

Inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 [Provisions] and Capital Works (Build to Rent Misuse Tax) Bill 2024 [Provisions]

FSU Submission June 2024

Finance Sector Union

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Background

The Finance Sector Union (FSU) is a registered industrial organisation under the *Fair Work (Registered Organisations) Act 2009*. The FSU represents members in the banking, finance and insurance industries (finance sector) in Australia. The finance sector consists of approximately 541,500 employees nationwide (approximately 4% of the workforce) with women making up approximately 48% of the total number of workers within the sector¹. The FSU covers workers in the Buy Now Pay Later (BNPL) segment of the industry.

Proposed Changes

The FSU in principle supports the regulation of the finance industry. We were at the forefront of campaigning for the government to establish the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. We support regulation of BNPL industry and note that this section of the industry has been growing, the Reserve Bank assessing the BNPL sector is worth \$19B in 2022-23.

We cover workers in the industry and note that the BNPL industry has innovated easy access to credit which puts pressure on mainstream lenders to keep up. At the same time, mainstream lenders are subject to both the Credit Act and Responsible Lending Obligations (RLOs) that the BNPL providers are not subject to which creates an unequal playing field. They are still subject to the consumer protection

¹ [Financial and Insurance Services | Jobs and Skills Australia](#) [accessed 24.06.2024]

provisions in the Australian Securities and Investments Commission Act which includes provisions relating to misleading, deceptive and unconscionable conduct.

The FSU understands that most of the BNPL providers have signed up to the Australian Finance Industry Association (AFIA) “Buy Now Pay Later Voluntary Code” which came into effect in March 2021, breaches are subject only to the “Buy Now, Pay Later Code Compliance Committee”. There are no criminal or civil penalties for code members who do not comply with their obligations. Self-regulation generally works however it is open to manipulation and misbehaviour as we saw highlighted in the Banking Royal Commission. It also does nothing to protect vulnerable consumers from predatory lending practices. The voluntary code is not enforced by the Australian Securities and Investments Commission (ASIC) and consumers can only obtain remedies for breaches by code members from the Australian Financial Complaints Authority (AFCA) or by taking legal action which is expensive and out of reach for most BNPL consumers.

BNPL arrangements are not regulated by the Credit Act and are not subject to Responsible Lending Obligations (RLOs) or other Credit Act requirements and providers do not need to hold a credit licence. The FSU supports the proposal to regulate BNPL contracts under the Credit Act which would make them subject to the Credit Code and comply with the licensing requirements set out in Chapter 2 of the Credit Act. This change will also ensure that BNPL providers will be regulated by ASIC.

The FSU supports the proposal to apply a modified RLO framework to BNPL providers however notes that the modified RLO framework may not reduce the risk for vulnerable consumers if the BNPL provider deliberately targets vulnerable communities with poorly designed products.