

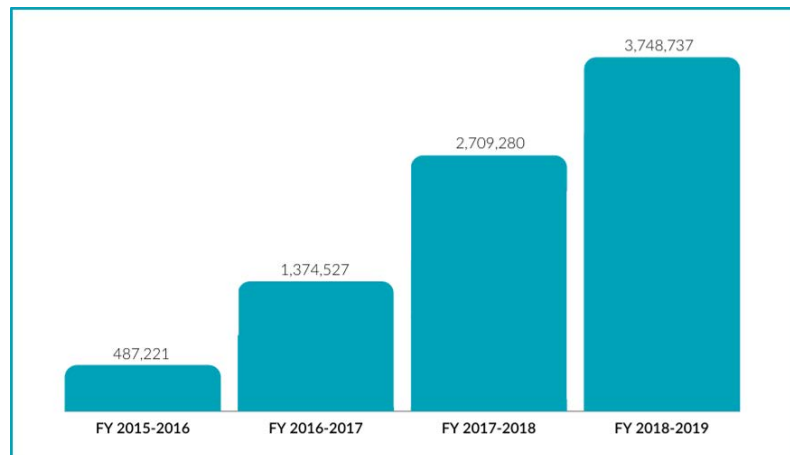


Is It Time to Regulate the Buy-Now-Pay-Later Industry? Or Will We Delay and Simply “Pay for It Later”?

With increasing attention on the potential negative impacts of buy-now-pay-later (BNPL) services, Australia may soon need to decide at what point BNPL providers will be regarded as credit providers under the law, and effectively regulated as such.

The BNPL industry has grown exponentially in Australia in recent years, changing the way consumers think about credit and purchasing products and services. It provides a unique service that allows consumers to purchase items and pay them off in smaller scheduled instalments over a set period, interest-free. [According to the Australian Securities and Investments Commission \(ASIC\)](#), the number of consumers using a BNPL service has increased from just under 500,000 in 2015-2016 to nearly 4 million in 2018-2019. The [Australian Finance Industry Association \(AFIA\) estimates](#) approximately 30% of Australian adults (roughly 5.8 million customers) are now using this service, and up to 10% of all online sales go through a BNPL provider.

Number of active BNPL accounts in Australia FY15/16 to FY18/19



Source: [ASIC Report 6 2, Buy now pay later: An industry update, November 2020.](#)

The [Reserve Bank of Australia reported](#) that in the 12 months leading up to January 2019, the number of credit and charge card accounts in circulation had dropped by almost one million while BNPL users grew significantly, indicating that some consumers may now consider BNPL as a genuine alternative to traditional forms of credit. However, unlike traditional forms of credit, BNPL service providers are not regulated under the [National Consumer Credit Protection Act 2009](#) (National Credit Act), meaning these providers:

- Are not required to complete affordability assessments to determine if their products are “not unsuitable” to a customer’s financial circumstances;
- Do not have an obligation to provide hardship arrangements in instances of financial difficulty; and
- Are not required to join the external dispute resolution scheme under the Australian Financial Complaints Authority (AFCA) which provides consumers with an option to bring complaints to an independent ombudsman for resolution.

It can be argued that the BNPL industry has been so successful because it more effectively meets the evolving needs of consumers as their personal preferences for credit products have changed, and also provides access to credit for those who may not be in a financial position to obtain more traditional forms of credit. However, the lack of clear disclosure in relation to the consequences of missed payments and potentially misleading advertising can lead to significant consumer harm. Whilst these services are advertised as being “free,” missed payment fee revenue for all BNPL providers included in a recent ASIC review of the industry totalled \$43 million in 2018-19, a growth of 38% from the previous financial year. ASIC also reported several instances of consumers cutting back on essential items, including meals, due to increasing debt from the use of BNPL services. One in five consumers reported missing payments and incurring late fees in the 12-month period leading to the ASIC review, with some consumers reporting they had to take out additional loans in order to make their BNPL payments on time.

In response to the ASIC report, as of 1 March 2021 several BNPL providers have voluntarily committed to comply with the AFCA’s newly published [Buy Now Pay Later Code of Practice](#) (the Code). The Code obliges its subscribers to comply with nine key commitments, including:

- The completion of initial and ongoing suitability assessments;
- A commitment to provide assistance where customers are experiencing financial hardship; and
- Submitting to become members of AFCA.

The introduction of the Code is a positive step forward, however, opportunities still exist to improve outcomes for consumers. While the Code’s requirements address some of the key issues identified in the ASIC report, further guidance could be provided in relation to how to execute these requirements, the factors which BNPL providers must consider, and the financial consequences of noncompliance. For example, the Code could be updated to provide guidance on the management of customers with exposure to multiple BNPL providers to help prevent the build-up of significant debt. [The Commonwealth Bank of Australia recently announced](#) that it will be launching its own BNPL service in mid-2021 and that it will be going above the Code’s requirements by [conducting credit bureau checks](#) on all customers to ensure the service is appropriate. The introduction of a platform by a major Australian bank may drive amendments to the Code to address the current gaps.

A Concern for Regulators in Other Countries, As Well

The BNPL industry has been a growing area of focus for regulators globally as well. The UK’s Financial Conduct Authority (FCA) outlined the findings of its study of the industry in its recently published [Woolard Review](#), where similar issues as those in Australia have been raised. Acknowledging that there could be great benefits from the BNPL industry when the service is provided to those who can afford to repay on time, the Woolard Review also noted that the industry poses potential harm to consumers for several reasons, including:

- The affordability assessments completed are very basic, usually consisting of a soft credit search and previous repayment history, and focus primarily on credit risk for the company rather than affordability for the consumer.
- Whilst consumers did not tend to view BNPL offers as credit, most still viewed it as a financial service and expected to be afforded the same protections as with traditional forms of credit.
- The average amount borrowed per transaction can be comparatively small, but consumers tend to have multiple outstanding transactions across different providers, meaning there is a risk the overall amount owed can be much greater than what is visible to a single provider.
- Many of the BNPL providers do not report to credit reporting agencies. This lack of transparency means that regulated credit providers may not have a complete view of a consumer's financial position when undertaking their affordability assessments.

The Woolard Review recommended that the industry be brought within existing regulation to strengthen consumer protection rights and promote the longer-term integrity and sustainability of the BNPL industry, and a move towards industry regulation in the UK is likely imminent. Action has also been taken in other jurisdictions to provide protections for consumers using BNPL services. For example, regulation has recently been amended in Sweden ([the Swedish Payment Services Act](#)) to combat the rising levels of debt stemming from the use of credit on e-commerce platforms, including BNPL services.

While the AFIA has presented the Code as going above and beyond the law in Australia, which puts Australia a step ahead of most other countries with a growing BNPL industry, many still question why the industry has been allowed to self-regulate with an industry Code rather than commit to complying with the legal obligations for credit providers that are already in place. New risks and consumer impacts will likely continue to arise in this rapidly growing industry. This will put the Code's efficacy to the test, and regulators and consumer protection groups will be monitoring closely, both in Australia and globally.

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