



13 March 2025

[REDACTED]
Senior Executive Leader, Credit, Banking and General Insurance
Australian Securities and Investments Commission
L5, 100 Market Street
Sydney NSW 2000
[REDACTED]

Dear [REDACTED]

**BUY NOW PAY LATER REFORM - RESPONSE TO ASIC CONSULTATION ON
REGULATORY GUIDE 000 (LOW COST CREDIT CONTRACTS)**

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia¹. We welcome the opportunity to respond to the Australian Securities and Investments Commission's (ASIC) Consultation Paper 382, *Low cost credit contracts (CP322)*² and Regulatory Guide 000, *Low cost credit contracts (Draft RG)*. We are proud to represent around 90 per cent of the buy now pay later (BNPL) market.

BACKGROUND AND CONTEXT

We recently provided a submission to Treasury on the draft *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025* (copy attached) which outlined concerns not only with the timing and implementation of the BNPL Reforms but also several of the provisions introduced by the reforms. We note those regulations have now been made in the form Treasury consulted on with the enactment of the *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025* (BNPL Regulations).

Separately, we asked ASIC to consider adopting a facilitative compliance approach to reforms introduced by Schedule 2 to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024* (Cth) (BNPL Reforms) (copy attached), given the significance of those reforms for BNPL

¹ [Australian Finance Industry Association \(afia.asn.au\)](https://afia.asn.au).

² ASIC, [CP 382 Low cost credit contracts | ASIC](#)
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providers and challenges associated with the upcoming compliance date of 10 June 2025 (**Compliance Date**).

In response to CP322, AFIA now submits there are several aspects of the Draft RG which require amendment and/or clarification. Our detailed comments and recommendations are set out in Attachment A.

CLOSING COMMENTS

We appreciate ASIC's consideration of our feedback to CP322 and look forward to working collaboratively to ensure a smooth transition to the new regulatory framework.

We would welcome another opportunity to consider any further draft of the Regulatory Guide at the time when there is greater certainty on the final regulations.

Should you wish to discuss our submission or require additional information, please contact me at

[REDACTED] mobile [REDACTED] or [REDACTED] mobile [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

Executive Director, Policy and Public Affair

ATTACHMENT A: AFIA'S DETAILED RECOMMENDATIONS

1. Proposal B2 – Scaling down inquiries and verification

- a. ASIC proposes under Proposal B2 of CP322 to set out guidance on the mandatory inquiries that must be made about a consumer's financial situation as part of the obligation to make reasonable inquiries and verification for a low cost credit contract (LCCC): see Draft RG 000.25–RG 000.33.
- b. While Draft RG 000.35 highlights that the obligations in section 130(1) of the National Consumer Credit Protection Act 2009 (NCCP Act) can be scaled down, we are concerned that it does not provide sufficient certainty as to what extent verification can be scaled down.
- c. Additionally, we note regulation 28HAD(6) of the BNPL Regulations requires licensees to seek to obtain information that it 'reasonably believes to be substantially correct about' the consumer's income, expenditure and any LCCCs, small amount credit contracts or consumer leases to which the consumer is currently a party. As submitted to Treasury on the exposure draft version of the BNPL Regulations, this conflates two separate concepts – inquiries and verification. Although regulation 28HAD(6) is made only in relation to the inquiry obligation in section 130(1)(b), it contains two distinct steps: "you must seek to obtain" (i.e. inquiries must be made by the provider) certain information that "you reasonably believe to be substantially correct" (i.e. the information must be plausible). An LCCC provider that seeks to discharge its obligation to reasonably believe the information obtained from the customer is correct is, in our view, performing a form of verification.
- d. We understand from our discussions with both Treasury and ASIC that the policy intention is that the verification obligation in section 130(1)(c) could be satisfied by the formation of a 'reasonable belief' for the purposes of regulation 28HAD(6) in appropriate circumstances, and in accordance with the scaling factors set out in section 133BXC(3) of the NCCP Act.
- e. The issue of verification and its interaction with the obligation to make reasonable inquiries is crucial to ensuring that the government's policy intent is achieved in implementing a modified responsible lending regime. Given ASIC's regulatory guidance in RG209 (which gives examples of verification that could be considered, such as payslips or bank statements), it is especially important for ASIC to provide BNPL firms with an appropriate degree of regulatory certainty on this issue.
- f. Importantly, scaling the standard of verification down to a reasonable belief is not tantamount to scaling down to 'nothing' - BNPL providers will, at a minimum, be conducting negative or partial credit checks, which can provide rich insights into a customer's financial situation. The revised and final Explanatory Statement to the BNPL Regulations also clarifies licensees could use

information obtained pursuant to regulations 28HAD(3) and (4) to determine whether they reasonably believe that the information obtained under regulation 28HAD(6) is substantially correct. Whilst providing some clarity that these provisions include both inquiries and verification obligations, definitive guidance from ASIC is still required.

g. We therefore submit that the final Draft RG should be updated to:

- i. acknowledge that satisfying regulation 28HAD(6) could also have the effect of satisfying the verification obligation in s130(1)(c);
- ii. clarify that the obligation to take reasonable steps to verify the consumer's financial situation can be, depending on the circumstances:
 - i. satisfied if the licensee has obtained information about the consumer's income and expenditure that it 'reasonably believes to be substantially correct' for the purposes of regulation 28HAD (which sets out inquiries that must be made for the purposes of s130(1)(b) of the NCCP Act); or, alternatively
 - ii. verification of information against the credit check obtained may be sufficient to satisfy s.130(1)(c) having regard to the scaling factors; and
- iii. include guidance to explain the circumstances in which ASIC would consider this approach to be appropriate.

2. RG 000.1: Commencement date

- a. RG 000.1 (including the 'Note') and the definition of 'commencement' in the Key terms section should be updated to reflect the commencement date of 11 June 2025.
- b. Section 2(1) of the Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024 provides that Schedule 2, Parts 2 to 10 commence on:

A single day to be fixed by Proclamation.

However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

3. RG 000.21

- a. As stated within this provision, 'pre-commencement contracts must comply with the fee caps from commencement'. It remains unclear as to whether BNPL providers will need to base such calculations on the fee caps contained in the current regulations, or whether, for example, providers are able to apply the new fee caps outlined in the new regulations to existing contracts from 11 June 2025.
- b. We welcome further clarification in the Draft RG to ensure that BNPL providers are best placed to comply with these requirements and to mitigate confusion and consumer impact post-commencement. Certainty on the fee cap requirements prior to commencement will assist providers to build system-based solutions and implement compliance protocols to address these obligations in respect of both pre- and post-commencement contracts.

4. RG 000.29

- a. ASIC notes at Draft RG 000.29 that benchmarks can be useful to test whether information is plausible, for the purpose of forming a reasonable belief that the information provided by a consumer in relation to their financial situation is 'substantially correct'.
- b. AFIA notes that the introduction of such benchmarks by individual providers will likely require substantial upgrades of internal systems and Information Technology (IT) investments, which are unlikely to be realised before the Compliance Date.

5. RG 000.31 to RG 000.37

- a. AFIA notes that the financial threshold for negative credit checks is LCCCs with a value of **less than \$2000** (per RG 000.31 and regulation 28HAD(2) of the BNPL Regulations).
- b. This is different to the threshold for the rebuttable presumption that LCCCs with a credit limit of the prescribed 'threshold amount' of **\$2,000 or less** (or a threshold prescribed by the regulations) will be presumed to be 'not unsuitable' (per RG 000.37 and NCCP Act, s133BXE and s133BXF).
- c. Applying different threshold tests is likely to present practical implementation challenges for LCCC providers.
- d. AFIA requests acknowledgement from ASIC about these differences, and any policy explanation as to why these thresholds are different. AFIA also asks ASIC to consider whether there is an opportunity for ASIC to align these thresholds under its regulatory guidance.

6. RG 000.36

- a. Table 2 (Mandatory factors to consider as part of 'reasonable' inquiries and verification), makes reference to providers asking targeted questions of consumers in determining whether they are experiencing financial vulnerability for the purposes of section 133BXC(3)(c) of the NCCP Act.
- b. AFIA submits that examples of these 'targeted questions' should be provided to assist providers in interpreting and applying ASIC's guidance in a practical context.

7. RG 000.39

- a. In relation to rebuttable presumptions for assessments, this paragraph states:

The presumptions only apply to a consumer's requirements and objectives. You will still need to assess the consumer's ability to comply with their financial obligations under the contract. You will also still need to make reasonable inquiries about the consumer's requirements and objectives under s130.

- b. We presume the final sentence of the above excerpt is an error, and is instead intended to say, 'You will still need to make reasonable inquiries about the consumers financial situation under s. 130'. AFIA submits that this provision creates uncertainty, insofar as it suggests providers will still have to conduct inquiries as to a consumer's needs and objectives despite the presumption that the product will meet their stated needs and objectives.
- c. AFIA submits that further clarification and examples to illustrate how this provision will function in practice will be of significant assistance to providers. AFIA submits that these examples could take a similar form to the illustrative examples set out in Regulatory Guide 209: Credit licensing: Responsible lending conduct, which existing providers may have be familiar with.³

8. RG 000.55

- a. RG 000.55 provides that a protected increase to a consumer's credit limit under an LCCC may be made where the terms of the LCCC after the increase are 'substantially the same' as the terms of that LCCC immediately before the increase.

³ See eg RG 209.39, 209.53, and 209.57.
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- b. AFIA notes that minimal guidance has been included as to what might constitute a substantial change in contract terms.
- c. While the example of a change in fees is provided under this paragraph, AFIA requests further clarification and examples on what might be considered a substantial change to the point where the new contract terms are no longer sufficiently similar to those contained in the original LCCC.

9. RG 000.59

- a. RG 000.59 reflects s133BXG of the NCCP Act, which requires BNPL providers to have a written policy known as an 'unsuitability assessment policy' incorporating the requirements which are summarised in Table 3.
- b. AFIA requests further clarification as to whether ASIC expects this policy to be prepared as an entirely new document or whether it will consider this requirement to be met if the policy requirements are included in a provider's existing responsible lending policy(ies).

10. RG 000.60-62

- a. RG 000.60 restates the requirement in s133BXA(1) of the NCCP Act that providers can elect to comply with the modified responsible lending obligations for all LCCCs or for a specified class of LCCCs.
- b. While RG 000.62 suggests that the standard responsible lending obligations will apply where a provider does not make an election in relation to all or a class of LCCCs, it is unclear whether this applies to pre-commencement contracts where a provider subsequently seeks to increase a pre-commencement consumer's credit limit.
- c. Accordingly, AFIA welcomes additional clarification on whether this expectation extends to LCCCs entered into by BNPL providers prior to the commencement date.
- d. If the answer to this is no, AFIA submits that additional clarification should be included to confirm what obligations apply to providers which choose not to make an election affecting any **pre-commencement contract** and, in such a situation, how a provider would increase limits of issue additional credit.

11. RG 000.64

- a. AFIA suggests that the list of examples of permitted means of electronic disclosure in RG 000.64 should be updated to include provision of required material by email for consistency with the new electronic disclosure provisions in section 331 of the NCCP Act.

12. RG 000.66

- a. RG 000.66 sets out ASIC's expectations in relation to AFCA membership for credit representatives which engage in credit activities involving LCCCs.
- b. RG 000.66(a) provides that such credit representatives are only required to maintain AFCA membership if they collect repayments from the LCCCs.
- c. AFIA requests further clarification as to whether this requirement applies to all credit representatives in their capacity as agents, employees or contractors of a body corporate (that is, where those credit representatives would need to apply for and maintain individual AFCA membership) or whether those credit representatives will be taken to have complied with the requirement in RG 000.66(a) if the relevant employing, principal or contracting entity maintains its own AFCA membership.

13. RG 000.73

- a. RG 000.73 sets out specific requirements for LCCCs (in addition to the requirements under s17 of the National Credit Code).
- b. AFIA requests further clarification as to whether there is or will be a prescribed form (for example, a modified financial table), or whether providers will have discretion to adopt any form that contains the required information in a way that aligns with their existing application and customer disclosure processes.