

21 February 2020

Our ref: WD BFLC

[REDACTED]
Committee Secretary
Senate Standing Committees on Economics
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: [REDACTED]

Dear Committee Secretary

National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)

Thank you for the opportunity to provide comments on the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2) (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Banking and Financial Services Law Committee, whose members have substantial expertise in this area.

Subject to our comments below, QLS is broadly supportive of the Bill, which seeks to amend the *National Consumer Credit Protection Act 2009* (Cth) (the **Act**).

The Bill reflects the Government's Exposure Draft Legislation released previously in 2017. The Bill also seeks to implement the recommendations of the Final Report of the Independent Review of the Small Amount Credit Contract Laws dated March 2016 (**Final Report**).

However, QLS has some reservations about the anti-avoidance provisions (Division 1A - Avoidance schemes) which, while seeking to address particular circumstances of avoidance, are complex and vague making it difficult for a person to be certain they do not fall foul of the civil penalty provision without undergoing unreasonable expense.

QLS also highlights that since the introduction of the *National Consumer Credit Protection Act 2009* (Cth), the publication of the Final Report and the preparation of the initial drafts of the

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Bill, the small loans market has shifted considerably with the advent of 'Buy Now Pay Later' (BNPL) services.

The Australian Securities and Investment Commission (ASIC) recently reported that 'the total balance of outstanding debt from these arrangements grew from \$476 million in April 2016 to over \$903 million by June 2018.'¹

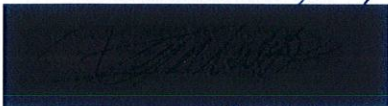
QLS does not suggest that this Bill should seek to regulate the BNPL industry. However, QLS does consider that the BNPL industry exhibits some of the features of the market which this Bill is intended to address. QLS believes that some form of regulation is required which is appropriate and proportionate to the risk level of the BNPL industry.

QLS therefore supports further engagement with the recommendations on this issue from ASIC,² and the recommendations arising out of the Senate Inquiry into Credit and Financial Services Targeted at Australians at Risk of Financial Hardship, including that the government consider, in consultation with ASIC, consumers and industry, what regulatory framework would be appropriate for the buy now pay later sector.³

QLS would be pleased to participate in this consultation process.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy
President

¹ Australian Securities and Investments Commission, *Review of buy now pay later arrangements* (Report 600, November 2018), 9.

² *Ibid*, 15-16.

³ Senate Economics References Committee, *Credit and Hardship: report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship*, February 2019, particularly recommendation 9.