

Editorial Introduction

In 2025, the Australian Government introduced new laws regulating buy-now-pay-later (BNPL) as a form of consumer credit. These laws sought to address the potentially harmful impacts of BNPL, while recognising its value as a relatively cheap, accessible form of credit with fewer risks than payday loans or credit cards. As consumer spending rises over the Christmas season, many low-income earners will use BNPL to smooth out the cost of large purchases and manage competing financial commitments. At the same time, consumer advocates will be watching closely to ascertain whether the reforms have done enough to prevent consumer harm.

About the Author

Dr Lucinda O'Brien,
Postdoctoral Fellow,
Melbourne Law School, The
University of Melbourne

Regulating buy-now-pay-later under Australia's consumer credit laws: A new era for 'new money'

Lucinda O'Brien

What is BNPL?

Buy-now-pay-later (BNPL) is a financial product allowing consumers to receive goods and services immediately, and pay for them over time, usually in four equal fortnightly instalments. Providers cast themselves as industry disruptors, challenging the model of traditional lenders and offering a radically new approach to consumer finance (Afterpay, n.d.). To access BNPL, consumers are not required to provide evidence of their incomes, living expenses or assets, as they would with a traditional credit application. Instead, providers assess consumers' creditworthiness using their own proprietary algorithms. The product is funded by merchants, who pay providers a fee ranging from two to six per cent of each transaction (Fisher et al., 2021). Consumers pay no fees to use BNPL, provided that they make their repayments as scheduled. BNPL is extremely accessible and easy to use. It is now integrated into the payment systems of most online retailers, requiring only a few clicks at the checkout (Zhao et al., 2025). It is also increasingly available in stores, where consumers can make BNPL purchases using their smartphones. The product was pioneered by an Australian company, Afterpay, and has been enthusiastically embraced by Australian consumers (Cornelli et al., 2023), particularly young people and lower-income earners (O'Brien et al., 2024). In 2023, when the government announced its intention to regulate the industry, there were seven million active BNPL accounts in Australia (Jones, 2023).

A controversial product

Since its inception, BNPL has provoked fierce controversy. The Australian Government has described it as 'a fintech success story; a financial innovation which has been exported around the world' (Jones, 2023). Providers claim that they promote good financial management, offering small, manageable amounts of credit and 'pausing' access as soon as a payment is missed. They also argue that they save consumers money, by offering an alternative to high-interest credit cards (Afterpay, n.d.). As recently noted by the United States Federal Reserve, BNPL is often a convenient and less costly alternative to credit cards for those on a 'firm financial footing' (Larrimore et al., 2024). In Australia, empirical research suggests that BNPL is less harmful than other forms of credit readily available to low-income earners, namely, payday loans and pawn loans. The research finds that BNPL can help low-income consumers to manage large, unexpected and urgent expenses, such as car repairs (O'Brien et al., 2024). In this context, some have described BNPL as 'a lifeline for people in poverty' who must constantly 'juggle' competing expenses, without access to mainstream credit (O'Connell, 2023).

Yet BNPL has also attracted sustained criticism, particularly from consumer advocates, who argue that it poses a serious risk to low-income earners and other vulnerable groups. These advocates say that BNPL is too easy to access and that it causes consumers to spend more (Kumar, 2025), sometimes leading to significant indebtedness. Advocates observe that low-income earners often use BNPL to pay for essentials such as groceries, trapping them in a

'debt spiral from which it is very hard to recover' (Consumer Action Law Centre, 2025). They warn that BNPL can be a vehicle for economic abuse, a form of family violence in which perpetrators cause deliberate financial harm to their victims. The 'frictionless' process of using BNPL makes it easy for perpetrators to incur debts in their victim's name, or force others to make purchases on their behalf (Chen et al., in press). While BNPL providers do not charge interest, they do charge late payment fees, which are disproportionately borne by the poorest users of the product.

A regulatory 'grey zone'

Until 2025, BNPL operated in a regulatory 'grey zone' (O'Brien et al., 2024), outside the scope of the *National Consumer Credit Protection Act 2009* (Cth) (the NCCPA). This legislation governs a wide range of consumer credit products, including home loans, credit cards, personal loans, payday loans, pawn loans and consumer leases. Using pre-existing exemptions for 'short term credit' and 'continuing credit' contracts, BNPL providers avoided the NCCPA's key consumer protections, including its 'responsible lending obligations' (RLOs). BNPL providers were not required to hold an Australian Credit Licence (ACL) or to join an external dispute resolution scheme, such as the Australian Financial Complaints Authority (AFCA). The industry engaged in self-regulation through its industry body, the Australian Finance Industry Association, producing a voluntary Code of Practice. However, in 2022, an independent review of the Code

found that it was not applied consistently and that it 'place[d] the onus on the customer to self-identify as vulnerable', undermining its effectiveness (Promontory, 2023).

The 2025 reforms

In 2025, the Australian Government passed new laws bringing BNPL within the scope of the NCCPA and regulating it as 'consumer credit'. As a result, BNPL providers must now take greater care to ensure their products are affordable and that they do not lead to severe indebtedness. When presenting the new laws to Parliament, the government noted the low cost of BNPL 'when compared to most traditional forms of credit'. It stated that the industry had increased 'financial inclusion' by offering low-cost credit to some consumers who could not access traditional forms of credit, such as credit cards (Parliament of Australia, 2024). It also noted that BNPL offered benefits to those consumers who had previously been forced to rely on more expensive, 'problematic' forms of credit such as payday loans (Parliament of Australia, 2024). Accordingly, the government has created a new set of rules within the NCCPA, applying only limited constraints on BNPL lending. While consumer advocates have welcomed these reforms, they caution that the government's 'soft touch approach' may not be enough to address the risks posed by BNPL (Consumer Action Law Centre, 2024).

Licensing, 'conduct obligations', fee caps and hardship measures

Under the new laws, which came into effect in June 2025, BNPL providers must now hold an ACL and comply with the 'conduct obligations' applicable to licensees, including duties to conduct their credit activities 'efficiently, honestly and fairly'. This means that the Australian Securities and Investments Commission (ASIC) now has extensive powers to regulate the conduct of BNPL providers. ASIC can demand information from providers, ban individuals from working in the industry and initiate civil or criminal proceedings for breach of the conduct obligations. BNPL contracts are now subject to annual fee caps, which are set by the *National Consumer Credit Protection Regulations 2010* (Cth). When consumers fall into financial hardship, providers must consider ways to help them (e.g., by postponing repayments or suspending late fees). They must also join AFCA, meaning that consumers now have access to a free, independent service to resolve disputes relating to BNPL.

'Modified' responsible lending obligations

Under the new laws, BNPL providers are also bound by the RLOs, but only in 'modified' form when the credit involved is less than \$2,000. In general, the RLOs require lenders to obtain evidence about consumers' incomes, assets and existing debts (usually in the form of pay slips and bank statements). Lenders must also establish consumers' 'requirements and objectives' to ensure that the credit sought is 'not unsuitable' for them. For many years, the BNPL sector argued that it would be 'impracticable' and 'disproportionate' to subject them to the RLOs, in their standard form, as the cost of compliance 'would potentially exceed the value of the goods being purchased' (Afterpay Touch, 2018). It warned that requiring full compliance with the RLOs would make it uncommercial for the BNPL sector to fund small purchases by low-income earners (Afterpay, 2022).

The government appears to have accepted these arguments, creating a unique RLO regime specifically for BNPL contracts. These contracts are described as 'low cost credit contracts' (LCCCs) under the NCCPA. Providers of LCCCs are only required to make an initial assessment of the consumer's eligibility, with reassessments every two years, or when increasing the consumer's credit limit. Under this regime, credit of \$2,000 or less is 'presumed' to meet the consumer's needs, unless there is information that suggests otherwise. Before offering an LCCC of any size, providers must seek information regarding the consumer's income, expenditure and existing use of BNPL, consumer leases and 'short term credit contracts' (payday loans). Yet this new requirement still affords considerable latitude to BNPL providers. They must only 'seek information that [they] reasonably believe to be substantially correct' in relation to these matters. Providers can determine how, and in what format, they obtain the information (ASIC, 2025; Chen et al., in press).

Conclusion

Although the BNPL industry has praised the government for enacting 'solid' and 'proportionate' reforms (Australian Finance Industry Association, 2024), some believe the new laws do not go far enough. Consumer advocates argue that by failing to impose strict responsible lending rules on smaller BNPL contracts, the government has left vulnerable consumers exposed to significant harm (Chen et al., in press). More generally, critics of the industry contend that it simply offers another way for those who are already indebted to incur more debt (Larrimore et al., 2024). Yet even the payday lending industry concedes that BNPL is creating intense competition in its traditional market (Finance Industry Delegation, n.d.), offering a much cheaper and more 'user-friendly' form of credit to low-income earners (Zhao et al., 2025). Given the limited extent of the 2025 reforms, it seems likely that some vulnerable consumers will emerge from the coming Christmas period with a heavy burden of BNPL debt. Even so, many will continue to regard BNPL as a useful tool as they navigate the ongoing challenge of financial precarity.

References

- Afterpay. (n.d.). *Old money doesn't like the way new money works*. <https://www.afterpay.com/en-AU/afterpay-misconceptions>.
- Afterpay. (2022, December 23). Afterpay submission to the *Regulating Buy Now, Pay Later in Australia Options Paper* [submission]. <https://treasury.gov.au/sites/default/files/2023-02/c2022-338372-afterpay.pdf>
- Afterpay Touch. (2018, November). Submission to the Senate Economics References Committee November 2018 [submission]. <https://www.aph.gov.au/DocumentStore.ashx?id=eb15139e-43b3-402d-b1b7-963bb797bf7d&subId=662600>
- Australian Finance Industry Association. (2024, June 5). *AFIA Welcomes BNPL legislation: An innovative, competitive, and sustainable sector for the future* [media release]. <https://www.afia.asn.au/newshub/bnpl-media-release>
- Australian Securities and Investments Commission. (2025, May). *Regulatory guide 281: Low cost credit contracts*. <https://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-281-low-cost-credit-contracts/>
- Chen, V., Kutin, J., & Russell, R. (in press). Buy now pay later and its intersection with family violence: Prevalence and prevention. *University of New South Wales Law Journal*, 49(1). <http://dx.doi.org/10.2139/ssrn.5377913>
- Consumer Action Law Centre. (2024, June 5). *Consumer groups welcome new laws regulating buy now, pay later as credit but some concerns remain* [media release]. <https://consumeraction.org.au/consumer-groups-welcome-new-laws-regulating-buy-now-pay-later-as-credit-but-some-concerns-remain/>
- Consumer Action Law Centre. (2025, February 12). Buy now pay later (BNPL): Draft regulations [submission]. <https://consumeraction.org.au/buy-now-pay-later-bnpl-draft-regulations/>
- Cornelli, G., Gambacorta, L., & Pancotto, L. (2023, December 4). Buy now, pay later: A cross-country analysis. *Bank of International Settlements Quarterly Review*. https://www.bis.org/publ/qtrpdf/r_qt2312e.htm
- Finance Industry Delegation (n.d.). Response to the *Options paper: Regulating buy now, pay later in Australia* [submission]. https://treasury.gov.au/sites/default/files/2023-02/c2022-338372-finance_industry_delegation.pdf
- Fisher, C., Holland C., & West, T. (2021, March). Developments in the buy now, pay later market. *Bulletin*. Reserve Bank of Australia. <https://www.rba.gov.au/publications/bulletin/2021/mar/developments-in-the-buy-now-pay-later-market.html>
- Jones, S. (2023, May 22). Address to the responsible lending and borrowing summit. Treasury. <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/speeches/address-responsible-lending-borrowing-summit>
- Kumar, A. (2025, January 9). Research suggests those who use buy-now-pay-later services end up spending more. *The Conversation*. <https://theconversation.com/research-suggests-those-who-use-buy-now-pay-later-services-end-up-spending-more-246686>
- Larrimore, J., Lloro, A., Merchant, Z., & Tranfaglia, A. (2024, December 20). 'The only way I could afford it': Who uses BNPL and why. *FEDS Notes*. <https://doi.org/10.17016/2380-7172.3675>.
- National Consumer Credit Protection Act 2009* (Cth).
- National Consumer Credit Protection Regulations 2010* (Cth).
- O'Brien, L., Ramsay, I., & Ali, P. (2024). Innovation, disruption and consumer harm in the buy now pay later industry: An empirical study. *University of New South Wales Law Journal*, 47(2), 657–698.
- O'Connell, K. (2023, May 30). Buy-now-pay-later should be regulated, but it's also a lifeline for people in poverty. *Crikey*. <https://www.crikey.com.au/2023/05/30/buy-now-pay-later-regulation-lifeline-poor-people/>
- Parliament of Australia. (2024). Treasury Laws Amendment Bill 2024: Buy Now, Pay Later: Exposure Draft Explanatory Materials. <https://treasury.gov.au/sites/default/files/2024-03/c2024-504798-ed-em.pdf>
- Promontory. (2023, March). *Review of the buy now pay later code of practice*. Australian Finance Industry Association. https://afiawebsitefiles.blob.core.windows.net/websitecontent/News_Release/20230309_BNPL%20Code%20Review_Final%20Report.pdf
- Zhao, A.L., Ward, P., & Relja, R. (2025, June 25). To make buy-now-pay-later fair for consumers, regulators need to understand why shoppers use it. *The Conversation*. <https://theconversation.com/to-make-buy-now-pay-later-fair-for-consumers-regulators-need-to-understand-why-shoppers-use-it-259487>