

# BUY NOW PAY LATER POINT OF SALE CREDIT

## What is it and how does it work?

Point of sale credit is an umbrella term used to describe one of the emerging financial services on offer, 'buy now, pay later' (BNPL) products. Buy now, pay later is a way of purchasing something without having to pay the full cost at the time of purchase, instead making smaller payments over a longer period of time, like an instalment plan<sup>1</sup>. There is no interest payable on the repayments like a typical loan, but there are fees involved.

Each BNPL provider has different specific terms, but typically the purchase price is divided into even amounts that are then paid over a specified term that is spaced evenly apart. For example, AfterPay, one of the world's largest BNPL service providers<sup>2</sup> operates by splitting the purchase price into four equal payments with the first instalment payable at the point of sale, and the following three instalments being payable in the fortnights following, with no interest or fees charged, if repayments are made on time<sup>3</sup>. Most BNPL providers operate similar to this, with small variations to their terms such as charging establishment fees, account keeping fees or processing fees<sup>4</sup> which differs from company to company.

We have seen many different BNPL service providers emerge, and their popularity skyrocket as demonstrated by the number of active BNPL users growing from just under 500,000 individuals in the 2015-16 financial year to over 3.7 million users in the 2018-19 financial year<sup>5</sup>. BNPL providers generate revenue by charging their users fees as outlined above, but also by charging the merchant a fee of between 4% and 6% of the total price of the purchase made by the user<sup>6</sup>. When an individual makes a purchase using a BNPL provider, the merchant receives the full purchase price upfront (minus the percentage fee taken) from the BNPL provider, and the individual repays the BNPL provider in instalments as specified within the agreed terms. BNPL is most popular with younger people, and in the 2018-19 financial year, over half (51%) of BNPL users were aged between 18-34 years old<sup>7</sup>.

## The Good

There are many advantages to using BNPL services. Compared to the traditional method of spending now and paying later by using traditional credit options such as the credit card, commonly BNPL services do not charge interest and only charge little to no fees (not including late fees). The late fees that are charged are capped in accordance with the industry's code of conduct with Afterpay's late fees capped at a maximum of 25% of the

original order value or \$68, whichever is less, as an example<sup>8</sup>. Considering that the average credit card interest rate is over 19% per annum,<sup>9</sup> in conjunction with the annual fees and account keeping fees charged by credit card providers, BNPL services are generally cheaper for the average user compared to credit cards<sup>10</sup>. Further, BNPL services are easy to use and navigate, their accounts are easy to create, approval for spending is fast and funds are accessible as soon as the account has been made<sup>11</sup>.

## The Bad

The use of BNPL services can become a bit of a slippery slope, especially for individuals that may not be aware of the consequences of using these services can carry. Due to the accessibility and ease of creating an account, it is very easy to over estimate spending limits and therefore manage payments due, and it is possible and relatively common for individuals to end up in a position where they may owe more than they earn or than they can afford to pay<sup>12</sup>. Using these services may also have a long-term impact on the user's eligibility for a loan in the future, as lenders will consider the use of these services as a line of credit, and late repayments can be recorded on the users credit report, but this is ultimately up to the BNPL provider's discretion<sup>13</sup>. As previously mentioned, BNPL services are quite easy to apply for, with some of these services not requiring a standard credit check when their users sign up<sup>14</sup>. This means that some users that are already in debt can be accepted to use a BNPL service despite having reached spending limits on other BNPL platforms which can create compounding and unmanageable debt for the individual. Subsequently this may result in numerous late fees, putting the user in further debt and financial stress.

## The Interesting

Interestingly, BNPL services are self-regulated, as opposed to begin treated (and therefore regulated) like other types of credit and loans under the *National Consumer Credit Protection Act 2009*. This is at the crux of the ongoing debate surrounding the regulation of the services.

Currently, BNPL services are self-regulated in accordance with the industry code of practice, Buy Now Pay Later Code of Practice<sup>15</sup>, implemented by the BNPL industry body, Australian Finance Industry Association (AFIA) on 1 March 2022. BNPL service providers that have voluntarily signed up to the Code make nine key commitments to their customers, and companies that have signed up to the code are identifiable by an AFIA tick. AFIA believes that the code of practice eliminates the need the need for further regulation of the industry and maintains that *“the advantage of industry self-regulation is that it can be dynamic in the way that legislation cannot”*<sup>16</sup>. BNPL services are not covered by the *National Consumer*

*Credit Protection Act 2009* (Cth) (*NCCPA*) that regulates other forms of credit and loans as there is a loophole in the legislation that means that BNPL services are not considered credit products and fall outside of the scope of the *NCCPA* by having different features to traditional credit<sup>17</sup>, like charging small flat fees and by not charging interest on their repayments. As BNPL services are not bound by the responsible lending obligations under cover of the *NCCPA*, they are not required to consider the amount of income nor the existing amount of debt the prospective user may have. This means that individuals that are already in debt or at serious risk of being in debt can still receive credit from these providers, individuals that have reached the maximum spending limit on one BNPL provider can sign up and use another BNPL platform. Individuals that do not have the income to pay the instalments are also able to be approved to use BNPL services.

Consumer groups from 9 countries around the world have banded together and called for action urgently in relation to the regulation of BNPL services to prevent a spiral of debt as the cost of living rises and wages not keeping up with the inflation rate<sup>18</sup>. Research conducted by CHOICE<sup>19</sup> has revealed that one in five individuals that used BNPL services in the past twelve months has used it to purchase essential items such as food and utilities, and that 78% percent of individuals that have missed or been late with making BNPL payments have experienced financial hardship in the form of taking out additional loans or forgoing household items as a result of these fees incurred. Along with these alarming statistics being presented by the group, Consumers International, have also provided six key requirements to ensure the effective regulation of the BNPL industry that include<sup>20</sup>:

1. Regulate BNPL products in the same way as other forms of credit;
2. Require merchants to provide an option that allows a consumer to pay for a product in full at the time of purchase;
3. Obligate BNPL providers to assess whether it is suitable and affordable to provide credit to people, without risk of causing financial harm;
4. Prohibit BNPL providers from marketing their products in ways that target children or people in financial hardship;
5. Enable consumers to have access to redress through fair and independent mechanisms when something goes wrong; and
6. Ensure regulators monitor and report publicly on the impact of BNPL products for different groups of consumers.

Promisingly, as reported within the Australian Financial Review just recently, the newly elected labour Government has declared that they will regulate BNPL services as credit products by the middle of 2023 but asserts that the laws will not be exactly the same as

legislation that regulates other forms of credit<sup>21</sup>. It is still unclear as to how exactly this will be achieved and what it will consist of, whether that be legislating the Code of Practice, including the six key requirements as outlined by Consumers International, amending the *NCCPA* or by creating a separate piece of legislation entirely.

## To sum up

It is important to understand all aspects of the BNPL service industry, as this is imperative in deciding whether the service is appropriate to the individual and their personal financial needs and wants. The services are extremely convenient and can be very helpful and appropriate for many individuals, however with this comes with potentially detrimental consequences, should an individual use the services incorrectly, by the unintentional accumulation of BNPL payments that are unable to be serviced or other debt accumulated as a consequence of the inadequate regulation of the BNPL industry. Until BNPL services are legislatively considered a form of credit and are regulated accordingly, there is a serious responsibility imposed on the user to understand not only the complex terms but also the and potential risk they are signing up for. This will continue until a time where this onus is transferred onto the BNPL service provider by the power of legislative regulation.

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<sup>1</sup> Australian Finance Industry Association, 'What is BNPL? – Definition', *What is BNPL?* (Web page, 2022) <<https://afia.asn.au/BNPL-Definition>>.

<sup>2</sup> yStats GmbH & Co. KG, *Global Buy Now Pay Later Top Market Players 2022* (Report ID:5571403, April 2022) 2.1. <[https://www.researchandmarkets.com/reports/5571403/global-buy-now-pay-later-top-market-players-2022?utm\\_source=Ci&utm\\_medium=PressRelease&utm\\_code=qzwdrb&utm\\_campaign=1688660+-+Worldwide+Buy+Now+Pay+Later+Top+Industry+Players+Outlook+-+Top+6+Most+Used+BNPL+Apps&utm\\_exec=jamu273prd](https://www.researchandmarkets.com/reports/5571403/global-buy-now-pay-later-top-market-players-2022?utm_source=Ci&utm_medium=PressRelease&utm_code=qzwdrb&utm_campaign=1688660+-+Worldwide+Buy+Now+Pay+Later+Top+Industry+Players+Outlook+-+Top+6+Most+Used+BNPL+Apps&utm_exec=jamu273prd)>.

<sup>3</sup>Afterpay, 'How does Afterpay work?', *Getting started with Afterpay* (Web article, December 2021) <[https://help.afterpay.com/hc/en-au/articles/217425866-How-does-Afterpay-work->](https://help.afterpay.com/hc/en-au/articles/217425866-How-does-Afterpay-work-).

<sup>4</sup> Australian Finance Industry Association, 'BNPL Fees Facts Sheet', *What is BNPL?* (Web page, 2022) <<https://afia.asn.au/BNPL-Fees>>.

<sup>5</sup> Australian Securities & Investments Commission, *Buy now pay later: An industry update* (Report No 672, November 2020) Figure 1.

<sup>6</sup> Ben Butler, 'Australian customers using buy now pay later schemes could soon be slugged a fee' *The Guardian* (online, 22 October 2022) <<https://www.theguardian.com/australia-news/2021/oct/22/australian-customers-using-buy-now-pay-later-schemes-could-soon-be-slugged-a-fee#:~:text=Analyst%20Grant%20Halverson%2C%20a%20former,an%20additional%20%246%20to%20%249>>.

<sup>7</sup> Australian Securities & Investments Commission, *Buy now pay later: An industry update* (Report No 672, November 2020) Table 9.

<sup>8</sup>Afterpay, 'Are the late fees worse for me than interest payments', *How Afterpay works* (Web page, 2022) <<https://www.afterpay.com/en-AU/how-it-works>>.

<sup>9</sup> Graham Cooke, 'Australian credit card and debit card statistics' *Finder* (online, 7 June 2022) <<https://www.finder.com.au/credit-cards/credit-card-statistics>>.

<sup>10</sup> Harrison Astbury, 'Every buy now, pay later provider in Australia' *Savings.com.au* (online, 31 June 2022) <<https://www.savings.com.au/buy-now-pay-later/every-buy-now-pay-later-provider-in-australia#:~:text=They're%20easy%20to%20apply,as%20well%20as%20simple%20ones>>.

<sup>11</sup> Afterpay, 'Is it hard to open and use an Afterpay account', *How Afterpay works* (Web page, 2022) <<https://www.afterpay.com/en-AU/how-it-works>>.

<sup>12</sup> Moneysmart (ASIC), 'Buy now pay later services' *Other ways to borrow* (Web page, 2022) <<https://moneysmart.gov.au/other-ways-to-borrow/buy-now-pay-later-services>>.

<sup>13</sup>Harrison Astbury, 'Every buy now, pay later provider in Australia' *Buy now pay later* (Web article, 31 June 2022) <<https://www.savings.com.au/buy-now-pay-later/every-buy-now-pay-later-provider-in-australia#:~:text=They're%20easy%20to%20apply,as%20well%20as%20simple%20ones>>.

<sup>14</sup> William Jolly, 'Does Afterpay affect your credit score?' *Buy now lay later* (Web article, 15 October 2020) <<https://www.savings.com.au/buy-now-pay-later/does-afterpay-affect-your-credit-score>>.

<sup>15</sup> Australian Finance Industry Association, *Buy now pay later code of practice* (Report No. 2, 1 March 2022)

<sup>16</sup> Jarni Blakkarly, 'Does buy now, pay later need tighter regulation?' *Choice* (online, 30 June 2021) <<https://www.choice.com.au/money/credit-cards-and-loans/personal-loans/articles/does-buy-now-pay-later-need-tighter-regulation>>.

<sup>17</sup> Chay Fisher, Cara Holland and Tim West, 'Developments in the Buy Now, Pay Later Market' *Reserve Bank of Australia* (online, 18 March 2021)

<<https://www.rba.gov.au/publications/bulletin/2021/mar/developments-in-the-buy-now-pay-later-market.html>>.

<sup>18</sup> Rhiana Whitson, "A downward debt spiral": Global calls to rein in buy-now, pay-late companies' *ABC News* (online, 17 March 2022) <<https://www.abc.net.au/news/2022-03-17/brt-bnpl-global-call-buy-now-pay-later-debt/100914440>>.

<sup>19</sup> Choice, 'Global alliance calls for regulation of harmful buy now, pay later industry', *Media releases* (Web article, March 2022) <<https://www.choice.com.au/about-us/media-releases/2022/march/global-alliance-calls-for-regulation-of-harmful-buy-now-pay-later-industry>>.

<sup>20</sup> Rhiana Whitson, "A downward debt spiral": Global calls to rein in buy-now, pay-late companies' *ABC News* (online, 17 March 2022) <<https://www.abc.net.au/news/2022-03-17/brt-bnpl-global-call-buy-now-pay-later-debt/100914440>>.

<sup>21</sup> Michael Read, ' "If it looks like a duck: Buy now, pay later to be treated as credit' *The Australian Financial Review* (9 June 2022).