

12 March 2025

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Australian Securities & Investments Commission
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By email: rri.consultation@asic.gov.au

Dear [REDACTED],

Consultation Paper 382 – Low cost credit contracts

The Australian Financial Complaints Authority (AFCA) is the independent external dispute resolution (EDR) scheme for dealing with consumer complaints about financial products and services. The new regulatory framework commencing June 2025 will require all Buy Now Pay Later (BNPL) providers to be members of AFCA, as well as increasing standards for existing BNPL members.

AFCA welcomes the opportunity to provide feedback on ASIC's Consultation Paper 382 *Low cost credit contracts* and draft Regulatory Guide 000 *Low cost credit contracts* (Draft RG 000).

We support ASIC's work to develop regulatory guidance for the application of the new BNPL framework and obligations. ASIC's Regulatory Guides play a critical role in providing clarity and practical guidance to industry and consumers.

This submission highlights some areas in Draft RG 000 that may benefit from additional clarity and guidance and outlines AFCA's work to support the BNPL sector to develop and enhance complaint resolution.

1. Feedback on specific provisions of Draft RG 000

Draft RG 000 provides a clear and concise overview of the new obligations and helpful guidance on how key aspects of the new BNPL regime will apply.

Features in the Draft RG 000 which clarify complex points will be particularly helpful to consumers and industry in understanding and applying the new laws. For example, the summary of modifications to the responsible lending obligations in Table 1.

Drawing on AFCA's experience in dealing with responsible lending complaints, we offer some suggestions to clarify specific sections of Draft RG 000 to assist AFCA to respond to common issues we consider may arise in complaints.

1.1 Mandatory inquiries about consumer's expenditure and credit products

We suggest including further guidance to clarify how Regulation 28HAD will apply, focussing on:

- how ASIC considers providers should meet the obligations to obtain 'information that you reasonably believe to be substantially correct' and information about a consumer's 'expenditure'
- how information about existing debts and liabilities (including existing BNPL debts) should be obtained and taken into account in assessments.

We consider it would be particularly helpful to clarify how providers who provide low cost credit contracts (LCCC) with a total value of less than \$2,000 could meet the obligation to obtain information that they reasonably believe is true about a consumer's other BNPL debts.

1.2 Scaling of reasonable inquiries and intensity of verification

We think there is opportunity to further clarify the application of section 133BXC.

Table 1 in Draft RG 000 indicates that factors in section 133BXC may lower the scope and intensity of reasonable inquiries and verification (**scaling down** obligations). We consider this will be appropriate in many circumstances.

However, we note that section 133BXC may require obligations to be scaled up – based on, for example, the nature of a credit contract¹ or a consumer's financial vulnerability² - as well as scaled down. While this is acknowledged in draft paragraph RG 000.35, we note that it is not explicitly referred to in Table 1.

We suggest guidance should be added to the first two items in Table 1 to make clear that, in certain circumstances, considering factors in section 133BXC(3) may lead to **scaling up** the scope and intensity of reasonable inquiries and verification required under section 130.

1.3 Notifying consumers of credit limit increases

Draft paragraphs RG 000.43-58 explain the application of provisions allowing credit limit increases within a period of time after an assessment, known as 'protected

¹ Section 133BXC(3)(a).

² Section 133BXC(3)(c).

increases'. We think it would be beneficial to explicitly outline requirements relating to the timing and process of notifying consumers about credit limit increases, including clarification about:

- how and when providers should seek consumers' consent to protected increases (e.g. during the application process and/or contemporaneously with the increase)
- whether providers are required to provide notice to consumers at the time of an application for credit that they may later increase the credit limit, and in what circumstances
- whether providers are required to provide notice to consumers at the time any protected increases are applied, and how they should provide that notice.

Draft paragraph RG 000.51 states that a protected increase can only be made at the consumer's request or with their consent. However, the increase could occur up to two years after the date of a request or consent and AFCA believes some providers may seek to obtain prospective consent at the outset to cover the entire period of the assessment. ASIC guidance on this point would be helpful.

1.4 Setting the length of a protected period in initial assessment

We suggest providing further clarification in the guidance about how BNPL providers should set the length of a 'protected period' when making an assessment for a maximum credit limit. The guidance notes that the protected period can be up to 2 years but that a shorter period 'appropriate in the circumstances' **may** be specified and reducing the period **may** be considered based on particular information.³

1.5 Assessing financial vulnerability

Table 2 includes an explanation of factors that can be used in determining financial vulnerability under s133BXC(3)(c) and provides an example of asking consumers targeted questions, such as in relation to late payments.

In our view, financial vulnerability can arise in a range of personal circumstances and is much broader in scope than late or missed payments. We suggest including additional examples, such as information that the consumer is solely reliant on Centrelink benefits, any indicators of financial abuse, coercion or family violence, or whether there are any other examples that indicate the consumer has a limited ability to protect their financial interests.

2. Supporting BNPL providers to enhance complaint resolution

Some BNPL providers are already AFCA members with established arrangements for internal and external dispute resolution (IDR and EDR). To the extent that their

³ Draft RG 000.47 and 49.

existing arrangements do not meet regulatory requirements for licensees, they will need to upgrade their IDR systems and processes. Other BNPL providers seeking to operate under the new regime may need to make more extensive improvements to their processes and systems for complaint resolution.

AFCA is committed to supporting all members to develop their complaint resolution capabilities. As part of the transition to the new regime, AFCA will work directly with BNPL members to provide information and training focusing on enhancing IDR practices and meeting fairness standards and EDR requirements under the new regime. AFCA will also develop materials to assist BNPL members to understand AFCA's complaints process, including publishing an EDR guide. Once AFCA builds experience in dealing with BNPL complaints under the new regime, we will consider whether additional guidance would be beneficial. In the meantime, AFCA will use the guidance in the ASIC Regulatory Guide to guide parties in our process and inform our decisions. Under AFCA Rule A.14.2, AFCA decision makers have regard to industry guidance, including regulatory guidance from ASIC.

As BNPL has not been regulated as credit under the National Credit Code to date, AFCA data on BNPL complaints has been incomplete and has limited our insight into key trends and consumer issues. AFCA welcomes these reforms and to playing our role in providing greater transparency about the consumer experience of LCCC products under the new framework including in publishing data about complaints received, issues and outcomes and our systemic issues work. We also note ASIC's reporting on IDR data will enhance transparency and understanding of BNPL complaints.