivors of family violence. For example, because BNPL providers can lawfully issue unaffordable debt, they issue multiple BNPL accounts without constraint, and increase BNPL account limits without consideration of a person's capacity to pay off the debt.

These harms are consequential. Research shows that women facing financial insecurity are more likely to experience violence than those who have financial security, and that women's financial dependence on perpetrators is a significant barrier to leaving an abusive relationship (ANROWS, 2022). Unaffordable BNPL debts and crushing debt cycles can therefore compromise women's safety and capacity to recover.

Good Shepherd data also shows that BNPL itself is being used to perpetrate financial abuse. Financial abuse is an insidious form of family violence, restricting women's choices and ability to leave an abusive relationship, and enabling other forms of abuse, such as physical and sexual violence. Financial abuse is a major form of coercive control, in which perpetrators use abusive behaviours in a pattern over time to create and maintain power and dominance over the other person (see Attorney General's Department, 2022).

Among surveyed Good Shepherd practitioners, 25% reported coercive BNPL debt in at least half of their clients with BNPL debts, and 69% reported it in at least one client using BNPL. This abuse can include creating multiple BNPL accounts in a partner's name, to accumulate debt. Rates of coercive debt appear to be increasing, with 53% of practitioners seeing it more than a year ago.

We consider BNPL products are liable to financial abuse because they can be easily opened and operated online by perpetrators using basic personal information, fraudulently and without the woman's knowledge. It is also relatively easy for coercive debts to be taken out, because no enquiries need to be conducted by BNPL providers, such as affordability and suitability checks. Given the links between financial hardship and family violence (see ANROWS, 2022), affordability/hardship enquiries could help BNPL providers identify and prevent coercive and fraudulent debts.

The case studies below show how BNPL can be weaponised by abusive partners in the absence of regulatory controls, and worsen financial insecurity.

Case study: BNPL as a tool of financial abuse

Phoebe,* a mother of two children, experienced violence in a previous relationship. Over four years, Phoebe's former partner made her open 12 BNPL accounts with different providers, amounting to more than $5000 worth of debt. Phoebe was coerced into opening these accounts because she was fearful of more violence from her partner. Phoebe had very little to no capacity to repay the BNPL debts, being reliant on a very low social security income of about $1100 a fortnight. Phoebe also had a poor credit history after her partner had coerced her into credit card debt as a young adult.

Despite these affordability pressures and the potential for hardship, Phoebe was approved for multiple BNPL products. One provider increased her credit limit from $1000 to $2500 after her partner coerced her into applying. Phoebe's partner purchased items such as petrol, groceries and cigarettes using this money, in turn compelling Phoebe to do the same. Drowning in debt, Phoebe had to use BNPL to pay for essentials such as Coles and Woolworths vouchers for daily living.

Phoebe worked with Good Shepherd to get most of the BNPL debts waived due to family violence.

*Name changed for privacy and safety reasons

Case study: abusive BNPL debt cycle causes trauma and mental distress

Nikki* contacted the Good Shepherd Financial Independence Hub seeking assistance in relation to the BNPL debts accrued in her name by her violent ex-partner. The ex-partner had taken out other debts in Nikki's name as well, collectively resulting in Nikki carrying tens of thousands of dollars of debt and forced into paying many hundreds of dollars of multiple repayments per fortnight.

Nikki can't afford the repayments and she never saw the benefit of any of these debts. Every missed BNPL repayment results in an additional fee, driving Nikki further into debt. The financial abuse by her partner via BNPL products meant that Nikki was having difficulty affording everyday essentials like food and fuel. The mental strain of carrying this unfair debt and the trauma of the abuse has caused Nikki significant distress.

*Name changed for privacy and safety reasons

Good Shepherd practitioners find that BNPL providers offer limited and inconsistent hardship and family violence support. Some practitioners report the larger providers offer better family violence support than smaller providers, but this is not universal. One practitioner noted:

> BNPL have fewer financial hardship options. [One provider] has a comprehensive family violence policy and framework, however others do not. Most will give short-term hardship moratoriums fairly easily; however, will usually only consider long-term payment or other longer-term plans when family violence is involved and many will not even consider long-term solutions such as debt waiver, long-term payment plans, suspension of interest or fees and charges or waiver of fees and charges. These longer-term solutions are commonly negotiated with credit cards/unsecured personal loans routinely with the majority of lenders.

In the context of poor and patchy hardship support, abusive BNPL debts are concerning. It is easy for signs of financial abuse to be mislabelled as financial stress or irresponsibility, rather than appropriately managed as an abusive debt through waivers.

The case study below provides an example of appropriate family violence support, which reflects the type of practice we would like to see standardised across all BNPL providers via regulation, *in addition to* subsequent change to industry guidance in the BNPL Industry Code of Practice ('Industry Code'). It is critical that family violence victim-survivors are not asked for or required to provide evidence of abuse in order to access hardship support. While showing a constructive response after financial stress emerged, the case study also provides an example of where a more preventative approach could have been taken to avoid unaffordable BNPL debts in the first place, within the context of family violence.

Case study: debt waiver and no evidentiary hurdles for family violence support

Diane* is the carer to one of her grandchildren. The grandchild experienced abuse from Diane's son (the child's father). Diane is also a victim-survivor of family violence having been financially abused by her son. Diane relies on Centrelink payments of about $1100 per fortnight, but her basic expenses far exceed this amount.

Diane came to a partner organisation of Good Shepherd with unmanageable debts including consumer leases, a car loan and several BNPL debts. The BNPL loans were issued even after Diane had accumulated other substantial debts, and was relying on low income support payments.

The heavy debt load caused serious mental stress for the family – children had to go without, and Diane didn't have the money to visit her other grandchild in care. The debts affected Diane's ability to prove to government authorities that she was financially stable and able to take another grandchild into her own care.

Diane worked with a specialist family violence practitioner to manage the debts. The car loan was waived, and some of the BNPL providers were supportive, accepting the need for debt waivers on the basis of a letter from the practitioner, and not requiring formal evidence of family violence in order to support Diane.

*Name changed for privacy and safety reasons

Financial stress and hardship

Good Shepherd frequently sees financial stress and hardship among clients using BNPL. Among surveyed practitioners:

- 84% said clients with BNPL debt had opened additional BNPL accounts to try to manage the debt
- 78% said clients had made late BNPL payments and incurred fees
- 75% said clients with BNPL debt cut back on or went without essentials such as food, medication and energy in order to service the BNPL debt

- 72% said clients had missed other essential payments in order to make BNPL payments
- 56% said clients had used credit cards/loans, or loans from family or friends, to make BNPL payments.

Importantly, this data shows that many experiences of financial stress and hardship are invisible to industry and the ombudsman because people are making sacrifices on essentials, missing other payments, or resorting to other sources of credit (formal and informal) in order to maintain BNPL payments and keep accounts open. Statistics on hardship program use are therefore likely to hide a 'dark figure' and substantially underestimate the number of BNPL users experiencing financial stress and hardship.

The case study below highlights how hardship risks are missed, or not enquired into, when BNPL accounts are issued, giving rise to long-term debt burdens.

Case study: BNPL debts issued despite hardship red flags

Abigail* is a sole parent to a young baby and relies on a social security income. A young woman in her early 20s, Abigail is a major target of BNPL marketing. Abigail was issued with several BNPL accounts and payday loans within a six-month period, such as Afterpay, Zip Pay, Salon Pay and Cash Direct. The BNPL debts amounted to $3500. One of Abigail's debts also included a Cigno loan, which features very high late fees and account-keeping fees, and adds substantially to her total debt obligations.

Abigail found the BNPL debts very easy to obtain, but they were unaffordable. At the time of seeking assistance from Good Shepherd no payments had been made towards any of the BNPL or payday loan debts. Abigail worked with Good Shepherd to develop a repayment plan, and hopes to be free of all debts in two and a half years, as she approaches her mid-20s.

*Name changed for privacy and safety reasons

Despite the prevalence of financial stress and hardship among clients using BNPL, Good Shepherd practitioners report inadequate and inconsistent hardship support, including large variation in response times, cooperation, and willingness to negotiate affordable payment plans from hardship teams. Because of their targeted online presence, many BNPL providers do not have readily available options for face-to-face or telephone contact, which can make negotiating hardship arrangements more difficult.

Looking at the financial experience of their clients as a whole, two thirds of surveyed practitioners reported that BNPL has made financial management worse for some or most of their clients. A smaller proportion (20%) said it had helped some clients manage their finances. This indicates BNPL can be used safely and affordably when lending is undertaken responsibly. It also suggests that some benefits currently experienced through products like BNPL could be better available to people through alternatives such as No Interest Loans and default no-interest payment splitting options for essential services. However, it is important to note that the need for these financial supports is driven by welfare payment rates that trap people in poverty, and low-paid, insecure work. In addition to BNPL regulation, these drivers must be addressed in order to prevent long-term financial harm.

Misleading marketing of BNPL, creating barriers to affordable loans

Another harm identified by our practitioners is the misleading or confusing marketing of BNPL products as something other than debt or credit, and obfuscation about the effective interest rates attaching to BNPL in the form of late payment and account-keeping fees. Our practitioners find that clients commonly see BNPL as something other than credit/debt, like layby. This is a significant issue when 78% of practitioners report that clients with BNPL debts had made late payments and incurred fees. As one practitioner commented:

> BNPL has a clear end goal provided [there are] no late payments, it is also short term, which makes it clearer to repay compared to long term loans and credit cards. However, the problem with that is that is viewed less seriously as a debt when compared to cards and loans. I see clients talking casually about BNPL but wary of credit cards, when they are the same things. BNPL has done a great job to remove the stigma of 'bad credit' when that is exactly what BNPL is.

Another practitioner commented on the costs generated by late fees and the spurious presentation of BNPL as a true 'no interest' option:

> These products are extremely flexible and easily available. They end up costing more than what the consumer intended however due to late fees. This is something that is not clear from a long-term cost point of view which is why some people end up in a cycle. The products themselves

are probably designed in this way which is what makes them such lucrative products.

This cycle can then shut people out of affordable No Interest Loans (NILs) provided by our national network of loan providers. Good Shepherd NILs managers see clients with numerous BNPL accounts who have been led to believe it is something other than credit/debt, and who do not realise BNPL debts may affect their ability to get an affordable No Interest Loan in the future.

Question 3: Are the guiding principles appropriate and fit for purpose to inform the development of a BNPL regulatory framework? What other factors should be considered?

We support the proposed guiding principles for a new BNPL regulatory framework, subject to the comments below.

The first principle requires the regulatory framework to 'improve consumer protections by addressing the main instances of consumer harm arising from BNPL products while continuing to ensure BNPL products are accessible to consumers.

This could be strengthened by aspiring to a positive goal of 'good consumer outcomes' to prevent new harms emerging, rather than seeking to address harms after the fact.

The second and third principles, aimed at encouraging competition, require the regulatory framework to be 'flexible enough to allow new BNPL providers into the market and for new and existing BNPL providers to bring new financial products onto the market', and to 'respect the competitive nature of the market'.

We do not consider the regulatory framework should support competition per se: competition is simply (and only potentially) a means to an end; in this case, the end is good consumer outcomes that see people able to access safe, affordable, suitable and transparent credit products where necessary.

Competition may produce good consumer outcomes, such as lower or no fees and greater affordability. Conversely, low barriers to entry and a profusion of BNPL providers may produce worse consumer outcomes if a diffuse market is harder to regulate. It can encourage the entry of providers with tight margins and little room for investment in good customer support, including hardship and family violence support. At present, the regular entry of new BNPL providers into the market makes it difficult for some of our clients to identify what and who they are signing up to, and consequently for our financial counsellors and No Interest Loan managers to establish the debts/liabilities of clients, offer affordable loans, and help clients manage their debts.

We support the fourth principle, which requires the BNPL regulatory framework to 'consider the existing regulatory arrangements for comparable regulated credit products, such as credit cards, small amount credit contracts (payday loans), consumer leases, and other types of personal loans.'

We similarly welcome the fifth and final principle, requiring the regulatory framework to be 'practicably enforceable by a regulator such as ASIC in a cost effective and efficient way that minimises the risk of avoidance behaviour while considering the existing regulatory framework for financial products and BNPL industry self-regulation.'

We support an interpretation of these principles that treats BNPL products the same as comparable and substitutable credit products with a similar risk of harm (such as credit cards), by bringing BNPL products within the *National Consumer Credit Protection Act 2009* (Cth) ('Credit Act').

Questions 4 and 5: Of the three options, which option do you think is most appropriate? Would you change any aspects of that option? What do you think are the issues with the other two options?

Regulatory options

Of the three regulatory options, **we support Option 3** (regulating BNPL under the Credit Act, like other credit products).

Based on what we know of each option, Option 3 is preferrable because it would require BNPL providers to take the following steps to promote good consumer outcomes and avoid harm (see Table 1).

Table 1. Comparison of Options with respect to financial abuse and family violence

Step required of BNPL providers	Option 3	Option 2	Option 1	Does this step help in situations of financial abuse/family violence?
Enquire into and verify a customer's financial situation	Yes	Possibly not	No (only 'bespoke affordability test' under Credit Act)	Yes, helps to prevent identity fraud, coercive debts, and unaffordable debts
Check that the BNPL product meets a person's needs and objectives	Yes	Possibly not	No	Yes, helps to prevent fraudulent, coercive and unaffordable debts
Check that the product is not unsuitable for the person	Yes	Yes	No	Yes, helps to prevent fraudulent, coercive and unaffordable debts
Allow customers to set their own spending limit, and be prohibited from increasing this limit without customer permission	Yes	Partially	No	Yes, promotes safe BNPL access and helps to prevent coercive and unaffordable debts
Follow regulated fee caps for missed or late payments, and disclose these fees	Yes	Yes	No	Yes, helps to prevent unaffordable debts
Follow guidance under a revised Industry Code for identifying family violence/financial abuse	Yes, but only applies to all providers if Code membership is mandated	Yes, but only applies to all providers if Code membership is mandated	Yes, but only applies to all providers if Code membership is mandated	Yes, best-practice guidance would help BNPL providers offer safe and effective support to victim-survivors, including debt management
Follow mandated hardship requirements under/consistent with the Credit Act	Yes	Yes	Unclear	Yes, helps victims-survivors manage abusive and unaffordable debts
Take steps to avoid ASIC enforcement action under the Credit Act	Yes	Partially/unclear	Largely no; perhaps penalties would attach to affordability test under Credit Act	Yes, enforcement penalties promote responsible lending at a systemic level by targeting the wider conduct of a BNPL provider (compare with focus on individual customer wrongs in AFCA processes)

Subsequent to the adoption of Option 3, family violence guidance under the Industry Code should align with the Australian Banking Association's financial abuse and family & domestic violence guidelines, to build staff capacity to understand and identify family violence, and provide safe and consistent support. It is important to note that the Industry Code is not enforceable, and should be developed in order to further build the capacity of the financial sector to respond to family violence, not to replace regulatory safeguards that prevent financial abuse and fraudulent/coercive debt.

We urge that through regulation of BNPL, Treasury ensure that legislative changes to the Credit Act do not negatively impact NILS and other not-for-profit microfinance services. The NILs scheme is a not-for-profit model for delivering safe and accessible credit to people on low incomes and social security payments. Explicit exemptions for these schemes could be detailed in the *Credit Act.*

Best-practice family violence support would include ongoing family violence training for BNPL providers, and a clear and consistent position that evidence of family violence (e.g. intervention orders, police reports, caseworker verification) should not be requested or required of victim-survivors when disclosing family violence and seeking support.

Regardless of which option is implemented, we strongly recommend that BNPL providers be required to notify people of alternative money sources and support services when affordability and/or family violence issues become known, including when BNPL providers are considering issuing a product. This could include referral information for:

- National Debt Helpline
- Mob Strong Debt Help
- No Interest Loans
- 1800 Respect, for family violence support
- Emergency relief services, including food

Complementary reforms

The Options Paper correctly recognises that complementary reforms are necessary when addressing the harms of BNPL. These harms could be better avoided if the drivers of BNPL use were addressed, and people did not have to resort to debt for everyday essentials, or when leaving an abusive relationship and establishing a new home. Priority reforms include:

- establishing a minimum income floor by increasing income support base rates (including JobSeeker) to at least the Age Pension level
- strengthening debt-free financial support for family violence victim-survivors, by increasing the amount and accessibility of the Escaping Violence Payment
- maximising alternatives to BNPL, by supporting the promotion and delivery of No Interest Loans
- ensuring people have a regulated right to interest free instalment payments for essential and important services, and that these rights are promoted and enforced.

A framework of regulated rights to instalment payments could be led by the Australian Government, in collaboration with the States and Territories and local governments. These rights should apply and be enforced across services such as energy (where, as the Options Paper notes, they already exist), water, telecommunications, rental housing, council rates and car registration.