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

RE: FinTech Australia – Feedback on ASIC Consultation Paper 382: Low cost credit contracts

FinTech Australia welcomes the opportunity to provide feedback on ASIC’s Consultation Paper 382, *Low cost credit contracts* ([CP 382](#)), and the accompanying draft Regulatory Guide 000, *Low cost credit contracts* ([Draft RG 000](#)) (**draft Regulatory Guide**). As the peak industry body representing Australia’s fintech sector, we support a regulatory approach that balances consumer protection with fostering innovation and financial inclusion.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech sector, representing more than 400 fintech companies and startups across Australia. As part of this, we work with a range of businesses in Australia’s fintech ecosystem, including fintechs engaging in payments, consumer and SME lending, wealthtech and neobanking, the consumer data right and the crypto, blockchain and Web3 space. Our vision is to make Australia one of the world’s leading markets for fintech innovation and investment. FinTech Australia regularly contributes to consultation processes and makes submissions on specific regulatory matters and proposals.¹

Our Submission

We understand that the draft Regulatory Guide is intended to help providers of low cost credit contracts to understand their key obligations, including how to comply with the modified responsible

¹ <https://www.fintechaustralia.org.au/policy submissions>

lending obligations. The Guide is necessarily limited by the regulatory parameters set out in the draft National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2025 (**draft BNPL Regulations**) and accompanying explanatory statement.² We are separately providing feedback on these instruments in alignment with the Government's stated policy intent of ensuring a scalable approach to BNPL providers' modified responsible lending obligations, commensurate with product risk profile.³

Our feedback below is focused on two key objectives: 1) ensuring sufficient regulatory clarity for providers in alignment with the policy intent of the new laws; and 2) ensuring sufficient time for providers to comply with the new modified responsible lending obligations through appropriate transitional arrangements.

Recommendations

1. Clarify the 'inquiries' and 'verification' modified responsible lending obligations

The current draft Regulatory Guide conflates the reasonable inquiries obligation with the verification obligation for the purposes of the modified responsible lending obligations under the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**). This is compounded by the lack of clarity in the draft Regulatory Guide on the extent to which the verification obligation can be scaled down. As a result, we believe the Regulatory Guide frames providers' 'modified' responsible lending obligations in a way that is no longer effectively scaleable, diverging from the stated policy intent of the Government.

Specifically, the verification obligation is subsumed within the inquiries limb in the current guidance. Under the heading "Mandatory *inquiries* about the consumer's income, expenditure and other credit products" (emphasis added), RG 000.28 refers to the obligation to "seek to obtain information that you reasonably believe to be substantially correct about...". A provider who seeks to discharge their obligation to reasonably believe the information to be substantially correct is testing the reliability of, or verifying, that information. There is no further guidance to clarify that a provider who has discharged their obligation to reasonably believe that information is capable of satisfying their verification obligation for the purposes of the Credit Act.

We acknowledge the wording in RG 000.28 is consistent with the wording in regulation 28HAD(6) of the draft BNPL Regulations, and are making separate submissions to Treasury in respect of the

² Treasury, 'Buy Now Pay Later - Draft Regulations' ([5 February 2025](#)).

³ See Commonwealth, *Parliamentary Debates*, House of Representatives, 5 June 2024, 3724 (Stephen Jones, Assistant Treasurer and Minister for Financial Services).

drafting of the Regulations on this point. However, we find that the draft Regulatory Guide is likely to add further regulatory uncertainty to this issue by expressly subsuming the verification obligation within the inquiries obligation and noting the verification obligation also applies per the Credit Act.

Further, although the draft Regulatory Guide acknowledges that the obligations in Section 130(1) of the Credit Act can be scaled down, it does not specify that the scaling factors in Section 133BXC(3) of the Credit Act can be used to scale down the verification obligation in particular. Instead, we believe that RG 000.35 and Table 2 should make it clear that, as a minimum standard, the factors in Section 133BXC(3) allow BNPL providers to reasonably believe that the information about a consumer is correct, provided there are no other factors to suggest further inquiries or verifications are required. Without this clarification, it is unclear to what extent the obligation to verify can be scaled down and, as a result, what is in fact enforceable by ASIC.

2. Provide transitional relief to licensees in respect of modified responsible lending obligations

FinTech Australia members remain highly concerned about the compressed timeline of 10 June 2025 for compliance with the new modified responsible lending obligations. We appreciate the transitional licensing arrangements ASIC has offered to providers who have applied for a credit licence (and had their application accepted for lodgement) in advance of this deadline.⁴ However, providers will still need to undertake extensive preparations, compliance change management and process updates, with dependencies on their stakeholders (such as suppliers, credit representatives) to meet the compliance requirements under the new laws. We implore ASIC to consider providing additional relief to licensees in respect of the modified responsible lending obligations under the Credit Act during a transitional period - for example, through a supervisory or no action period. This would be an equitable and appropriate solution to addressing the very brief timeframe for providers to comply with these new obligations, and is similar to the transitional licensing relief offered by ASIC to foreign financial service providers as well as conditional relief offered to life insurers from specific design and distribution obligations, for example.⁵

3. Concluding comments

FinTech Australia supports proportionate and flexible regulation of BNPL products that maintains consumer protections while fostering financial inclusion and innovation.

⁴ ASIC Information Sheet 285 (INFO 285), [Buy Now Pay Later Products: Credit Licensing](#), January 2025.

⁵ [ASIC Corporations \(Amendment\) Instrument 2024/497](#) and [ASIC Corporations \(Design and Distribution Obligations—Reissued Life Policies Class Exemption\) Instrument 2023/183](#), respectively.

We appreciate the opportunity to contribute to this consultation and welcome further engagement with ASIC to refine the draft Regulatory Guide on the key points above.