

7 March 2025

██████████, Senior manager
Regulatory Reform & Implementation
Australian Securities and Investments Commission
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By email: rri.consultation@asic.gov.au

Dear ██████████

CP 382: Low Cost Credit Contracts

The Consumer Credit Legal Service (**CCLS**) is a specialist Community Legal Centre that offers state-wide legal advice services in Western Australia on financial and consumer law matters. CCLS focuses on supporting individuals experiencing vulnerabilities and challenges in accessing the legal system. CCLS is committed to providing assistance to individuals experiencing financial abuse through the pilot of our Financial Abuse Legal Service, which has received project funding until the end of the 2025/2026 financial year from the Law Society of WA's Public Purposes Trust.

CCLS welcomes the opportunity to comment on the Australian Investment and Securities Commission's (**ASIC**) Draft Regulatory Guide 000 Low Cost Credit Contracts (**Draft Guide**). This short submission will focus on the need for explicit recognition of the relationship between financial abuse, and consumer lending.

Financial abuse is a pervasive form of interpersonal violence that leads to long-term financial insecurity for women and their children. It is often facilitated by perpetrators through consumer lending. In November 2022, Good Shepherd Australia and New Zealand reported that "one in four Financial Counselling and Capability practitioners (saw) coercive debt in at least half of their clients using BNPL."¹ This mirrors our clients' experiences of perpetrators being easily able to access Buy Now Pay Later (**BNPL**) platforms and obtain credit in our client's name without our clients' knowledge and/or coercing them into taking out loans that they did not want or benefit from, without further enquiry from the lender.

The issue of financial abuse and consumer lending is broadly acknowledged and has been raised repeatedly by front line legal services. As it stands, the Draft Guide acknowledges financial vulnerability and sets out high-level harm mitigation strategies; however, it fails to specifically recognise the impact of financial abuse in consumer lending. This is despite the recent discourse on the weaponisation of consumer lending arrangements against victims and victim-survivors.

CCLS encourage ASIC to specifically address financial abuse in the Draft Guide, noting that it has now been formally recognised as a reasonable cause of financial hardship in the National Credit Code and National Consumer Credit Protection Act 2009, and recognising its impact on credit reporting of financial

¹ Good Shephard Australia and New Zealand, *Safety net for sale: The role of Buy Now Pay Later in exploiting financial vulnerability* (Report, November 2022).

hardship information. Recently, consumer advocate groups, including specialist credit and debt services, wrote to the Treasury on the need for legislative, administrative, and policy-based recognition of Financial and Domestic Violence (**FDV**) in the BNPL and Low Cost Credit Contract (**LCCC**) space (the 2024 Submission).²

Risks of financial abuse in credit lending

In the 2024 Submission advocates confirmed over-indebtedness and multiple BNPL accounts routinely featuring in the debt mix of victim and victim-survivors of family violence.³ This is in part due to the ease of obtaining this type of credit.

BNPL providers, at times, accept self-declared income figure without necessarily making further inquiries. This means that perpetrators with access to a victim-survivor's identification could apply for credit under the victim-survivors' name and make unverified claims about their financial situation.

We are also concerned that our clients and our lawyers as their authorised representatives continue to experience difficulties in obtaining proper and appropriate responses from BNPL providers to information or documentation requests. The failure to adequately respond exacerbates and prolongs the financial abuse and emotional toll that debt has upon our clients.

CCLS recommend that where the Draft Guide purports to set a standard that requires reasonable verification, particularly where there are inconsistencies or gaps in the information provided by a consumer about their financial situation, specific examples acknowledging the signs and complexities of financial abuse and credit lending should be included.

CCLS acknowledges that many lenders now have dedicated teams to deal with people experiencing financial abuse. We encourage ASIC to include in the guide examples of where lenders can upskill those assessing or onboarding clients to recognise the risks of LCCCs being used to perpetrate financial abuse.

As part of this work, we ask ASIC to include in the Draft Guide the requirement for lenders to:

- Develop a financial abuse risk assessment model.
- Develop a fraud detection model which at a minimum, flags situations where:
 - an applicant's stated reason for obtaining the loan suggests they may not be receiving any benefit from such loan;
 - an applicant has an application for BNPL or LCCC refused, then reapplies within a short time but provides different income and expense figures on the new application; or

² Choice, Submission to Senate Economics Legislation Committee Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024, *An inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* (16 May 2024).

³ Ibid 5.

- an applicant denies that they have any existing payday loans, consumer leases, or BNPL products, but a credit check shows records of two recent inquiries made by lenders that operate in these markets.
- Encourage transparency and explain to the consumer the risk associated with the presumption that a credit limit under \$2,000 will not be unsuitable for consumers.

We are also advocating for the Draft Guide to incorporate examples of lived experience of financial abuse and noting additional vulnerability of culturally and linguistically diverse customers and the need to potentially engage with interpreters at an early stage of onboarding.

The following is an example of where a BNPL arrangement was used as a tool of control by a perpetrator, in this instance establishing the credit and threatening to default knowing the impact this could have on the victim-survivor.

Case study

Grace*, a victim-survivor of financial abuse and FDV, sought legal advice for several loans (including a BNPL arrangement) taken out in her sole name for the benefit of her abusive ex-partner. The ex-partner had been making the repayments for the loans, but he continually threatened to stop making payments as a form of coercive control over Grace. This way the perpetrator was able to remain in contact with Grace.

CCLS requested documents from the BNPL provider, pursuant to clause 10.9 of the AFIA BNPL Code of Practice. However, CCLS experienced issues in obtaining the relevant documents. CCLS were told that the BNPL provider did not have physical, or paper statements and the client needed to log on through the application to see their account. However, this was not possible as Grace had not set up the account, her ex-partner had.

The account was referred to a third-party debt collector and this added to Grace's financial vulnerability. With assistance from CCLS, the BNPL provider ultimately agreed to waive the debt and provided Grace with additional non-financial loss compensation.

*name changed

While CCLS was able to obtain a favourable outcome for Grace, we maintain concerns for unrepresented victims of financial abuse who are unaware of their options and unable to advocate for themselves. We support stronger guidance by the regulator to set out clear obligations and expectations for BNPL providers, requiring them to recognise and act on red flags for financial abuse when assessing applications for credit.

Clarification around Modified Responsible Lending Obligations

CCLS recognises that detecting financial abuse in the consumer lending space can be difficult, and that guidance is required on processes that can help lenders identify red flags. CCLS recommends that the

Draft Guide provide specific guidance to lenders and provide examples to help lenders understand scenarios where financial abuse occurs and interplays with the provision of BNPL and LCCC's.

CCLS acknowledges that the Draft Guide has tried to be proactive in briefly highlighting consumer vulnerability but without specifics and examples, it remains abstract and vague. We recommend that ASIC introduce words such as 'family violence', 'domestic violence', 'intimate partner violence'.

Furthermore, we ask that ASIC introduce into the Draft Guide the requirement, and provide examples to:

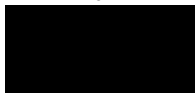
- Make further inquiries into a consumer's history and or reliance on social security payments.
- Make further inquiries through structured questioning into a consumer's circumstances, including their ability to identify any external influences that may have coercive intentions.
- Provide mandatory warnings to consumers that using BNPL and LCCC for rent, food or utilities is a risky and inappropriate use of credit.

We are concerned that many providers of LCCC have not previously been required to comply with any form of responsible lending obligations and have not previously turned their minds to identifying and mitigating the risk of financial abuse of their products. Therefore, the Draft Guide needs to be clear with the expectations on lenders, which we do not consider it does in its current form.

Conclusion

In our experience, financial abuse is often facilitated through easily accessible BNPL arrangements. Given the continuous expansion of the LCCC market, it is critical that ASIC embed from the outset in the Draft Guide the risks and associated harms that lenders are expected to identify and respond to it.

Sincerely,



CEO
CONSUMER CREDIT LEGAL SERVICE