Innovation, Disruption and Consumer Harm: Regulating Buy Now Pay Later in Australia

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The University of Melbourne acknowledges the Traditional Owners of the unceded land on which we work, learn and live: the Wurundjeri Woi-wurrung and Bunurong peoples (Burnley, Fishermans Bend, Parkville, Southbank and Werribee campuses), the Yorta Yorta Nation (Dookie and Shepparton campuses), and the Dja Dja Wurrung people (Creswick campus).

The University also acknowledges and is grateful to the Traditional Owners, Elders and Knowledge Holders of all Indigenous nations and clans who have been instrumental in our reconciliation journey.

We recognise the unique place held by Aboriginal and Torres Strait Islander peoples as the original owners and custodians of the lands and waterways across the Australian continent, with histories of continuous connection dating back more than 60,000 years. We also acknowledge their enduring cultural practices of caring for Country.

We pay respect to Elders past, present and future, and acknowledge the importance of Indigenous knowledge in the Academy. As a community of researchers, teachers, professional staff and students we are privileged to work and learn every day with Indigenous colleagues and partners.

The rise of Buy Now Pay Later (BNPL)

- According to the Bank of International Settlements, there are now more than 2.5 million daily active users of BNPL worldwide.

- Australia and Sweden boast the highest adoption rates in the world.

- BNPL is also well established in the United Kingdom, the United States, New Zealand, China and Singapore.

Source: Giulio Cornelli, Leonardo Gambacorta and Livia Pancotto, 'Buy Now Pay Later: A Cross Country Analysis', *BIS Quarterly Review*, 4 December 2023 <https://www.bis.org/publ/>

The Harmful Financial Products Project

- Chief Investigators: Emeritus Professor Ian Ramsay and Associate Professor Paul Ali, Melbourne Centre for Commercial Law, Melbourne Law School

- Funded by the Australian Research Council (Linkage Project 160100082)

- Empirical methods included surveys, focus groups and statistical analysis of personal insolvency data (obtained from the Australian Financial Security Authority)

- Examined a wide range of 'fringe' financial products including pawn loans, consumer leases, funeral insurance and point-of-sale credit (eg Harvey Norman 'interest-free' finance); two studies of BNPL

- All articles available in full text via the Social Science Research Network (https://www.ssrn.com/) or https://law.unimelb.edu.au/centres/mccl/research/projects/projects/harmful-financial-products-project

Outline

1. What is BNPL?
- The current regulatory framework
- The Government's reform agenda

2. Our empirical study
- Quantitative data from online survey
- Qualitative data from focus groups

3. Implications for the Government's reform agenda

What is BNPL?

- Allows consumers to buy and receive goods or services immediately and pay for them over time, usually in four equal instalments; late payment fees can apply
- Consumers pay no interest if they make their repayments on time
- Funded by merchants, who pay a fee of up to 6% of the value of each transaction
- Consumers do not need to provide proof of income or undergo a credit check
- Can be used online and in stores
- Can be used to purchase clothing, footwear, furniture, electronics, car repairs, airline tickets, dentistry and veterinary care.
- At least one provider can be used to pay bills for utilities, eg gas and electricity.

Current regulation

- In a regulatory ‘grey zone’ outside the scope of consumer credit laws
- Voluntary code of practice developed by the Australian Finance Industry Association (AFIA)
- Not regulated as credit by the *National Consumer Credit Protection Act 2009* (Cth) (*NCCPA*)
- BNPL providers are not required to hold an Australian Credit Licence (which would require them to comply with ‘general conduct’ rules applicable to ACL holders)
- BNPL providers are not required to comply with Responsible Lending Obligations – not required to verify consumers’ incomes, assets or existing debts

The Government’s reform agenda

- In November 2022, the Australian Government set out three potential models:
  - Enhanced self-regulation
  - Full application of the *NCCPA*, including Responsible Lending Obligations
  - ‘Modified’ application of the *NCCPA*, with ‘tailored’ Responsible Lending Obligations
- In May 2023, the Government announced it would adopt the third, ‘tailored’ model.
- Draft legislation was due to be published by December 2023 but has been delayed.

Our survey

- Sought to investigate the impact of BNPL, payday loans and pawn loans on consumers
- Targeted consumers who had used **one or more** of these products in the previous three years
- Gathered 1,472 responses
- 77% of respondents (1,128 individuals) had used BNPL, either alone or with another product
- 458 had **only** used BNPL
- 152 had **only** used payday loans
- 111 had **only** used pawn loans

Survey

Table 1: Impact of product use on capacity to manage money and spending habits

	BNPL only (per cent) (n = 458)	Payday only (per cent) (n = 152)	Pawn only (per cent) (n = 111)
Helped	48	35	32
Didn’t affect	40	27	38
Made it harder	13	38	31

Survey

Table 2: Financial hardship and other adverse impacts of product use

	BNPL only (per cent) (n = 458)	Payday only (per cent) (n = 152)	Pawn only (per cent) (n = 111)
Financial hardship	4	42	24
Falling behind with rent or mortgage payments, or late payment of a bill	2	18	10
Borrowing money from friends or family	8	24	30
Going without or cutting back on essential household items	13	21	25
None of the above	69	29	27

Survey

Table 3: Impacts reported by respondents who used BNPL and payday loans (n = 280)

	BNPL (per cent)	Payday (per cent)
Helped to manage money	45*	32*
Didn’t affect	32	30
Made it harder to manage money	23*	38*

Survey

Table 4: Impacts reported by respondents who used BNPL and pawn loans (n = 98)

	BNPL (per cent)	Pawn (per cent)
Helped to manage money	56	26
Didn’t affect	20	38
Made it harder to manage money	24	37

Focus groups

- Six focus groups with consumer advocates, conducted online
- 36 participants including financial counsellors, consumer law solicitors, policy specialists and emergency relief workers
- Most participants were drawn from our Linkage Grant partner organisations:
  - Consumer Action Law Centre
  - Financial Counselling Australia
  - Good Shepherd Australia New Zealand
  - Mallee Family Care (Mildura)
  - Westjustice (Melbourne)

Focus groups

- Some low income earners value BNPL as a way of funding urgent purchases, eg car repairs.
- However, BNPL is too easy to access.
- Some consumers can become caught in a BNPL ‘debt spiral’, devoting large proportions of their incomes to their BNPL repayments and then being forced to use the product again to purchase groceries and other essentials.
- The safeguards provided by the industry’s voluntary code have little value in practice.
- BNPL is less harmful than payday loans or credit cards, because of its much lower cost (even allowing for late fees) and the low spending limits built into many BNPL products.
- Some vulnerable consumers would suffer even greater hardship if they could not access BNPL. Some may be forced to resort to more harmful forms of credit, particularly payday loans.

Implications

- While BNPL carries risks, particularly for vulnerable groups, it also helps some consumers to meet urgent expenses in a flexible and cost-effective way.
- The Government's preferred approach – applying a 'modified' form of the Responsible Lending Obligations – is a good one.
- This approach will reduce the risks posed by BNPL.
- At the same time, it will preserve access to BNPL for lower income earners, reducing the risk that they will resort to other, more harmful forms of credit.

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