



12 May 2022

Making Buy Now Pay Later safer.

Dear party spokespeople & independent candidates,

Together our organisations support and advocate for hundreds of thousands of people across Australia. Some of our services include emergency relief, financial counselling, legal advice and advocacy and support.

We are writing to you about the harm we are seeing from the use of unregulated buy now pay later (BNPL) and wage advance credit products.

As the cost of living is increasing and interest rates are likely to rise, we are deeply concerned that many people are turning to credit products like BNPL and wage advance to simply get by.

Our next federal Parliament needs to legislate for greater consumer protections to prevent financial harm from the use of BNPL and wage advance products.

BNPL and wage advance credit products have become mainstream and are used by millions of Australians. BNPL alone accounts for around 20 per cent of online retail transactions by value. As of June 2021, there were more than 5 million active BNPL customer accounts.¹ These numbers have increased dramatically year on year.

BNPL's reach is expanding rapidly and can be used for purchases from fashion, food and childcare, through to utility bills and rental payments. Limits can

¹ <https://www.rba.gov.au/publications/bulletin/2021/mar/developments-in-the-buy-now-pay-later-market.html>



range from a few hundred dollars to \$30,000. Wage advance products offer an advance of an individual's upcoming pay for a flat fee – usually around 5%. Wage advance products are similar in many ways to payday loans.

Our consumer protections are not keeping pace with these new credit products, and the consequences are being felt by people and families.

Our consumer laws have not kept pace with innovation in the credit market. These products are not covered by our National Credit Code because their business models fall outside of the definition of credit used in the Code.

As a result, BNPL and wage advance providers are not legally required to assess the ability of their customers to repay debts or offer adequate hardship support. The commitments in the current, voluntary, industry code are woefully inadequate. It doesn't cover wage advance, is not properly enforced, and only eight out of more than 16 BNPL companies have signed up to it.

As use of these credit products grow, so does the harm they cause. Financial counsellors are seeing large numbers of clients struggling to pay their BNPL and wage advance debts, with many people having become overcommitted, and some having debts with multiple providers. Some people are also accessing BNPL and wage advance on top of other forms of debt, such as payday loans.

These problems were identified in research undertaken by ASIC in November 2020, which found 20% of people using BNPL cut back or went without essential items, such as food, in order to make payments. It also found that 15% of people took out other loans to make a BNPL payment.²

Credit should not be unduly harmful to people's financial, mental, and physical wellbeing. When people cannot safely repay credit, it risks pushing them into a debt spiral that can exacerbate poverty and inequality.

The next Federal Parliament needs to pass regulation that will make these products safer.

² <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-280mr-asic-releases-latest-data-on-buy-now-pay-later-industry/>



Given what we are seeing on the ground across Australia and the research demonstrating this harm, we are calling on political parties and independents to commit to supporting greater consumer protections for these credit products in the next Parliament.

As a first step, as in the UK, we recommend an independent inquiry that should involve an expert panel, which includes a consumer perspective. This work should inform new regulatory protections.

Without greater consumer protections, these credit products will continue to cause unnecessary harm and have long-term consequences for people, families, and communities.

Signed by



- Financial Counselling Australia
- Anglicare Australia
- CHOICE
- Financial Rights Legal Centre
- Consumer Action Law Centre
- Youth Action
- Youth Affairs Council of Victoria
- Brotherhood of St. Laurence
- St Vincent de Paul Society National Council of Australia
- Wesley Mission



Anglicare NQ
Anglicare Southern Queensland
WorkVentures
UnitingCare Australia
Anglicare Tasmania Inc
Anglicare Victoria
NILS Network of Tasmania
Good Shepherd Australia New Zealand
Australian Council of Social Service (ACOSS)
Anglicare WA
The Rocks Care Network
Midlas
HK Training & Consultancy
South Australian Financial Counsellors Association
Centacare Catholic Country SA Limited
Uniting Communities
St Vincent de Paul
Queensland Council of Social Service (QCOSS)
Womens Legal Service WA
CareWorks (SA)
City of Cockburn Financial Counselling Service
Care Incorporated
The Spiers Centre
Victorian Council of Social Service (VCOSS)
Way Forward
Centacare Family Services
Shelter Housing Action Cairns
Broome CIRCLE
Share & Care Community Services Group Inc.
Federation of Community Legal Centres Victoria
Hume Riverina Community Legal Service
Community Legal Centres Australia
Consumers' Federation of Australia
Consumer Credit Legal Service (WA)
Financial Counselling Hunter Valley Project Inc.
Northern Community Legal Centre
Hobart Community Legal Service Inc
Bravery Trust
The Salvation Army Australia
Community Information & Support Victoria



CFSS WA Ltd.
Marra Worra Worra Aboriginal Corporation
Rural West
Pilbara Community Legal Service
LawRight
The Salvation Army - Moneycare Qld
Cumberland Multicultural Community Services
Tenants' Union of NSW
Money Mentors
UnitingCountrySA
Financial Counselling Network
Gosnells Community Legal Centre
Tenants Victoria
Darwin Community Legal Service
The Wyatt Trust
Youth Affairs Council of Western Australia
Lifeline Central West
Financial Counselling Victoria
Financial Counselling Association of Western Australia
Financial Counselling Association of New South Wales
Financial Counselling Association of South Australia
Financial Counselling Association of Queensland
Financial Counselling Association of Tasmania
Financial Counselling Association of the ACT
Caxton Legal Centre
Shoalcoast Community Legal Centre
Bush Money Mob
NSW Council of Social Service
Economic Abuse Reference Group
Consumer Policy Research Centre
Mallee Family Care
Anglican Community Care Inc.
Louisa DaCosta Trust
Inner Melbourne Community Legal
Kimberley Community Legal Service
National Shelter
Women's Legal Service NSW
ACTCOSS
WACOSS



Catholic Social Services
TASSCOSS
Redfern Legal Centre
Public Interest Advocacy Centre
Centre For Women's Economic Safety
South East Community Links
Variety Children's Charity Queensland
Economic Justice Australia
Youth Affairs Council of Victoria
Brotherhood of St. Laurence
ICAN
Youth Network of Tasmania
FamilyCare
St Pats Community Support Centre
Anglicare ACT
Regional Alliance West
Uniting WA
Ethnic Communities Council of WA Inc. (ECCWA)
Indigo Junction
Queensland Consumer Association

APPENDIX B – BACKGROUND INFORMATION

1 WHAT IT IS AND HOW IT WORKS

Buy Now Pay Later (BNPL) is an instalment credit product. People receive the goods at the time of the transaction, but then pay off the balance over a few weeks. For example, you might pay 25% up front, then the balance is paid in three equal instalments.

The best known BNPL provider is Afterpay. The BNPL model does not charge interest, but some providers charge account keeping fees. There are also late fees. Some providers do a credit check before an account is first opened, but not all.

BNPL has expanded from its initial footprint in fashion, to now just about everything, including at the pub and for groceries as well as for medical procedures and home renovations. You can also access BNPL from just a few hundred dollars to up to \$30,000.

A large proportion of BNPL revenue comes from commissions charged to the merchants. These are commonly around 4%. Unlike credit cards, where merchant fees are often passed on to consumers, BNPL contracts with merchants prohibit them from passing on the fees. Merchants need to therefore absorb the cost. The reason many will do this is that BNPL often increases the amount a person spends, however some merchants have also previously acknowledged that they have increased their prices across the board to absorb this cost.

The ability of BNPL providers to maintain this business model may be under threat from the proposed review of Australia's payment framework – BNPL also sits outside of these rules, but the review will look at whether that should change.

Wage Advance is similar in some ways to payday lending, in that people pay back a loan over the next few paydays through direct debit. Like BNPL however, there is no interest and generally the cost is around 5% of the amount borrowed. One wage advance company, BeforePay (www.beforepay.com.au) recently listed on the stock exchange.

BNPL and Wage Advance (WA) products are both growing in popularity. For example, BNPL accounts for around 20 per cent of online retail transactions by value and at June 2021, there were more than 5 million active BNPL customer accounts.³

2 WHAT IS THE PROBLEM?

BNPL and WA providers are not regulated by the credit laws, because their business models fall outside of the definition of credit used in the Code.⁴ As a result, BNPL and wage advance providers are not required to assess ability to repay or have robust hardship practices in place. This is resulting in significant harm for some of the most vulnerable members of our society.

³ Reforming Australia's Payment Systems for a Digital Age, https://treasury.gov.au/sites/default/files/2021-12/p2021-231824_1.pdf, p 4.

⁴ There is an industry self-regulatory code for the BNPL industry, but it is very weak.

ASIC Reports in 2018 and 2020

The strongest evidence of detriment in Australia comes from reports by ASIC in both 2018⁵ and 2020.⁶ These reports analysed data from the BNPL providers and also surveyed consumers about their experiences. Relevant findings from the most recent report in November 2020 show that a large number of people experience negative outcomes from using the product.

- 21% of buy now pay later users surveyed had missed a payment in the last 12 months;⁷
- 39% also had a small and/or medium amount credit contract (a small amount credit contract is colloquially known in Australia as a payday loan, a medium amount credit contract is a loan between \$2,000 - \$5,000 that is also a costly form of credit);⁸
- 20% of BNPL users reported that they had cut back or went without essentials (such as meals) in the last 12 months, in order to make their BNPL payments on time;⁹
- 15% of consumers had taken out an additional loan in order to make a payment on time.¹⁰

This detriment was magnified for younger people using BNPL who proportionately were more likely to have cut back on essentials in order to make a payment or to have taken out an additional loan, compared to other age groups.¹¹

The analysis of BNPL data confirms the reliance of the business model on late fees:

- between 9% - 15% of BNPL transactions incurred late fees each month;¹²
- over the three year period to June 2019, BNPL revenue from late payment fees represented up to 15% of total revenue.¹³

Financial Counselling Australia 2021 Survey

⁵ Australian Securities and Investments Commission, Report 600, Review of buy now pay later, November 2018, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/>

⁶ Australian Securities and Investments Commission, Report 672, Buy now pay later: An industry update, <https://asic.gov.au/media/5852803/rep672-published-16-november-2020-2.pdf>

⁷ *ibid*, p 12.

⁸ *ibid*, p 12.

⁹ *ibid*, p 15.

¹⁰ *ibid*, p 15.

¹¹ *ibid*, p 15.

¹² *ibid* p 12.

¹³ *ibid* p 13.



In December 2021, FCA [published a survey](#) of 250 financial counsellors describing the trends they are seeing with BNPL amongst their clients. The key findings of the survey were that financial counsellors say that BNPL debt is growing rapidly, that it is being used to pay for essential day-to-day living costs such as food and utilities and that people can easily become overcommitted, sometimes with multiple accounts.

Financial counsellors were particularly concerned that even though BNPL is a credit product, it is not regulated by the National Credit Code. While wage advance is a newer product in the market, the survey found that most financial counsellors are also concerned about the emerging use of this products.

The ease of access to BNPL and wage advance credit makes it easy for people to open new accounts, often without adequate checks on their ability to repay the debt.

Credit should ultimately be beneficial to the financial, mental, and physical wellbeing of consumers. When people can't safely repay credit, it risks pushing them into a debt spiral that can exacerbate poverty and inequality.

3 WHY WE NEED BETTER SAFEGUARDS

Financial services are changing quickly, but consumer protection laws are not keeping up. The National Credit Code (Code) is the regulatory framework applying to consumer lending. BNPL and wage advance products however fall outside of the Code – both products charge fees rather than interest and do not meet the definition of credit in the Code.

BNPL and wage advance products should be brought within the scope of the Code, with greater regulatory safeguards in place such as mandatory assessments on customers' ability to repay.

As a first step, we are asking the government to commission an independent review of BNPL and wage advance products. The review should involve an expert panel, with input from consumer advocates.

In December the Federal Government [announced a review into](#) Australia's payment system, which will look at what rules should surround new payment platforms like digital wallets and BNPL. The consultation is expected to be announced in early 2022, however it will not consider BNPL from a consumer protection perspective.

Given the timing of this review and the exponential growth of BNPL and wage advance, we are presented with a unique moment to raise awareness of the harm of unregulated credit and to call on the federal Government to commission a separate review in the next term of government that focuses on protecting consumers.

It is worth noting that both the UK and New Zealand governments are undertaking reviews of the regulatory frameworks applying to BNPL. The US regulator has also asked for feedback about issues with BNPL.

