



28<sup>th</sup> June 2024

Senate Standing Committees on Economics

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### **Submission to the Inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 (the Bill)**

Zip Co Limited (Zip) welcomes the opportunity to provide a submission to the Senate Standing Committees on Economics in relation to the Bill. Zip supports 'fit for purpose' regulation in the BNPL sector. Overall Zip is supportive of the draft legislative package delivered on 12 March 2024. Throughout the consultation process, Zip has advocated for Option 2 (limited BNPL regulation under the Credit Act) of the *Regulating Buy Now Pay Later Options Paper* released by Treasury in November 2022 and is well placed to comply with the draft legislative package.

### **ZIP OVERVIEW**

Zip is an ASX-listed (ASX:ZIP) leading global financial services company, offering innovative consumer centric products that bring customers and merchants together. Zip offers point-of-sale credit and digital payment services, predominately in Australia, New Zealand and the United States.

#### Zip products

In Australia, ZipMoney Payments Pty Ltd (a subsidiary of Zip Co Limited) holds an Australian Credit License<sup>1</sup> with authorisations to engage in credit activities as a credit provider. ZipMoney Payments Pty Ltd operates three consumer products, namely Zip Pay, Zip Plus and Zip Money, as well as a merchant acquiring network. The Zip Pay product is Zip's BNPL product and currently operates under the exemption provided by section 6(5) of the National Credit Code. Zip Plus and Zip Money are both currently regulated as credit contracts under the *National Consumer Credit Protection Act 2009* (Cth) ('NCCPA') and will not be impacted by this reform.

Zip Pay is a line of credit. A customer can transact up to their credit limit, provided their account is not in arrears and they meet Zip's drawdown criteria. The features of this product include:

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<sup>1</sup>Australian Credit Licence 441878.

- a minimum credit limit of \$350, with the maximum credit limit of \$1,000 for new customers. Customers who have exhibited good repayment behaviour over time (using Zip's internal criteria) can apply to increase their credit limit up to \$1,500.
- an ability for customers to use the line of credit to purchase goods and services with Zip integrated merchants (closed loop), non-Zip merchants (open loop) via the Visa network, and to pay bills using BPAY.
- as a digital product, Zip Pay customers can perform transactions using the Zip App or website, directly with merchants who offer Zip Pay as a payment method (through the merchant's website or instore), or by using the single-use Visa or digital Visa card (available by using a virtual card in the Zip app anywhere that Visa is accepted).
- an ability for customers to structure their repayment amount and repayment frequency to suit their budget (subject to meeting minimum monthly repayments). Repayment frequency can be set to weekly, fortnightly or monthly. All customers provide an authority to make automatic repayments at onboarding. Additional repayments can be made at any time.
- unlike BNPL products offered by other providers, Zip Pay is not a "pay-in-four" solution. Zip Pay offers greater flexibility by allowing customers to make multiple purchases up to their agreed credit limit, with flexible repayment options.
- no interest (including default interest) is charged in connection with purchases made or bills paid using Zip Pay.

#### Zip's approach to responsible lending and credit protections provided to customer

Zip was founded on the premise that consumer credit could be provided in a fair and transparent way. We have always approached lending through a lens of financial responsibility and have taken steps to provide consumer protections, even where not required to do so under regulation.

In the BNPL segment, Zip's objectives are to lend responsibly via innovative, digital products that represent a better alternative than traditional credit products. Our Zip Pay product has low credit limits, no interest, transparent fees and repayments in weeks or months, rather than years. All applicants are subject to credit assessment processes (as further detailed below) and we only approve customers who we believe the product is suitable for. Customers are provided with protections including access to AFCA and financial hardship support, should they require it.

Zip has a multifaceted approach to lending responsibly which includes:

- Credit assessment - Zip conducts credit checks on all customers. We have the ability to review banking transactional data which provides us with a view of affordability and exposure to other lenders including other BNPL providers. Our credit assessment process is data driven and based on 10+ years of lending experience in the Australian market.
- Credit limit increase - Zip does not automatically increase a customer's credit limit. If a customer wishes to increase their credit limit, they must make a request to Zip, via the

App or the web wallet. A customer will only be provided with a limit increase (to a maximum of \$1,500), if they have demonstrated good repayment behaviour and meet Zip's eligibility criteria.

- Credit limit decreases – Zip monitors customer repayment behaviour and credit quality to identify particular customer cohorts that are struggling to make repayments. If it identifies this type of customer behaviour, Zip will instigate a credit limit decrease, to prevent the customer from acquiring further debt. Financial hardship processes are in place and are highly visible on Zip's external facing materials to ensure they are accessible to customers who require support. Our teams are also regularly trained to identify vulnerable customers.
- Account locking - if a customer falls into arrears (misses a repayment), their account is locked and they will not be able to make additional purchases until their account is cleared of the arrears balance. This ensures that customers do not compound financial difficulty, becoming stuck in a cycle of revolving debt, common with traditional credit products such as credit cards.
- Late fee capping – Zip's late fee is \$5, charged only after a series of reminders and payment messages are provided and when the customer is 21 days in arrears. The fee is capped to one fee being charged once, meaning that if a customer goes to 180 days in arrears, they will only be charged a single \$5 late fee. Our model does not rely on customers falling into arrears to generate revenue. Late fees make up less than 1% of Zip's revenue.

## ZIP'S FEEDBACK ON TREASURY'S BNPL REGULATION OPTIONS

*(released by Treasury 21 November 2022)*

For the information of the Senate Standing Committee on Economics, Zip has set out below Zip's position provided to Treasury in regards to Treasury's options paper:

Option	Zip's key points
1. <b>Strengthening the BNPL Industry Code plus an affordability test.</b>	This option suggested inclusion of bespoke provisions in the Credit Act to check that the BNPL product is not unaffordable for a person before offering it to them. Zip did not think this approach went far enough to give protections to vulnerable customers and those who are already in hardship or cannot afford the repayments.
2. <b>Limited BNPL regulation under the Credit Act</b>	Zip strongly advocated for Option 2. Zip believed that amending the Credit Act to require BNPL providers to hold an ACL would ensure the right obligations for internal and external dispute resolution, hardship provisions, compensation arrangements, fee caps and marketing rules.

	At the time Zip provided feedback on Treasury’s option, Zip already exceeded the obligations required under the AFIA BNPL Code of Conduct.
<b>3. Regulation of BNPL under the Credit Act, with full responsible lending obligations (FLOs)</b>	Zip did not support this option primarily because of the large impost to participants.

Zip strongly advocated for Option 2. Zip considered that this option had the right balance between consumer protections and minimum standards, building confidence in the sector, while encouraging innovation.

### **ZIP’S FEEDBACK TREASURYS DRAFT LEGISLATIVE PACKAGE**

*(released by Treasury on 12 March 2024)*

Zip directionally supports the draft legislative package and made substantive submissions about two key areas – fee caps and modified responsible lending obligations for Treasury’s consideration, which are outlined below. Zip also identified possible unintended consequences with the draft legislative package, which Zip also raised to Treasury.

#### Fee caps – regulation 69E(2) of the exposure draft *National Consumer Credit Protection Amendment (Low Cost Credit) Regulations 2024 (Exposure Draft Regulations)*

Zip submitted to Treasury that the proposed fee caps should be revisited and standardised across all BNPL contracts for the following reasons:

- The existing fee caps in regulation 51 have not changed since being introduced in 2010, and those same fee caps appeared in earlier State and Territory consumer credit regulations from the mid 1990s onwards;
- The Explanatory Statement to the original regulation 51 noted that a maximum charge was prescribed to 'limit the exemption to credit contracts where account charges reflect the costs of establishing and maintaining the account';
- The cost of providing BNPL products to customers has materially increased since 2010 (for example increase in resourcing costs, interest rates, customer data storage and security and supplier services); and
- The proposed modified responsible lending obligations regime will further increase the cost of providing BNPL products both from an application assessment perspective as well as ongoing compliance costs, and the fee caps should make adequate provision for this cost increase.

Zip submitted that the fee caps should be regularly reviewed and increased in line with changes to the consumer price index (CPI). In addition, the fee caps should include an indexation mechanism.

Further, item 2 of regulation 69E(2) provides that, if a customer opens a second Low Cost Credit Contract (LCCC) within 12 months of operating the first LCCC with the credit provider, the fees and charges on the second account are capped at \$0. This is also the current position under regulation 51. Zip's understanding is that this provision is intended to prevent credit providers from circumventing the annual fee caps in item 1 by opening multiple accounts for a single debtor.

Zip submitted that it is being unintentionally and unfairly caught by item 2, and expects other BNPL providers are in the same position, because: (1) Zip does not allow customers to hold more than one Zip Pay account at a time; and (2) if a customer sought to open a new Zip Pay account within 12 months of closing their first account, Zip's fees are structured in such a way that the annual fee caps in item 1 would not be exceeded. In circumstances where a customer has voluntarily closed and then, within 12 months, applied for a new Zip Pay account, Zip considers it ought to be allowed to impose the fees permitted by Item 1.

Zip requested that Treasury:

1. reconsider the drafting of item 2 to avoid what Zip considers to be an unintended consequence of the existing regulation 51.
2. consider applying the caps at a customer level rather than an account level, such that no customer would be charged in excess of the caps in item 1 in any 12 month period.

#### Responsible lending obligations - Reasonable belief (regulation 28HAD of the Exposure Draft Regulations)

Under the draft legislative package, before entering into or increasing the credit limit on a LCCC, a licensee must obtain certain prescribed information that the licensee 'reasonably believes' to be substantially correct, being the 'income of the consumer', the 'expenditure of the consumer', and any LCCC, small amount credit contracts or consumer leases to which the consumer is currently a party. Whilst the proposed regulation does not require that this information be verified, a licensee must make an assessment to ensure it holds the 'reasonable belief' that the LCCC is not unsuitable. Treasury has confirmed that the definition of a 'reasonable belief' is a legal standard and that it is open to each licensee to interpret its meaning.

In the absence of clear guidance requirements on what constitutes a 'reasonable belief', providers may take unnecessary steps to comply with the requirement to conduct an unsuitability assessment, which may be contrary to the intent and purpose of the modified responsible lending obligations.

For these reasons, Zip requested that Treasury consider providing more detailed guidance in the explanatory statement (including by way of examples) on what might constitute a 'reasonable belief' in the context of these regulations.

Zip also noted the delays have recently been announced regarding expansion of the Consumer Data Right to non-bank lenders, which is expected to (among other things) increase the availability of data. In Zip's view, these developments may impact the options available to BNPL providers to comply with regulation 28HAD.

### Other feedback

Zip also provided the following feedback to Treasury in relation to the draft legislative package. We note that a number of these points are now dealt with in the Bill.

- Extension of the application of the National Credit Code - in its draft legislative package, Treasury identified that additional drafting was to be added to extend the application of the National Credit Code (NCC) to the provision of credit under a LCCC and to set out the constitutional basis for this extension. In its submission to Treasury, Zip raised that Zip expects the additional drafting to clarify the status and ongoing application of certain exemptions set out in the NCC.<sup>2</sup> It appears that the Bill has dealt with this.
- Time period - Zip also noted to Treasury that in the draft legislative package, the definition of a LCCC considers a time period for the products purpose. Specifically at 13C(1)(c) *the period during which credit is, or may be, provided under the contract is no longer than the period (if any) prescribed by the regulations of this paragraph*. Zip noted to Treasury that if a time period was to be prescribed in the regulations, Zip Pay may no longer fall within the definition of a LCCC because it is a revolving line of credit with no fixed term.
- Possible exclusion of some BNPL products - unintentional exclusion of some BNPL products - subsections 13C(1)(c) and 13C(1)(d) appear to replicate some aspects of the exemptions in subsections 6(1) and 6(5) of the NCC. However, given a LCCC must be a BNPL contract that satisfies both subsection 13C(1)(c) and subsection 13C(1)(d), we are concerned that this formulation would unintentionally exclude some BNPL products from this definition. It appears that the Bill has dealt with this, however any regulations should take this into account.
- Credit limit - Zip is supportive of Treasury's proposed thresholds. In relation to references to credit limits "less than \$2,000" in sections 133BXF and 133BXG and regulation 28HAD, Zip is of the view that such references should be amended to "\$2,000

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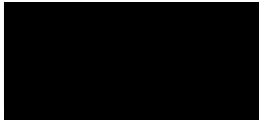
<sup>2</sup> Specifically the exemptions in subsections 6(1) and 6(5)), and to address the definitions of "credit" and "credit contract" in sections 3 and 4 of the NCC, and the meaning of "provision of credit" in section 5 of the NCC, in the context of LCCC.

or less” as a matter of practicality and to allow for rounded credit limits. We note that the Bill now reflects this.

- Licence variation – Zip suggested to Treasury that guidance be provided on the approach to varying existing credit licenses to include authorisations for LCCCs. Zip understands from our conversations with Treasury that this detail is forthcoming.

Overall, Zip welcomes Treasury’s draft legislative package and is in a large part supportive of its contents. Zip appreciates the opportunity to provide feedback directly to the Senate Standing Committees on Economics. Zip is also open to discussing any aspect of our submission and / or appearing at the Senate Standing Committee to respond to any questions.

Yours sincerely,



**Peter Gray**

**Co Founder and CEO ANZ**