

Wednesday, 12 February 2025

**Consumer Credit Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600**

Dear Director

Buy Now Pay Later (BNPL) – Draft Regulations

Thank you for the opportunity to provide comment on the draft regulations for BNPL. We support and have contributed to the joint submission authored by CHOICE.

In this supplementary submission we provide some further feedback on the Draft Regulations below. In particular, we are concerned about the changes in fee caps in the Draft Regulations providing a special advantage to Afterpay's business model.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

BNPL credit continues to risk harming the most vulnerable in our community

The consumer sector has been calling for appropriate regulation of BNPL for several years and we are pleased that legislation will shortly come into force, providing some protection to customers, particularly those experiencing or at risk of financial difficulty. However, we remain concerned about the false narrative that BNPL is low risk and low harm and so should not have to meet the same consumer protection standards as other forms of credit.

Financial counsellors and community lawyers already see a proliferation of BNPL debts from people experiencing financial hardship in the cost-of-living crisis. For most people with a reliable income that exceeds their everyday living expenses, BNPL may be a better product than a credit card. These customers who would never or rarely

default on repayments are not the people calling us. We hear from people using BNPL to afford essentials like groceries, initiating a debt spiral from which it is very hard to recover.

Traditionally, BNPL products had limitations to their frictionless access. They relied on merchants entering into agreements to accept individual BNPL products and initially the uptake was in highly discretionary consumer products, like expensive shoes or technology. For many years you could not use BNPL to meet your essential living costs by using them in supermarkets.¹ Innovations in industry offerings like enabling BPAY payments and issuing Visa or Mastercard cards² means that BNPL is now marketed and designed to meet essential living costs and will soon be able to be used in any store or website regardless of the nature of the purchase. The RBA data indicates that nearly a third of Australians use BNPL, with higher representation among younger consumers.³

A caller to the National Debt Helpline recently told me she uses Afterpay's card feature to pay for her groceries at the checkout. How things have changed – there was a time when BNPL's providers claimed that consumers only use their accounts to buy non-essential goods. We know that people who are experiencing financial hardship are regularly using their BNPL accounts to buy food at the supermarket. The fact is they have been doing this for a long time by buying gift cards through BNPL first. Now they don't even need to do that – they can buy essentials directly on their accounts. These are the people who will wear the brunt of the late fees, rather than those who use their accounts to buy non-essential goods. How is that fair?

A senior financial counsellor at Consumer Action.

The convenience cannot outweigh consumer protections. BNPL is becoming incredibly close to a credit card in how it will be used, yet it is still characterised as a low-risk product under the LCCC regime.

Changes to the fee cap

We are concerned that the Draft Regulations differ from versions in previous consultations by allowing certain models, which charge no fees other than default fees, to charge default fees to a higher value.

BNPL providers that do not charge establishment or account keeping fees already and will continue to benefit from a lower friction onboarding process. It is well accepted that people generally overestimate their ability to meet repayments (the optimism bias). It is easy for someone to look at two BNPL products and choose the one that has higher default fees and no other fees, under the belief that they will always meet their repayments. BNPL already leads to overspending, with recent research from RMIT indicates that customers using BNPL rather than paying for purchases upfront or on delivery typically make purchases 6.4% more, before any fees are incurred.⁴

¹ In recent years we have heard from many people who use BNPL to purchase supermarket gift cards to afford essential groceries and petrol. This is promoted on Afterpay's website: [Afterpay - Love the way you pay](#). Zip is an option on Woolworths online [Pay with Zip when shopping at Woolworths | Zip](#).

² ZipPlus is available 'anywhere Visa is accepted' [Apply for Zip Pay, Zip Plus or Zip Money | Flexible Repayments](#). AfterpayPlus can be used 'almost anywhere Apple Pay, Google Pay, or Samsung Pay is accepted, online or in-store' 'almost anywhere Apple Pay, Google Pay, or Samsung Pay is accepted, online or in-store'.

³ [Developments in the Buy Now, Pay Later Market | Bulletin – March 2021 | RBA](#)

⁴ [Research suggests those who use buy-now-pay-later services end up spending more](#)

The obvious result is that defaulting customers are effectively subsidising those who can afford to always meet their repayments. It means that these BNPL models depend on people experiencing financial hardship as a revenue stream and casts doubt on their ability to offer adequate financial hardship assistance to their customers.

We believe the change will also result in models having no incentive to compete on establishment and account keeping fees. If a BNPL provider charges a fee other than default fee, they will be highly incentivized to charge the maximum amount, given their prospective revenue from default fees will be lower than models which do not charge multiple fees.

The fee caps previously consulted on would incentivise all providers to charge account and establishment fees. However, there would at least be some incentive to compete on the other fees, and customers in financial hardship would not be subsidising the cost of providing credit to others

Our strong recommendation is to maintain the separate fee caps in the exposure draft regulations.⁵

Wage advance products

Our frontline financial counsellors are observing a significant increase in Victorians contacting the National Debt Helpline reporting using wage advance products to meet living costs. Our financial counsellors report that wage advance products now present just as often as BNPL.

Wage advance products may lend as much as 25% of a customer's regular (e.g. monthly) wage.⁶ Given the lending is unregulated, there's little stopping a person securing four wage advance payments at once. What we see is people in serious financial trouble after committing their entire salary plus multiple 5% charges in the previous month and then having no income to afford the same essential costs in the following month.

We urge Treasury to move towards regulating wage advance under the LCCC regime as a matter of priority in 2025.

Please contact Rose Bruce-Smith at rose@consumeraction.org.au for any further information about this supplementary submission.

Yours faithfully

Stephanie Tonkin
CEO

⁵ <https://treasury.gov.au/consultation/c2024-504798>

⁶ [Pay advance services - Moneysmart.gov.au](https://www.money-smart.gov.au/pay-advance-services)