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Committee Secretariate
Senate Standing Committees on Economics
PO Box 6100
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By email: economics.sen@aph.gov.au

Dear Senate Economics Legislation Committee

We welcome the opportunity to submit a response in relation to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* (the **Bill**).

We support the Government's approach to extending the provisions of the National Credit Code to the Buy Now Pay Later (**BNPL**) industry.

We further commend the Senate Committee for their engagement in BNPL regulation and their consideration of the Bill. This submission serves as an opportunity to discuss the Bill, in particular the proposed responsible lending framework and other matters we consider relevant in the Bill.

We believe that this inquiry is a positive opportunity to discuss elements of the Bill which may be adapted by Treasury, the elements which are not fit for purpose and the key issues that are absent from the Bill. We contributed to Treasury's consultation on the Buy Now Pay Later regulatory reforms undertaken earlier this year. Many of the issues we explored in that consultation are also set out in this submission.

We welcome any feedback you may have in respect of this submission, and we look forward to the outcome of this consultative process.

Yours faithfully

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Submission Paper

In response to Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024

About Hamilton Locke - Funds and Financial Services

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The Funds and Financial Services Team at Hamilton Locke (formerly, The Fold Legal) has become one of the go-to firms for cryptocurrency, blockchain, fintech and insurtech businesses seeking regulatory advice. Our Funds and Financial Services team is also one of Australia's largest as a result of the merger between The Fold Legal and Hamilton Locke.

We are known for our technical expertise and industry knowledge, which we use to provide practical solutions for our fintech, cryptocurrency and digital asset clients. Our expertise in financial and credit services is recognised by our ranking in Chambers and Partners Asia-Pacific and FinTech Legal Guides. Reflecting our commitment to client service, we also won Best Law & Related Services Firm (<$30mil) across several specialist categories the past 3 years based on direct feedback from our clients.

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We are a partner and member of Blockchain Australia, FinTech Australia and InsurTech Australia.

Executive Summary

The introduction of Buy Now, Pay Later (**BNPL**) has had a positive impact on encouraging competition with traditional forms of credit. The industry has seen rapid growth over the years and a clear regulatory approach is needed to ensure that BNPL providers have regulatory certainty and consumers are protected.

A limited form of regulation in the BNPL industry has been in place for several years, including in respect of the design and distribution obligations as well as through voluntary initiatives such as the BNPL Code of Practice.

We see the benefit in applying a consistent approach to the regulation of the BNPL industry and capturing BNPL providers as part of the broader concept of low-cost credit contracts (**LCCCs**). However, it is critical that regulatory design enables rather than stifles innovation and competition.

We support the proposed reforms in Schedule 2 to the Bill and are encouraged by the ongoing efforts to engage with industry to ensure that the development of regulation broadly aligns with the realities and risks of the industry, as well as the expectations of key stakeholders in the industry.

The proposed regulatory framework delivers welcomed regulatory clarity for BNPL. However, if the intention is that the Bill enables innovation and competition to continue to thrive while reducing the risk of regulatory arbitrage, then greater clarity and guidance is needed, particularly in relation to the modified responsible lending obligations framework.

We consider that a regulatory regime that is fit for purpose and easy to adopt by those regulated should be the main priority in developing further regulation for the industry.

Submission

1. Proposed Responsible Lending Reform

Modifying the existing Responsible Lending Obligations Framework

Presently, holders of an Australian credit licence are required to comply with the responsible lending obligations (**RLO**) set out in Chapter 3 of the *National Consumer Credit Protection Act 2009* (Cth) (**the Act**). The obligations impose both disclosure obligations as well as a requirement to undertake an unsuitability assessment before a consumer is provided, or assisted, with credit.

At a high level, credit licensees are required to make an assessment as to whether the loan is not unsuitable no more than 90 days before entering into the credit contract. As part of this assessment, the licensee must:[1]

- make reasonable inquiries of the consumer's requirements and objectives;
- make reasonable inquiries about the consumer's financial situation; and
- take reasonable steps to verify the consumer's financial situation.

'Reasonable inquiries' are not defined in the Act, but ASIC has provided regulatory guidance on the topic.[2]

Opt-in Model

The Bill proposes a modified RLO framework to create an opt-in RLO framework for LCCCs – that is, providers of LCCCs who do not wish to comply with the full RLO obligation can 'opt-in' to the modified RLO framework.

It is intended that this framework will enable the scaling of risks that are posed to consumers by certain types of LCCCs. This includes a requirement that LCCC providers develop and review a written policy to assess whether each LCCC would be unsuitable to the consumer.

[1] s 130 of the *National Consumer Credit and Protection Act 2009* (Cth).

[2] ASIC Regulatory Guide, RG 209 *Credit licensing: Responsible lending conduct*, December 2019.

The Explanatory Memorandum to the Bill states that the factors by which reasonable inquiries and verification are to be determined are intended to 'reduce the scope and intensity of existing information gathering and verification requirements under Part 3-2 of the Act'.[3] These factors that LCCC providers can have reference to include: [4]

- the nature of the LCCC;
- the nature of the target market;
- whether the consumer is financially vulnerable;
- whether the licensee has in place any procedures that reduce the risk of unaffordability or harm to the consumer; and
- any matters prescribed by the regulations.

BNPL providers would also be required to consider any additional matters that the regulations may prescribe.

Although the changes have been described as a 'modified' RLO framework with a 'reduction' in what is reasonably required, it is difficult to see how these modified obligations fundamentally differ to the existing RLO framework or how they otherwise ease compliance for BNPL providers. We take this view because we consider that the existing RLO framework is already scalable in nature; that is, an assessment of what is reasonable (as part of the requirement to make reasonable inquiries and verification) will vary based on the circumstances. ASIC already calls this out in paragraph 81 of Regulatory Guide 209: *Credit licensing: Responsible lending conduct*. The key distinction for BNPL under the modified RLO framework appears to be that scalability, that is, whether the LCCC provider has made 'reasonable' inquiries or taken 'reasonable' steps to verify, is to be determined by reference to the prescribed list of matters in the Bill. By comparison, the full RLO has guidance provided by ASIC on the matters to be considered by credit providers in making more or less inquiries and taking reasonable steps to verify.

In substance, it seems that the only real difference between the full RLO and the modified RLO is that one has ASIC guidance, and one has a legislated list of factors, to be considered when scaling the inquiries and verification. We also note that ASIC guidance is not law, or comprehensive, so it is arguable that the application to a BNPL product of the full RLO and the modified RLO could produce similar outcomes in any case, because an LCCC provider who opts in to the full RLO is still entitled to make an assessment of what is 'reasonable' in light of *all applicable circumstances*, which will arguably include the prescribed list of factors in any case.

Further, draft reforms initially proposed by Treasury in March, 2024, provided a level of guidance and protection for providers who conducted assessments by allowing providers to:

- rely on information and documentation provided by consumers (thus reducing the need for verification);
- follow a general policy about the inquiries to be made and steps to be take; and
- rely on presumptions about the consumer (which would reduce the burden on the LCCC provider).

The removal of this type of language from the Bill disincentivises the use of the opt-in model for RLO, as it reduces the ability for interactions with the consumer to be seamless while creating additional compliance obligations on the provider, together with risk exposures.

In our view, the opt-in model is not a meaningfully 'reduced' RLO obligation for LCCC. The Explanatory Memorandum acknowledges that the modified RLO may not have this effect, where for example, a provider 'has a particularly risky target market or offers poorly designed products',[5] However in our view the problem won't be confined to only 'particularly risky' or 'poorly designed' products. We take this view, and consider that there is likely to be a convergence between applications for BNPL and applications for fully regulated credit products like credit cards, because:

[3] [2.31] *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024: Explanatory Memorandum*.
[4] s 133BXC(3) *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024.*
[5] [2.33] *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024: Explanatory Memorandum*.

- in most cases, an unsuitability assessment still needs to be done;
- given this above fact, it is practically impossible to do an unsuitability assessment without data from both sides of the ledger i.e. the income or expenses of a consumer are meaningless without comparing the two. That is, no matter how high a person's income, their expenses could be commensurately high as to make a loan unsuitable, and vice versa;
- the 'scalability' of RLO is a subjective assessment which is open to challenge, meaning that there may be a reluctance to adopt a reduced approach to RLO in circumstances where LCCC providers have no certainty that they will actually be complying with the obligation. This is particularly so because it is unclear what practical effect the listed prescribed factors will actually have on an RLO assessment; and
- there is no longer an ability to rely on information and documentation provided by consumers and certain presumptions when conducting assessments, which (as compared to the original draft legislation) makes the obligation more onerous.

We expect this to lead to a significant increase in friction in the BNPL application process, which will make it less appealing to consumers, and / or an increased cost to BNPL providers, which will make BNPL more expensive and / or less viable. Informal conversations with BNPL clients of ours have indicated that the cost of the modified RLO obligation is likely to make many LCCCs unprofitable from the perspective of the provider (including the purchase of low-value items using BNPL), while other LCCCs will need to start charging fees (or increase fees) to make them profitable (at increased cost to consumers). This is likely to have an impact on innovation and availability in the BNPL sector.

If we consider the example of a $100 toaster which a consumer wishes to split into 4 fortnightly payments for cash flow management and / or convenience, under the Bill, a BNPL provider would be required to obtain certain information from a credit reporting body (because the value of the loan is less than threshold amount ($2,000) - where the value of the loan is greater than $2,000, the BNPL provider will be required to obtain the same information as well as certain consumer credit liability information prescribed under the *Privacy Act 1988* (Cth)) as well as collect and verify the income and expenses of a customer (scaled to some indeterminate degree in accordance with the prescribed factors) in order to demonstrate compliance with the proposed RLOs. This seems a disproportionate burden for the nature of the credit offered, especially in circumstances where the customer pays no fees or interest (which is the case for many LCCCs).

Benefits of the new framework

We do see some key benefits to BNPL providers from the modified RLO framework outlined in the Bill, including:

- the clarity on and flexibility of same-day approval;[6]
- the presumption that LCCCs will be not unsuitable in cases where the credit limit or subsequent increases to the credit limit are 'less than or equal to the threshold amount', being $2,000;[7] and
- the requirements for precontractual disclosure.[8]

However, in relation to the not unsuitable presumption, we note that the Act has the following requirements:[9]

- a credit provider must not enter into a contract that is not unsuitable; and
- a credit provider must conduct reasonable inquiries and take reasonable steps to verify.

The obligation to not enter into a contract that is not unsuitable is absolute – that is, it is not a defence to a breach of this obligation that the lender has made reasonable inquiries. This means that lenders in general, but BNPL providers specifically, can be reluctant to scale inquiries because they can still

[6] s 13 *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* amending section 133(4)(b) of the *National Consumer Credit Protection Act 2009* (Cth); [2.59] *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024: Explanatory Memorandum.*
[7] s 133BXE *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*.
[8] s 28 *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* amending section 16 of the National Credit Code.
[9] ss 128-130 *National Consumer Credit Protection Act 2009* (Cth).

be in breach of the obligation to not enter into a contract that is unsuitable. It therefore makes sense to provide relief from this obligation under any modified RLO framework proposed for BNPL.

This is because providing a presumption that a contract is not unsuitable without also providing relief from the obligation to conduct reasonable inquiries provides little real reduction in obligations. This is because:

- most of the work (and all the friction for the consumer) exists in the process of making inquiries and verifying information supplied; and
- if all the inquiries still need to be made anyway in order to perform an unsuitability assessment, then the presumption a contract is not unsuitable may be easily rebutted as a result of collecting that information.

This means that providing relief from the unsuitability requirement, but not the reasonable inquiries requirement, results in a provider still conducting more or less a full unsuitability assessment, where there is minimal reduction in effort, if any.

The intersection of the unsuitability obligation and the reasonable inquiries obligation, and that relief needs to be provided from both in parallel, is why, as outlined below, we believe that a more prescriptive approach is needed in this case.

Challenges of a principles-based approach

Although we are generally proponents of principles-based regulation, which offers better flexibility and longevity, given that the existing RLO framework is already scalable, and given that the intent is to create a reduced obligation for LCCC products that acknowledges the reduced risks of these products and fosters continued innovation, it continues to be our view that a modified RLO regime might benefit from being more prescriptive. This would better set clear parameters for LCCC providers to operate and sufficiently distinguish the modified RLO regime from the existing regime. This is necessary to avoid the outcome currently promulgated by the Bill, which are two regimes that are both scalable and arguably not meaningfully distinguishable. We previously recommended and continue to hold the view that this prescriptive approach should be incorporated into the Bill and not left to regulators to determine.

We note that historically scalable principles-based obligations (e.g. the best interests duty for financial planners) have not been well-handled by industry. For example, there has been a trend in financial advice where financial advisers adopted the approach that they could only meet their best interests duty obligation via holistic advice (rather than adopting a scalable approach, as permitted by law). The result was that advisers either exited the retail client market (as they found providing holistic advice to be too onerous) or had to set fees that priced many retail clients out of the market. The industry in this case is now seeking to address the rising price of advice and the inability for clients to seek discrete issue advice as a result of the best interests duty, which is part of the reason for the Quality of Advice Review. We believe that the proposed scaled RLO framework will result in a similar outcome, leading to the exit of some providers or otherwise raising the cost to consumers and making the product less affordable.

Timing

We note that the unsuitability assessments are only valid for 90 days before a new assessment must be conducted.[10] We question the suitability of this timeframe particularly where BNPL products are operated as separate credit contracts rather than under one continuous line of credit. We understand that there is generally a 50 / 50 split in the market with which model is used and for those using separate contracts they would be required to reconduct an unsuitability assessment every 90 days (i.e. 4 times a year). Instead, we believe that it would be more appropriate for this to be conducted on an annual basis unless a trigger event occurs which suggests that a new assessment is required, especially since those operating under a continuous line of credit would not be required to re-conduct these assessments at all once established, which may lead to industry players moving to this model to avoid regulation (depending on the cost / benefit ratio).

[10] s 133BXB *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024.*

Potential RLO Solutions

We consider that the scale of responsible lending requirements should be proportionate to the relative risk posed by the loan (i.e. it should depend on the nature, amount, and cost of the loan) but that these should be prescriptive requirements so that LCCC providers can operate with certainty inside a set of genuinely reduced obligations.

We believe that there is merit in prescribing the type of responsible lending obligations that apply to loans based on certain categorisations that seek to quantify the risk to the consumer. We envisage that this might include a combination of the loan amount and the cost to the consumer; for example, the larger the loan amount, the higher the cost; the lower the fees, the lower the cost, where each category has prescriptive requirements. It may also include the period over which the credit is repayable. By way of example to illustrate our point:

- all LCCCs (whether they charge fees or not) with a loan limit under $500 might be presumed to be not unsuitable in all cases and not require any reasonable inquiries to be made or verified unless something is known to the LCCC provider to rebut the presumption e.g. information in the credit check;
- no cost LCCCs under $1,000 might also be presumed to be not unsuitable in all cases and not require any reasonable inquiries to be made or verified unless something is known to the LCCC provider to rebut the presumption e.g. information in the credit check;
- LCCCs that have fees and / or interest and a loan limit over $500 but under $2,500 might require the collection and verification of income information but not the collection of expense information aside from other debts, and the LCCC provider is only required to make a suitability assessment on the basis of that information and the LCCC is presumed not to be unsuitable for any other reason.

We do not necessarily represent that these thresholds or prescriptive requirements are the correct ones but use them to illustrate our point.

That said, we do consider that where a BNPL arrangement is for a significant amount, with or without fees, the risk to the consumer is much higher and therefore it is appropriate that more comprehensive responsible lending practices are employed including collecting and verifying the borrower's financial information. We consider that the full RLO should apply at this point, as consumers are now committing to either a large repayment in a short period of time, which is more likely to be higher risk, or consumers are committing to a long term obligation, which is more likely to impact their ability to access other regulated credit. We are not sure what this threshold is exactly; $5,000 or $10,000 may be appropriate, given these amounts are more consistent with personal loans.

There are risks attached to providing presumptions that loans are not unsuitable, as it may not always be the case and consumer harm may result. If there are policy concerns about possible consumer harm arising from presumptions of suitability, one possible option is to put rules in place to mitigate such consumer harm. For example, if a BNPL provider is relying on a presumption that a loan is not unsuitable under a modified RLO regime, the risk of consumer harm arising could be mitigated by not allowing the BNPL provider to enforce the loan in circumstances where (in the event of a dispute) it can be shown that had the loan been subject to full RLO, the loan would have been assessed as unsuitable. This shifts the risk of non-compliance from regulatory and legal risk to commercial risk and could operate as a check in circumstances where LCCC providers get a broader exemption from RLO, to deter them from abusing the privilege of a reduced RLO regime.

Any thresholds set by reference to monetary value should be indexed annually.

2. Regulatory Arbitrage

We are concerned that the Bill has not considered the definition of low-cost credit contract in the context of regulatory arbitrage. Proposed section 13E of the draft bill reads that:[11]

(1) *A contract is a low cost credit contract if:*

a) …

b) …

c) …

d) *The contract satisfies any requirements prescribed by the regulations for the purpose of this paragraph that relate to fees or charges that are, or may be, payable under the contract; and*

e) …

Previously draft regulations had been released which prescribed fees and charges in such a way that it duplicated the fee caps for the exemption (the **Continuing Credit Contract Exemption**) contained in section 6(5) of the National Credit Code (the **Code**).

While there are no current draft regulations, we consider it important to address this point, as presumably these regulations are yet to be drafted and form the cornerstone of what will be regulated as an LCCC, and the prior drafting contained a fatal flaw that had the result that low cost BNPL was regulated but high cost BNPL remained completely exempt.

This occurred because, under the previous drafting, a contract would only be a LCCC if it fell within all of the fee caps under the Continuing Credit Contract Exemption. BNPL providers currently rely on two key exemptions – the Continuing Credit Contract Exemption and the exemption in section 6(1) of the Code (the **Short Term Credit Exemption**). Some also rely on there being 'no charge' for the credit, so that it does not fall under section 5 of the Code, but that is not relevant to this issue.

The LCCC upfront fees in the previous draft regulations were aligned to the fees in the Continuing Credit Contract Exemption. However, it was not the case for the Short Term Credit Exemption, which allows a fee of 5% of the loan amount and interest at the rate of 24% p.a. The cost of credit under the Short Term Credit Exemption will exceed the fee caps in the Continuing Credit Contract Exemption (for a first contract) at around a loan amount of $2,500 if the provider charges maximum fees. For a second and subsequent contract in the same 12-month period, any fee charged of any amount more than nil will exceed the fee caps in the Continuing Credit Contract Exemption.

This issue is important when talking about the draft regulations defining what is an LCCC, because while the fees prescribed in the Continuing Credit Contract Exemption are a fee cap, in the yet to be drafted regulations, they will not be – rather, they will form part of the definition of LCCC.

To explain the issue, both the Continuing Credit Contract Exemption and the Short Term Credit Contract Exemption operate on this basis:

- if the fees and charges are under the fee cap – the loan is exempt from regulation under the Code.
- if the fees and charges exceed the fee cap – the Code applies in full.

However, the definition of LCCC is an exemption from an exemption (or, in other words, it is carving some currently exempt products back into the Code). This means that the fee limits that were proposed in the draft regulations in the LCCC definition would have operated on the following basis (which can be contrasted to the above basis for the exemptions):

- if the BNPL contract has fees and charges under the fee cap – then it is an LCCC with a reduced RLO;

[11] s 13E *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024.*

- if the BNPL contract has fees and charges that exceed the fee cap – then it is not an LCCC and it will continue to be completely unregulated under the Short Term Credit Exemption with no application of the Code.

This outcome would have occurred under the draft regulations because these contracts would have remained exempt (as they currently already are) and would not have been brought into the Code.

To illustrate our point, if certain BNPL loans that relied on the Short Term Credit Exemption were not within these fee caps, then they would not have been regulated as a LCCC and would have remained exempt and wholly outside the regulation and this would have included:

- any 62-day (or less) loan that fell within the Short Term Credit Exemption which, through a combination of fees and interest, charged more than $200. We are aware of 62-day loans for real estate marketing which can run to the tens of thousands of dollars and charge a 5% fee which will fall in this category and would not have been regulated as a LCCC. The threshold for falling into this category is approximately $2,500, which means many BNPL loans for whitegoods and furniture, for example, would have been completely exempt from the Code by charging maximum fees and interest. This would have meant providers who currently charge nothing could have moved themselves outside of regulation by charging maximum fees and interest for loans over $2,500; and
- any 62-day loan that fell within the Short Term Credit Exemption, which was a second or subsequent loan in the same 12 months with the same provider. This would have meant that all second or subsequent loans with the same provider inside the same 12 months would not have been an LCCC and would not have been regulated under the Code at all if they charged any kind of upfront fee whatsoever (no matter how minimal) because a second and subsequent loan within the first 12 months would have only been an LCCC if it were completely free. We have not considered the $125 cap for the second year in this analysis because 62-day loans, by their nature, do not have a second year.

We are encouraged by the removal of the draft regulations, as we are hopeful that this means the above issue is being addressed, but the fact no draft regulations have been released in this package means we have no certainty or clarity on this point. If the draft regulations, which will define the very crucial point of what is a LCCC, remain to be drafted, then we cannot stress the importance of ensuring that this is appropriately drafted. The outcome under the previous draft regulations cannot have been intended, as it is contrary to the regulatory intent, since it would have meant that many BNPL contracts would have been exempt, and in fact it created an incentive for BNPL providers to charge higher fees to avoid regulation. It is absolutely imperative that we do not duplicate this error in the next set of draft regulations, as it completely undermines the regime.

In our view, when draft regulations are released which identify what is an LCCC, we suggest that they should be:

- specifying that if the BNPL product is a continuing credit contract, it must fall under the fee caps specified in the Continuing Credit Contract Exemption (which are the fee caps prescribed for all LCCCs in the previous draft regulations);
- specifying that if the BNPL product is a loan of 62-days or less, that it must fall under the fee caps specified for the Short Term Credit Exemption, i.e. a fee of 5% of the loan amount and 24% p.a. interest; and
- specifying that if the BNPL product is not a continuing credit contract and has a term of more than 62 days, that it charges no fees and charges for the provision of the credit.

This structure would capture all BNPL products relying on all available exemptions and ensure they are all pulled within the definition of LCCC.

We also suggest this is better achieved by a modification to the draft legislation to remove reliance on draft regulations. To achieve this, we welcome inclusions in the Bill in section 13B as follows:

the *Code applies to the provision of credit under a buy now pay later contract if:*

(a) …

(b) this Code would, apart from this section, apply to the provision of credit under the buy now pay later contract (and to the buy now pay later contract and related matters) if the following were disregarded:

(i) paragraph 5(1)(c) (which requires charges to be made for the provision of credit in order for it to b subject to the Code);

(ii) subsection 6(1) (which excludes the provision of certain kinds of short term credit);

(iii) subsection 6(5) (which excludes the provision of credit for which only account charges within certain caps are payable).

The effect of this provision would be to disregard the effect of sections 5(1)(c), 6(1) and 6(5) of the Code, which ordinarily has excluded BNPL products from regulation.

3. Debt Factoring

We note that there are a series of models for the BNPL regime operating in Australia: the traditional model (as generally described in the Bill) and a debt factoring white-label model.

As currently drafted, it does not appear that the Bill will capture the debt factoring models. These models are generally characterised by the use of a white-label arrangement with a merchant. The merchant is responsible for providing the credit to the customer under existing exemptions from the Act, and this debt is then immediately sold to a debt factoring BNPL provider at a discount and recovered.

In our view, it is unlikely that this arrangement is captured under the Bill given that there is no credit provided to a customer by these third-party providers and there is no relationship until after the debt is purchased. However, functionally it fills the same purpose as a direct BNPL arrangement.

It is also unclear if using this type of arrangement is likely to trigger the anti-avoidance provisions proposed in the Bill and currently in the Act, as we understand that generally the intention behind these arrangements is to allow for a white labelling of the BNPL product rather than avoidance of regulation (as it relies on the same exemptions as the direct model). If direct BNPL providers were to restructure their arrangements we suspect this might fall foul of anti-avoidance, but we doubt existing providers would.

We recommend consideration be given to including the debt factoring model so as to ensure all BNPL providers are regulated equally.