



The Buy-Now-Pay-Later Market Regulatory Act 2019 (NSW)

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The Buy-Now-Pay-Later Market Regulatory Act 2019 (NSW)

A Bill for

An Act regulate the Buy-Now-Pay-Later market ensuring the protection of all loan applicants, especially young adults at risk of rapidly accumulating debt.

Title

The Buy-Now-Pay-Later Market Regulatory Act 2019 (NSW)

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Explanatory Notes

In New South Wales currently, the 2015-16 financial year saw 400,000 consumers using BNPL services in Australia compared to over 2 million consumers in the 2017-18 financial year, therefore representing approximately 10% of the adult population. Part of this 10% represents a growing number of adolescents under the age of 18 using the BNPL services on account, therefore, statistics for adolescent use cannot be recorded. The issues lie at financial literacy, the lack of knowledge amongst adults and adolescents of the implications that will follow if the payments to the services are not received on time. These implications include; the increasing amount of charges due to missed fees, with services such as Afterpay having 21% of active users being charged the maximum missed payment fee per month. There is a \$10 charge for each late payment, with a maximum late fee of 25% of the purchase price or \$68, whatever is lower, which can be the equivalent of a high-interest rate if all payments on a purchase are late.

BNPL services lack financial regulation, thus leading to dangerous outcomes for consumers. BNPL services allow people to overcommit to debt due to the lack of credit checks as BNPL companies are not obliged to check whether users can afford to make the repayments. Consumers are now beginning to treat BNPL services as a form of credit card or personal loan, therefore, more regulation is needed in this industry.

The BNPL industry encourages consumers to spend money which they do not have, thus causing users to live beyond their realistic means. Hence, many users accumulate thousands of dollars of BNPL debt, hence causing financial difficulties and stress. Thus, the lack of regulation has allowed companies to mislead its customers, especially young, vulnerable persons. ASIC stated "our data analysis indicates that 60% of the buy now pay later users in our review were aged between 18 and 34 years old."

In New South Wales, many young people are misled by BNPL as they fail to read the terms and conditions or 'fine print', therefore leading to dangerous outcomes. As a result, ASIC's review of BNPL services found that buy-now-pay-later services' transactions have gone from 80,000 to 1.9 million and the number of stores offering the service has gone up a staggering 45 times. Thus advertising this idea of 'Buy-now-pay-later' causes one-in-six customers of this service, which is equivalent to over 300,000 people to have experienced at least one negative outcome from this service. This may include overdrawing amount, delayed bill payments and creating debt between loan providers and family members. Through all this misleading advertising in 2017-18 financial year late fees accounted for 25% of Afterpay's \$117 million in revenue whilst the remaining 75% was generated by merchant fees. Thus the lack of conditions and false advertising creates the customer to be left in a vulnerable state.

Part 1

1. Title

The Buy-Now-Pay-Later Market Regulatory Act 2019

An act to regulate the Buy-Now-Pay-Later market ensuring the protection of all loan applicants, especially young adults at risk of rapidly accumulating debt.

2. Commencement

This Act shall commence as of September 1st 2019, that will come into effect on November 1st 2019 after the Royal Assent from the NSW Youth Governor.

3. Objects

- Age: ID checks and a minimum age of 18.
- Licence: A 20 question multiple choice test + module.
- M license: Covers the necessity and requirements to gain an M license
- ASIC: Improves their enforcement practices in regard to BNPL services

4. Definitions

In this act;

1. **Buy-Now-Pay-Later** services shall be referred to as **BNPLs**.
2. **Registration Number:** A unique number that is provided to those who have completed the 20 multiple choice test and module.
3. **Australian Securities and Investments Commission** shall be referred to as **ASIC**.
4. **M license:** a license held by a merchant which allows that merchant to provide BNPL services.
5. **BNPL Merchant Module:** a module that a business must complete in order to obtain their M license.
6. **Blacklist(ing):** a list to ban all abusers of BNPL services and to stop these people from swapping to another BNPL provider. Thus, they are banned from using any BNPL service
7. **BNPLdatabase:** a database that tracks all consumers interactions with any BNPL provider

Part 2

5. Minimum Age

The NSW Government is to implement a policy that requires all businesses to check the age of all users of BNPL services to ensure they are over the age of 18.

- a. The NSW Government is to implement new legislation that ensures businesses will only allow those of legal age to use BNPL services and will include the following clauses:
 - I. All businesses offering BNPL services will be required to conduct ID checks on any person who looks under the age of 25.
 - II. The ID provided by persons should be of the level of a driver's license or above.

- b. The NSW Government is to implement new legislation to ensure users of BNPL in NSW are over the age of 18.
 - I. Persons who fail to provide a sufficient level of ID will be refused BNPL services.

6. Licence (consumer)

The NSW Government is to implement a policy that requires the applicant to complete a set multiple choice and module on the Buy-Now-Pay-Later-Service.

- a. The NSW Government is to implement new legislation that the applicant must complete set multiple choice and module. This multiple choice and module will determine the applicant's use of this service.
 - I. A person must be 16 years of age before completing the multiple choice comprehension test.
 - II. Once the set module and test are completed, the applicant will receive their registration number.
 - III. Failure to complete set 20 multiple choice test and module after three attempts will result in a waiting period of eight weeks before another attempt may be taken.
 - IV. The aim of the module is to provide crucial key knowledge about BNPL services to BNPL consumers

- b. Businesses must have access to the BNPL database which is to be created by the NSW Government that lists registration numbers of all those who have registered and have the valid requirements to use BNPL services

- I. Businesses who offer BNPL services must check BNPL consumers registration number in the database to ensure they are eligible to use BNPL services

7. License (merchant) 'M License'

All merchants must meet certain requirements outlined in the subsections below in order to provide BNPL services.

- a. All merchants must complete the 'BNPL merchant module' before being allowed to purchase a 'M license'.
 - I. Module must inform merchants of their rights and responsibilities regarding BNPL services.
 - II. Module must state the consequences for not following the Buy-Now-Pay-Later Market Regulatory Act 2019.
 - III. Module must also guide merchants as to how to follow the legislation laid out in The Buy-Now-Pay-Later Market Regulatory Act 2019.
 - IV. Module must also lay out the best practices to comply with the the Buy-Now-Pay-Later Market Regulatory Act 2019.
- b. All merchants must purchase a 'M license' which will allow them to provide BNPL services to their customers.
 - I. All merchants must purchase a license after completing the 'BNPL merchant module' if they wish to provide BNPL services.
 - II. To purchase an M license merchant must have completed the 'BNPL merchant module'
 - III. A license must be held by businesses in order to provide BNPL services.
- c. Merchants must ensure all employees have completed the BNPL consumer multiple choice comprehension test prior to distributing services
 - I. Merchants as stipulated by the 'BNPL merchant module' must ensure all employees have completed the online comprehension test prior to providing the BNPL service.
- d. The following are the specifications of the M license
 - I. A merchant must purchase an M license through ASIC
 - II. The cost of an M license is a 'one off' of \$500
 - III. The M license expires after 10 years

8. New Government Enforcement Body/ ASIC

In order to reinforce the importance of the M License ASIC will proceed to periodically check and investigate any discrepancy with the use of an M license.

- a. ASIC shall employ a series of “mystery shoppers” to undergo investigations.
- b. Additionally to ensure continued monitoring of the BNPL market ASIC shall order mandatory annual reports from BNPL services. These report shall help to identify or encourage:
 - I. At risk demographics
 - II. Users abusing the market and therefore up for blacklisting
 - III. Fair and honest management of the market by providers
- c. ASIC shall monitor all BNPL consumers interactions with the service
 - I. Via the use of the BNPL database
 - II. Enforce the black listing of repeat system abusers through the BNPL database

Part 3

9. Merchants

- a. Failure to check users ID's of BNPL consumers who appear to be under 25 years in age will result in a:
 - I. Temporary suspension of the businesses BNPL license for a period of 12 months and;
 - II. A mandatory fine of \$8000.
- a. If a business which offers the BNPL services as a payment method, is caught providing the service to adolescents under the age of 18 they will be:
 - I. Banned from providing any BNPL transactions as a payment method;
 - II. And subject to a maximum fine of \$12500.

10. Consumers

- a. If caught using a BNPL under the age of 18 the offender is subject to the following requirements:
 - I. a mandatory \$200 fine.
 - II. A temporary 12 month suspension from the use of any BNPL service
 - III. A track record on BNPL database
 - IV. A strike will go on BNPL database
 - I. 3 strikes will result in a blacklisted consumer

Part 4

This part includes all amendments that the refuters of the bill propose to modify the wording of sections or clauses or remove and/or add clauses.

Clause number	Part 2, Clause 6. Income
Existing clause or part wording	<p>The NSW Government is to implement a policy that requires the applicant's income to predetermine the financial credit of the Buy-Now-Pay-Later-Service.</p> <ol style="list-style-type: none"> 1. The NSW Government is to implement new legislation that the applicant's monthly income should predetermine the financial credit of the service. <ol style="list-style-type: none"> 1. The applicant's monthly income should cover 10% of the value of the credit. 2. If the applicant's income does not cover 10% of the value of the credit, they must be restricted from using the Buy-Now-Pay-Later-Service until their monthly income increases to 10% of the requested credit.
Amendment request	The request proposed is to strike the clause.
New clause shall now read	Not applicable.
Clause number	Part 2, Clause 9. E- license
Existing clause or part wording	<p>All employees who need to provide customers with BNPL services who are employed at merchant stores who offer BNPL services will be required to hold an 'E license'.</p> <ol style="list-style-type: none"> 1. .An employee who works at a business who offers BNPL must hold an E license in order to provide the BNPL service to the customers they are to serve. 2. Employees who do not hold an E license are not permitted to serve customers BNPL services 3. The following are the requirements for any persons who wish to obtain an E license <ol style="list-style-type: none"> 1. A person must be over the age of 16

	<ol style="list-style-type: none"> 2. Must purchase the E license through ASIC 3. Will pay a 'one off' E license fee of \$20 4. The following will outline the specifications of the E license <ol style="list-style-type: none"> 1. The E license will expire after ten years 2. Is transferable across any employment in NSW 3. A new license will not need to be purchased if a person changes employers 4. An E license will enable a person to serve customers who wish to use BNPL services
Amendment request	The request proposed is to strike the clause due to the unnecessary burden of responsibility placed upon employees, many of which will be new to the workforce.
New clause shall now read	Not applicable.
Clause number	Part 2 Clause 8. M License, Section C
Existing clause or part wording	<p>C. All merchants must ensure only employees with an 'E license' serve customers who request to use BNPL services</p> <ol style="list-style-type: none"> 1. All merchants as stipulated by the 'BNPL merchant module' must ensure those employees who are serving customers who wish to use BNPL hold an E license. 2. Failure for employees to hold an E license whilst serving a customer a BNPL service will result in financial penalties.
Amendment request	<p>That all merchants and employers must ensure that their employees have completed the BNPL consumer multiple choice comprehension test prior to distributing BNPL services.</p> <p>And that, employees are no longer required to hold the license for any employment reasons.</p>

New clause shall now read	<p>C. Merchants must ensure all employees have completed the BNPL consumer multiple choice comprehension test prior to distributing services</p> <ol style="list-style-type: none"> 1. Merchants as stipulated by the 'BNPL merchant module' must ensure all employees have completed the online comprehension test prior to providing the BNPL service.
Clause number	Clause 7. Licence (Consumer)
Existing clause or part wording	<p>The NSW Government is to implement a policy that requires the applicant to complete a set multiple choice and module on the Buy-Now-Pay-Later-Service.</p> <ol style="list-style-type: none"> 1. The NSW Government is to implement new legislation that the applicant must complete set multiple choice and module. This multiple choice and module will determine the applicant's use of this service. 1. Once the set module and test are completed, the applicant will receive their registration number. 2. Failure to complete set 20 multiple choice test and module after three attempts will result in a waiting period of eight weeks before another attempt may be taken. 3. The aim of the module is to provide crucial key knowledge about BNPL services to BNPL consumers 2. Businesses must have access to the BNPL database which is to be created by the NSW Government that lists registration numbers of all those who have registered and have the valid requirements to use BNPL services. 1. Businesses who offer BNPL services must check BNPL consumers registration number in the database to ensure they are eligible to use BNPL services
Amendment request	In accordance with the amendment to Clause 8 section C, to ensure all participating in the workforce can

	provide the BNPL service, the minimum age of the multiple choice test should be 16.
New clause shall now read	<p>The NSW Government is to implement a policy that requires the applicant to complete a set multiple choice and module on the Buy-Now-Pay-Later-Service.</p> <ol style="list-style-type: none"> 1. The NSW Government is to implement new legislation that the applicant must complete set multiple choice and module. This multiple choice and module will determine the applicant's use of this service. 1. A person must be 16 years of age before completing the multiple choice comprehension test. 2. Once the set module and test are completed, the applicant will receive their registration number. 3. Failure to complete set 20 multiple choice test and module after three attempts will result in a waiting period of eight weeks before another attempt may be taken. 4. The aim of the module is to provide crucial key knowledge about BNPL services to BNPL consumers 2. Businesses must have access to the BNPL database which is to be created by the NSW Government that lists registration numbers of all those who have registered and have the valid requirements to use BNPL services. 1. Businesses who offer BNPL services must check BNPL consumers registration number in the database to ensure they are eligible to use BNPL services