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Senior Manager
Regulatory Reform & Implementation
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

5 March 2025

By email: rri.consultation@asic.gov.au

Dear [REDACTED]

CONSULTATION PAPER 382: LOW-COST CREDIT CONTRACTS (THE CONSULTATION)

The Mortgage and Finance Association of Australia (**MFAA**) is Australia's peak industry body for the mortgage and finance broking industry with over 15,500 members. More information about the MFAA can be found in **Attachment B**.

In our earlier submissions on the regulation of buy now pay later (**BNPL**) products, we described the impact of BNPL facilities on a borrower's capacity to obtain a home loan.¹ The MFAA therefore welcomes the amendment to the National Credit Code to BNPL products as regulated credit² and are pleased to contribute to ASIC's consultation on regulatory guidance.

OUR SUBMISSION

The MFAA is supportive of the changes underway to regulate BNPL products and recognises the BNPL industry has in recent years taken steps to enhance consumer protection through the introduction of the Buy Now Pay Later Code of Practice³ and its oversight through the BNPL Code Compliance Committee.

As a general observation of the modified responsible lending regime, the regime adds a layer of complexity that was arguably unnecessary given the wording of the current law in relation to the regulation of credit assistance (i.e. that 'reasonable' steps must be taken). This makes the interaction between this draft RG and RG 209 somewhat unclear. For example, one complexity and risk area for ASIC may be that **BNPL** lenders may opt to apply the standard responsible lending rules rather than the modified framework. Given that responsible lending rules are scalable, lenders might choose a lower standard under the guise of reasonableness. We expect BNPL providers to

¹ MFAA submissions include to Treasury <<https://cdn.sanity.io/files/t0x3ukgp/production/2047f13b1a5dcf2ecf8d75121b2b31a411f7282e.pdf>>, 9 April 2024 and the Senate Standing Committees on Economics, <<https://cdn.sanity.io/files/t0x3ukgp/production/3f6c2836b82b19efb0c5258e061e69af88351f69.pdf>>, 28 June 2024.

² Parliament of Australia, Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024.

³ Australian Finance Industry Association, Buy Now Pay Later Code of Practice, introduced 1 March 2022, <<https://www.afia.asn.au/bnpl-code>>.

follow regulations in good faith and uphold the spirit of the law to support good consumer outcomes. However, ASIC should be aware of this risk.

We continue to emphasise the importance of further education around BNPL for consumers as a credit product.⁴ We also understand that work is underway in relation to the participation of BNPL providers in comprehensive credit reporting.⁵ It is essential that BNPL facilities, including consumer credit liability information, are clearly visible on a consumer's credit report to support responsible lending assessments for other credit products.

Our responses to the consultation specific questions have been developed in coordination with Dentons and have designed to be helpful to ASIC in refining its guidance to the BNPL industry. Our responses to the consultation specific questions can be found in **Attachment A**.

CLOSING REMARKS

If you wish to discuss this submission or require further information, please contact me at [REDACTED] or [REDACTED] at [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]

Executive, Policy and Legal
Mortgage and Finance Association of Australia

⁴ MFAA submission to the Independent review of the credit reporting framework, <<https://cdn.sanity.io/files/t0x3ukgp/production/fc4611999413c557b0bb097673ac00af87101759.pdf>>, 7 June 2024.

⁵ Australian Government, *Review of Australia's Credit Reporting Framework – Final Report, September 2024*, page 83.

Attachment A – MFAA response to consultation questions

#	Proposal	Question	MFAA Response
B1	We propose to include guidance on who the regime applies to and how the obligations apply for low-cost credit contracts entered into before commencement: see Section B of draft RG 000.	Is our guidance clear?	The guidance provides a helpful overview of the transition of pre-commencement contracts into the new regime.
		Is any further guidance needed on how the regime applies to pre-commencement contracts?	ASIC could clarify further if AFCA should apply post-commencement rules on pre-commencement contracts. ASIC could also provide further guidance on its expectations on level of inquiries for credit limit increases on pre-commencement contracts that do not involve a new formal contract.
B2	We propose 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: see draft RG 000.25–RG 000.33.	Is our guidance clear?	The new RG does not clearly define the specific criteria a lender should seek in a credit report before either declining an application or designating a customer as vulnerable. The new RG presents an opportunity to further define the specific criteria that lenders should consider in a credit report before either declining an application or identifying a customer as vulnerable. Although defaults are mentioned, there is an opportunity to clarify the precise number or severity of defaults that would trigger vulnerability or justify a loan refusal. Furthermore, while the RG indicates that defaults do not necessarily mandate a loan decline—instead prompting further enquiries—there is an opportunity to refine this approach in the context of the auto-approval nature of most BNPL products, ensuring that system adjustments to include additional questioning do not unduly restrict customer access.

#	Proposal	Question	MFAA Response
		Do you suggest any changes? If so, please provide details.	ASIC could further clarify whether BNPL providers can rely on existing automated credit assessment tools (e.g., Open Banking data, customer spending behaviour) to meet inquiry requirements instead of or in addition to credit reporting information.
B3	We propose to set out guidance on the mandatory factors that must be considered in determining what constitutes 'reasonable' inquiries about a consumer's requirements, objectives and financial situation (and the steps taken to verify the information obtained from these inquiries): see draft RG 000.34–RG 000.36 and Table 2	Is our guidance clear?	ASIC notes that a more robust analysis may be required if products are poorly designed or attract especially vulnerable consumers. We suggest that it would be helpful for ASIC to provide an example such as of poor product design (or a product that is attracting especially vulnerable consumers) that could warrant a more robust analysis and what that analysis could look like.
		Do you suggest any changes? If so, please provide details.	ASIC may want to consider providing specific guidance on whether BNPL providers can rely on alternative methods of verifying financial circumstances, such as transactional data analysis or AI-driven affordability modelling.
B4	We propose to include guidance on the rebuttable presumptions that low cost credit contracts with a credit limit up to \$2,000 (or a threshold prescribed by the regulations) will: (a) meet the consumer's requirements and objectives, for the purpose of s131; and (b) be presumed to be 'not unsuitable' in terms of meeting the consumer's requirements and objectives for the purpose of s133: see draft RG 000.37–RG 000.42.	Is our guidance clear?	As currently drafted, the guidance is potentially ambiguous. ASIC should clarify how a provider can rebut the presumption in practical terms- e.g., what level of evidence would be sufficient?
		Do you suggest any changes? If so, please provide details.	See above.

#	Proposal	Question	MFAA Response
B5	We propose to include guidance on assessments for low-cost credit contracts that are larger than the initial limit provided, including on making the initial assessment, making protected increases, and the interaction with the rebuttable presumptions: see draft RG 000.43– RG 000.58.	Is our guidance clear?	RG000.51 is clear a protected increase can only be made within the protected period, and it must be at the request of the consumer or with the consumer’s written consent. The guidance overall is clear, but ASIC could provide further detail on the interaction between initial assessments and subsequent limit increases.
		Do you suggest any changes? If so, please provide details.	We suggest it would be helpful to BNPL providers for ASIC to incorporate further examples in the regulatory guide, including in relation to RG000.54 (when a BNPL would choose to make new inquiries and verification to help it determine whether the increase would be unsuitable for the consumer).
B6	We propose to include guidance on the requirement to prepare an ‘unsuitability assessment policy’, including when reviews are needed: see draft RG 000.59 and Table 3.	Is our guidance clear?	We think so.
		Do you suggest any changes? If so, please provide details.	ASIC could clarify whether smaller BNPL providers can adopt a simplified version of the policy, especially if they only offer low-value transactions. ASIC could also provide guidance on how frequently a provider is expected to review its policy and what constitutes a material event triggering a review.
B7	We propose to include guidance on how providers can elect to comply with the modified responsible lending obligations for a specified class of low-cost credit	Is further guidance needed on elections for all or a specified class of low-cost credit	ASIC could provide examples of circumstances where a provider may choose to not elect the modified responsible lending regime. ASIC should clarify whether an election applies at the entity level or must be made separately for each product type.

#	Proposal	Question	MFAA Response
	contracts: see Section D of draft RG 000.	contracts and how to revoke an election?	We suggest more guidance is needed on the process for revoking an election – can a provider simply switch to the standard responsible lending framework, or is notification to ASIC required?
B8	We propose to summarise other modified obligations that apply to low-cost credit contracts, including differences in requirements relating to electronic disclosure, credit representatives, comparison rates, default notices, contractual requirements, and anti-avoidance schemes: see Section E of draft RG 000.	Should we include additional guidance on these other modified obligations?	<p>ASIC could provide a minimum period of storage and availability of electronic disclosures</p> <p>We suggest ASIC provide examples of acceptable default notices and whether providers must proactively engage consumers before sending a formal notice.</p>

Attachment B – About the MFAA

The MFAA's membership includes mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage and finance broking industry.

Over time, consumers have increasingly sought the services of a mortgage and finance broker with the latest MFAA quarterly market share showing mortgage brokers facilitated 74.6% of all new residential home loans⁶ and approximately four out of ten small business loans⁷ in Australia.

The MFAA's role, as an industry association, is to provide leadership and to represent its members' views. We do this through engagement with governments, financial regulators and other key stakeholders on issues that are important to our members and their customers. This includes advocating for balanced legislation, policy and regulation and encouraging policies that foster competition and improve access to credit products and credit assistance for all Australians.

⁶ MFAA media release, *Mortgage broker market share reaches new record highs*, <<https://www.mfaa.com.au/news/mortgage-broker-market-share-reaches-new-record-highs>>, 3 December 2024.

⁷ Productivity Commission, *Small business access to finance: The evolving lending market Research paper*, September 2021, <<https://www.pc.gov.au/research/completed/business-finance/business-finance.pdf>>, pg 44.