

Submission to Treasury for ‘Regulating Buy Now, Pay Later in Australia’

Position: In this submission we argue against option 1, offer some support for option 2, and advocate most strongly for option 3.

Introduction

The Newcastle Youth Studies Centre (NYSC) is a collaborative group of researchers from the disciplines of Sociology, Anthropology, Human Services and Industrial Relations at the University of Newcastle, Australia. Over the last three years we have conducted a program of research on young adults’ use of buy now, pay later (BNPL) financial products and services, focusing particularly on young people (aged 18-30) in the Hunter region of NSW. In this submission we draw on the findings of this research to provide feedback on the future regulatory framework for BNPL arrangements. The research supporting this feedback includes:

- In-depth interviews with 40 young people (aged 18-30) about their views of and experiences with BNPL services and other sources of credit.
- Workshops with 10 young adults (aged 18-30) to discuss the meaning and significance of credit and debt for members of their age cohort.
- A survey of 575 young people (aged 18-30) living in the NSW Hunter region about their use of and attitude towards various sources of credit, and their experiences of financial stress and help-seeking.
- Interviews and focus group discussions with 18 youth sector practitioners who work with young people experiencing BNPL debt and other forms of debt.
- A policy review comparing the regulation of BNPL, credit cards and small amount credit contracts (payday loans).
- A desk review of BNPL apps and websites considering their functionality, and how their services were represented.

Key findings of this program of research include:¹

- BNPL services deliberately avoid marketing themselves as credit. Instead, they claim to offer a ‘way to pay’ that is suited to the consumption habits of young people and make appeals to young people’s identities in their marketing. As a result young people

¹ The findings presented here are drawn from the following publications:

- Farrugia, D. Cook, J. Senior, K. Coffey, J. Threadgold, S. Davies, K. Shannon, B. Haro, A. (2021). *Young People, Debt and Consumer Credit: Pilot Study Report*. University of Newcastle, Australia. Available at: <https://nova.newcastle.edu.au/vital/access/manager/Repository/uon:38627>

- Farrugia, D., Cook, J., Senior, K., Threadgold, S., Coffey, J., Davies, K., Haro, A., & Shannon, B. (2022). Youth and the consumption of credit. *Current Sociology*, online first. <https://doi.org/10.1177/00113921221114925>

do not initially understand BNPL services as credit or debt at all, only recognising this if they are unable to repay their obligations to these providers.

- Young people use credit in two main ways: to deal with unforeseen crises, and for discretionary consumption.
- Young people understand banks as intimidating and predatory institutions suitable only for large, ‘serious’ purchases, whereas BNPL services are seen as more accessible and as facilitating discretionary consumption. The game-like nature of apps as platforms for credit services encourages over-consumption.
- Debt has a negative impact on wellbeing. It creates experiences of shame and anxiety and places young people in financial hardship that negatively impacts on their physical and mental health.
- Young people do not use BNPL products and services in isolation. They are likely to use them in combination with other sources of credit such as credit cards, bank loans and informal loans (such as from family).
- By consulting with the youth sector in our target regions we have found that debt and financial hardship are problems for many disadvantaged youth. Indeed, debt and financial hardship have long been identified as barriers to participating in education and employment (by, for instance, the Smith Family). Some of the ways in which this manifests include (but are not limited to): inability to access transport; inability to cover the cost of uniforms, study materials, and/or resources needed for employment; experiences of stress, anxiety and low self-esteem; insecure housing; and social stigma.
- In our survey study, we found that almost three quarters (73%) of those who used BNPL products and services experienced at least two types of financial stress (using the HILDA measure mentioned in the options paper). Notably, this was double the extent of financial stress experienced by those who did not use BNPL products and services.²
- In our survey study, we found that less than half (44%) of young BNPL users knew where or how to seek help with debt.

Our response

We focus here on responding to the questions set out in the options paper.

- Can you provide examples of other areas of consumer harm or industry behaviour this paper has not discussed?
- What are the main contributors of consumer harm? What evidence supports this view?

The consumer harms identified in the options paper resonate with what we have found in our research. However, we have five further points to add:

First, we have identified that some of the harms identified in the options paper may stem from or be exacerbated by the way in which BNPL services are currently regulated, and how

² Please note, the findings of this survey will be published in a forthcoming research report in February of 2023.

this shapes consumers' understandings of these services. Specifically, BNPL services are consciously marketed as 'a way to pay' or even 'a better way to pay', as opposed to a source of credit. They appear alongside payment options such as Paypal, Visa and Mastercard at the point of sale in both digital and physical commercial spaces. Due to this positioning, and avoidance of the term 'credit' among BNPL services' advertising and interfaces, consumers do not necessarily relate to BNPL products as a type of credit. Young people also do not always understand that BNPL service providers will pursue them for late payments and may eventually even refer their account to debt collectors. Indeed, several of our young adult research participants contrasted the perceived innocuousness of BNPL services with banks, which they saw as comparatively serious and threatening. While this point is touched upon in the finding of 'lack of transparency' in the options paper, we argue that this lack of transparency has wider-reaching implications and scope for harm that need to be taken seriously in discussions about potential regulation.

Second, we note that the options paper does not identify who, specifically, is using BNPL services and is thus at risk of the harms that are identified. BNPL customers are disproportionately likely to be young adults. In 2018 ASIC³ found that 60% of BNPL users were aged 18-34, and industry surveys have put the proportion of young users even higher than this in the intervening years. While it is crucial that young adults have access to credit, it is equally important to acknowledge that they have specific needs and vulnerabilities in relation to their credit use. Young adults are disproportionately likely to be on low and fixed or irregular incomes, meaning that even small amounts of debt can have a devastating effect on their lives. This is especially true of young adults who cannot turn to their family for practical and financial support if necessary. Indeed, during our consultation with youth sector practitioners we found that practitioners working on programs supporting out of home care leavers identified their clients as particularly vulnerable to BNPL debt.

Third, the options paper identifies the 'frictionless' sign-up process as a risk factor for coercion and financial abuse. This aligns with our findings. However, through consultation with the youth sector we have also identified a further harm resulting from this sign-up process and lack of identity verification. Specifically, young people aged under 18 (minors) are accessing and using BNPL services. In some cases this appears to be due to the use of an adult relative's identity documents (often without their knowledge), but in some cases minors are able to set up BNPL accounts under their own name due to a lack of any requests for verification of their age or identity.

Fourth, it is crucial to acknowledge that young people do not use BNPL products and services in isolation. In our own survey study, we found that out of the 51% of young people who used BNPL services, 85% combined this with at least one other source of consumer credit (for example, 30% combined with credit cards, and 23% with personal bank loans). The potential harms related to BNPL products and services therefore should not be considered in isolation, and attention should be paid to the compounding effect that multiple different

³ ASIC (2018). *Review of buy now pay later arrangements*. Report 600. Available at: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/>

credit-based debts may have. The idea of an independent BNPL credit reporting database mentioned in the options paper has merit, but the fact that it will not be visible to other credit providers is a significant limitation. The invisibility of BNPL debt relative to other forms of credit is an important issue that should be considered in the upcoming 2024 review of the credit reporting framework.

Finally, the options paper identifies that AFCA receives relatively few complaints about BNPL. It also identifies that consumer groups have argued that many consumers do not know of AFCA or how to raise a complaint. This resonates strongly with the findings of our research. Through consultation with the youth sector and interviews and workshops with young BNPL users we have found that even disclosing debt to a trusted support person can be extremely challenging due to the stigma associated with debt. Additionally, our survey study found that young adults' knowledge of where and how to seek help or file a complaint is limited. It is therefore unlikely that young people will make a complaint with AFCA, even when they may have clear grounds for doing so.

- Are the guiding principles appropriate and fit for purpose to inform the development of a BNPL regulatory framework? What other factors should be considered?
- Of the three options below, which option do you think is most appropriate? Would you change any aspects of that option?
- What do you think are the issues with the other two options?

The guiding principles that have been identified in the options paper are fit for purpose. However, as identified above, we believe that the specific needs of the primary customer base of BNPL (young adults) should be considered while developing a BNPL regulatory framework.

We argue against option 1, offer some support for option 2, and ultimately advocate most strongly for option 3 due to the robust protections it offers to consumers.

We argue against option 1. Consultation with youth practitioners (including financial counsellors and financial capability officers) has demonstrated that the current BNPL industry code is not effectively managing the harms that can be associated with BNPL products and services. While we acknowledge that some BNPL services have met, and even exceeded, the expectations of the code and that option 1 would strengthen the code, we nevertheless do not believe that this option offers enough consumer protections. While we welcome the introduction of an affordability test, the lack of a requirement to verify a customer's financial situation indicates that this test is unlikely to be robust enough to avoid harm. We would also welcome further information about this test and how it may differ from the 'unsuitability' test in the Credit Act. Additionally, the lack of a requirement to check if the provision of credit aligns with a person's needs and objectives undermines the ability to verify whether the product or service is appropriate for the consumer's needs. We are also concerned with the lack of discussion of specific hardship measures. While the industry code includes these measures, we would like to see them included in the measures that are enforceable by ASIC if this option were to be pursued.

Option 2 provides more robust consumer protections. The prohibition on increasing a consumer's spending limit without explicit instructions from them is a positive inclusion, as is the cap on charges related to missed and late payments. The scaled obligation to assess that BNPL credit is not unsuitable for a consumer is also a positive inclusion. However, the lack of a requirement to check if the provision of credit aligns with a person's needs and objectives again risks undermining the ability to verify whether the product or service is appropriate for the consumer.

Option 3 provides the most robust protections for consumers. We are particularly in favour of BNPL services being required to hold an Australian Credit Licence due to the associated requirements for information sharing and hardship provisions. While we acknowledge that it is important to avoid excessive compliance-related burden which may undermine the functioning of the BNPL sector, we also highlight that the responsible lending laws in the Credit Act are scalable, meaning that they can be matched to the size of the credit offered to consumers by BNPL services.

Feedback on supplementary reforms to support a new BNPL regulatory framework

We are supportive of the aim of improving the financial capability of BNPL consumers. However, it is important to ensure that these measures reach the most disadvantaged consumers, who are arguably at the greatest risk of the harms outlined in the options paper, and elaborated upon above. Consultation with the youth sector, which works with young adults experiencing many different forms of disadvantage, has demonstrated multiple barriers that young people face when they are in need of support related to debt and financial hardship. Many of these barriers are caused by a lack of understanding of the specific financial needs and challenges facing young people among professionals such as financial counsellors. As such, in addition to improving the financial capability of BNPL consumers, there may also be a role for enhancing the skills and capabilities of financial counsellors and financial capability workers to help them to work with young BNPL consumers.