



**ASIC**  
Australian Securities &  
Investments Commission

**REPORT 600**

# **Review of buy now pay later arrangements**

November 2018

## **About this report**

This report summarises the findings of ASIC's review of 'buy now pay later' arrangements. These arrangements allow consumers to buy and receive goods and services immediately but pay for that purchase over time.

The aim of our review was to develop a broad understanding of this industry and to identify potential risks for consumers.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## Executive summary

- 1 In January 2018, ASIC commenced a review of ‘buy now pay later’ arrangements. These arrangements allow consumers to buy and receive goods and services immediately but pay for that purchase over time.
- 2 The market for these arrangements is diverse, evolving, and growing rapidly. The number of consumers who used at least one buy now pay later arrangement has increased about five-fold from 400,000 consumers during the 2015–16 financial year to over 2 million consumers during the 2017–18 financial year. This represents about 10% of the adult population in Australia.
- 3 Many buy now pay later users appear to be regular users of these arrangements. More than four in five consumers (86%) who had used a buy now pay later arrangement within the last 12 months plan to do so again. Most users also believe that these arrangements allow them to buy more expensive items, spend more than they normally would, or make more spontaneous purchases.
- 4 Buy now pay later arrangements can create some risks for consumers if they take on debt that they may have difficulty paying back. To make a scheduled repayment on a buy now pay later arrangement, some consumers delayed paying bills, became overdrawn, or borrowed money from family, friends or another loan provider.
- 5 Many consumers who have recently used a buy now pay later arrangement are also younger consumers and students who describe themselves as part-time employed or unemployed.
- 6 Buy now pay later providers take some steps to help consumers stay in control and make informed decisions about their purchases and repayments. For example, 75% of users keep track of their repayment obligations through notifications, online accounts and mobile applications from their buy now pay later provider. While we identified instances where providers could have done more, each provider demonstrated a readiness to work with ASIC by improving their practices in response to our recommendations.
- 7 The consumer protections under the *National Consumer Credit Protection Act 2009* (National Credit Act) do not apply to buy now pay later arrangements. This means that buy now pay later providers do not need to hold an Australian credit licence (credit licence) to provide these arrangements, nor comply with the responsible lending obligations.
- 8 Only one out of six providers in our review examined the income and existing debts held by consumers before providing their services. We also received reports of instances where consumers were allowed to use a buy now pay later arrangement despite having limited or no income and substantial existing debt.

- 9 Currently, ASIC has limited jurisdiction to regulate conduct and address lending risks to consumers when they use a buy now pay later arrangement.
- 10 We consider that ASIC's proposed product intervention power should apply to all credit facilities regulated under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), which includes buy now pay later arrangements. This would allow us to act quickly and effectively to address the causes of problems if we identify a significant detriment to consumers that cannot be resolved through other action.
- 11 In using the product intervention power, we would look for interventions that represent the most targeted and appropriate regulatory solutions to address identified consumer detriment.

Note: See ASIC, [Submission to the design and distribution obligations and product intervention power: Revised exposure draft legislation](#) (August 2018) (PDF, 518 KB).

## Background to our review

- 12 ASIC's review of the buy now pay later industry is consistent with our mandate to promote confident and informed consumers in credit and financial services. It is also consistent with our mission to drive good consumer outcomes and to promote the strong and innovative development of the financial system.

Note: For our new regulatory mission, see [ASIC's Corporate Plan 2018–22](#).

- 13 The aim of our review was to develop a broad understanding of this industry and to identify potential risks for consumers.
- 14 We examined six buy now pay later providers: see Table 1.

**Table 1: Arrangements covered by our review**

Arrangement	Provider
Afterpay	Afterpay Pty Ltd (Afterpay)
zipPay	zipMoney Payments Pty Ltd (zipMoney)
Certegy Ezi-Pay	Certegy Ezi-Pay Pty Ltd (Certegy)
Oxipay	Oxipay Pty Ltd (Oxipay)
BrightePay	Brighte Capital Pty Ltd (Brighte)
Openpay	Openpay Pty Ltd (Openpay)

15 We commissioned independent consumer research which included a qualitative online discussion board and a quantitative survey of 600 randomly selected consumers who had used a buy now pay later arrangement within 12 months of completing the survey.

16 We also consulted a range of stakeholders including other regulatory agencies, consumer advocates, the two ASIC-approved external dispute resolution (EDR) schemes at the time, and industry associations.

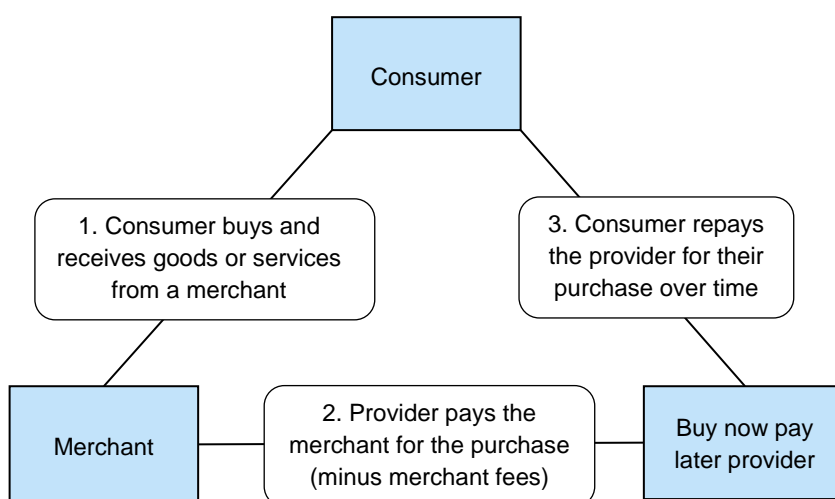
17 We reviewed information provided to us by each buy now pay later provider. This included policies and procedures, responses to a qualitative survey (survey) and over 650 aggregated fields of data (data) from each provider.

Note: For a full methodology, see Appendix 1.

### What is a buy now pay later arrangement?

18 A buy now pay later arrangement usually involves a contract between the consumer and the buy now pay later provider, a contract between the consumer and the merchant, and a contract between the provider and the merchant: see Figure 1.

**Figure 1: How a buy now pay later arrangement works**



Note: This figure illustrates that when a consumer uses a buy now pay later arrangement to buy goods or services, the merchant is paid by the provider of the arrangement. The provider then collects repayments from the consumer to recover the upfront payment over time. Consumers can receive the goods or services immediately, well before the purchase price has been fully repaid.

19 Each provider in our review charges merchants when consumers use a buy now pay later arrangement. Some providers also charge consumers for these arrangements. Arrangements are available in-store, online, and sometimes through door-to-door sales.

- 20 These arrangements can be cheaper for consumers than some other types of credit because consumers are generally not charged interest and there are limits on the fees that buy now pay later providers can charge. However, consumers can incur missed payment fees.
- 21 The scope of our review focused on buy now pay later arrangements that are not regulated under the National Credit Act:
- (a) Afterpay and Oxipay do not charge consumers for providing the credit, so the arrangement is not regarded as ‘credit’ under the National Credit Code (Sch 1 of the National Credit Act).
  - (b) An arrangement would not be regulated under the National Credit Act if the credit is for a term of 62 days or less, fees and charges do not exceed 5% of the amount of credit, and interest charges do not exceed an amount equal to 24% per annum. None of the buy now pay later providers in our review offer these arrangements.  
  
Note: See s6(1), National Credit Code (short term credit exemption).
  - (c) The remaining four buy now pay later providers offer continuing credit contracts not regulated under the National Credit Act because they only include charges for credit that amount to an upfront fee (e.g. an establishment fee) or a periodic fee (e.g. an account-keeping fee) that is fixed, does not vary according to the amount of credit that is provided, and is less than specified amounts.  
  
Note: See s6(5), National Credit Code (continuing credit contract exemption), National Consumer Credit Protection Regulations 2010.
- 22 Other unregulated ‘no interest’ payment arrangements exist, such as arrangements which allow consumers to defer payments on utility bills and insurance excesses. These were beyond the scope of this review.

### The industry at a glance

- 23 Table 2 summarises the different features of the buy now pay later providers in our review.

**Table 2: Features of buy now pay later providers**

Feature	Description
Start date	Certegy started offering buy now pay later arrangements in 2000 and Openpay started in 2013. The remaining four providers started from April 2015 or later.
Listing on ASX	Afterpay, zipMoney, Certegy and Oxipay are part of larger ASX-listed groups.
Licensing	Afterpay holds a credit licence but does not provide any products regulated under the National Credit Act, while zipMoney holds a credit licence to provide a different product regulated under the National Credit Act. Certegy and Oxipay are subsidiaries of FlexiGroup, which holds a credit licence and also provides regulated credit products.

Feature	Description
Application of the National Credit Act	<p>zipMoney, Certegy, Openpay and Brighte offer continuing credit contracts that are exempt from the National Credit Act under s6(5) of the National Credit Code.</p> <p>Afterpay and Oxipay provide arrangements that are exempt because they do not charge the consumer for providing the credit (missed payment fees do not affect this exemption).</p> <p>Note: None of the arrangements fall under the short term credit exemption.</p>
Loan amount	<p>Afterpay, zipMoney and Oxipay offer amounts up to \$1,000–2,000, while Openpay offers amounts up to \$17,500. Brighte and Certegy offer amounts up to \$30,000.</p>
Loan terms (including early exit)	<p>Afterpay and Oxipay offer weekly or fortnightly repayments over 6–8 weeks.</p> <p>zipMoney has no fixed repayment term but requires a minimum monthly repayment.</p> <p>Openpay offers three repayment options over 2–36 months.</p> <p>Certegy and Brighte offer continuing credit contracts with repayments over 2–60 months.</p> <p>All six providers allow consumers to repay early.</p>
Fee structures	<p>Each provider has a different fee structure for consumers. Fees can include:</p> <ul style="list-style-type: none"> <li>• establishment and redraw fees;</li> <li>• regular account keeping or administration fees;</li> <li>• payment processing fees; and</li> <li>• missed payment fees and/or account closure fees.</li> </ul> <p>Afterpay and Oxipay do not charge consumers any fees if they pay on time.</p> <p>To rely on the continuing credit contract exemption, zipMoney, Openpay, Certegy and Brighte limit fees to up to \$200 in the first year and \$125 in subsequent years (regardless of the amount of credit).</p> <p>zipMoney does not charge any fees if the closing balance is paid in full within one month.</p> <p>Missed payment fees range from \$4.99 to \$15. None of the providers charge consumers a fee for paying off their debt early.</p> <p>All providers charge merchants a fee for each transaction that usually includes, but is not limited to, a percentage of the purchase price for the goods or services.</p>
Information used to assess applications	<p>Brighte performs a credit assessment that considers a consumer's financial position, including their income and expenses.</p> <p>Afterpay, Openpay, Certegy and Oxipay assess applications by considering the consumer's previous repayment history with the provider. For example, consumers could start with a lower account limit with some providers and qualify for a higher account limit by making repayments on time.</p> <p>Openpay, zipMoney, Certegy and Oxipay consider demographic information about the consumer such as their age, location and details of the purchase.</p> <p>Openpay, zipMoney and Brighte consider negative credit information from credit reports.</p>
Financial hardship	<p>All providers have a policy for helping consumers having difficulty making repayments.</p>
EDR membership and dispute resolution	<p>All providers are members of the Australian Financial Complaints Authority (AFCA), which is an ASIC-approved EDR scheme. Each provider has procedures for addressing consumer complaints, but these procedures vary between providers.</p>
Overseas operations	<p>Afterpay, Openpay, Certegy, Oxipay and zipMoney operate businesses in New Zealand. Afterpay recently started operating in the United States and the United Kingdom.</p>



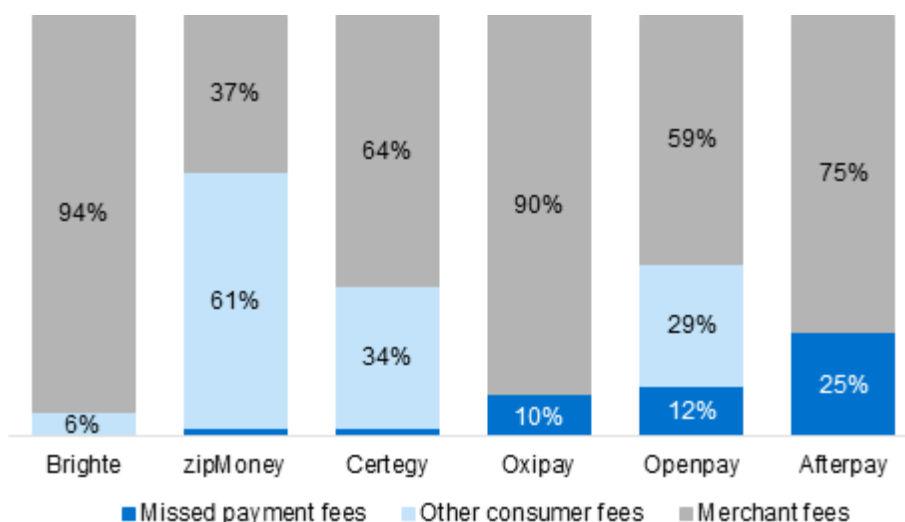
## Summary of findings

### Finding 1: Buy now pay later is a rapidly growing industry

- 24 Although buy now pay later arrangements from Certegy have been available to consumers in Australia for nearly two decades, the recent entry of new buy now pay later providers has led to substantial growth in this industry.
- 25 The number of buy now pay later transactions in each month has grown from over 50,000 transactions in April 2016 to 1.9 million transactions in June 2018. The total balance of outstanding debt from these arrangements grew from \$476 million in April 2016 to over \$903 million by June 2018.
- 26 The number of merchants that offer buy now pay later arrangements has also grown. By 30 June 2018, 50 times more merchants were partnered with zipMoney than in June 2016, and 45 times more merchants were partnered with Afterpay.
- 27 The total revenue of the six buy now pay later providers in our review increased from \$32 million during the quarter that ended on 30 June 2016 to \$78 million during the quarter that ended on 30 June 2018.

### Finding 2: The buy now pay later industry is diverse and evolving

- 28 The diverse range of buy now pay later arrangements that are available to consumers is reflected in Table 2.
- 29 Consumers can use zipPay, Oxipay and Afterpay for up to \$1,000, \$1,400 or \$2,000 of credit respectively, without being charged a fee if they pay on time or, for zipPay, if they repay their outstanding balance within the balance period. In contrast, Openpay provides consumers credit limits up to \$17,500, and Certegy and Brighte provide up to \$30,000.
- 30 Buy now pay later arrangements are not limited to low-value purchases. For example, these arrangements can be used to finance solar power products, health services, travel, and electronics. Buy now pay later arrangements are also available for daily necessities such as groceries and at 'everyday' retailers such as Big W, Target, Harris Scarfe and Kmart.
- 31 The diversity of business models in this industry is also reflected in the share of revenue that each provider earned from merchant fees and consumer fees (including missed payment fees): see Figure 2.

**Figure 2: Revenue earned by buy now pay later providers (FY 2017–18)**

Note: For the underlying data shown in this figure, see Table 4 in Appendix 2. Percentages are rounded to the closest 1%.

32 All six buy now pay later providers in our review allow consumers to use an arrangement online or in-store, and Certegy and Brighte also allow consumers to make some purchases over the phone. Our data indicates that online purchases are more common for some but not all buy now pay later providers.

33 We note that other credit arrangements that are not regulated under the National Credit Act have also emerged, such as arrangements that allow consumers to defer payment on their utility bills or insurance excesses. These credit arrangements were not included in our review.

### **Finding 3: Some buy now pay later arrangements result in the price of goods being inflated**

34 Each provider in our review contractually prevents merchants from charging consumers higher prices for using a buy now pay later arrangement.

35 For lower priced goods (typically under \$1,000–2,000), and for goods sold at merchants that do not negotiate prices (such as online stores or department stores), consumers do not currently pay more for using a buy now pay later arrangement compared to other payment methods such as cash, a debit card or credit card. Given existing surcharges for some credit card transactions, merchants may in the future seek to introduce surcharges for buy now pay later arrangements. The implications of this would need to be considered.

36 However, we have received anecdotal evidence that some merchants may have charged consumers significantly higher prices for using a buy now pay later arrangement, including for:

- (a) higher-value purchases (over \$2,000);
- (b) where the price of goods is less transparent and ‘negotiable’ (e.g. solar power products); or
- (c) where consumers are acquiring services.

37 These higher prices can be misleading to consumers if they are not disclosed, because they can obscure the actual cost of using a buy now pay later arrangement. This can make it difficult for consumers to make an informed decision about the costs of the arrangement.

38 ASIC is considering the legal position of scenarios where a merchant inflates the cost of the underlying goods if a consumer uses a buy now pay later arrangement. We have taken action against credit providers for attempting to avoid the National Credit Code by creating artificial business models and for engaging in credit activities without a licence.

Note: For example, see [Media Release \(16-027MR\)](#) *Payday lender penalised for overcharging consumers* (9 February 2016), [Media Release \(15-278MR\)](#) *Federal Court finds Fast Access Finance breaches National Credit Act* (1 October 2015), [Media Release \(13-090MR\)](#) *ASIC accepts enforceable undertaking from Solar Rental Company* (29 April 2013).

#### **Finding 4: Many buy now pay later users are relatively younger consumers**

39 Our data analysis indicates that 60% of the buy now pay later users in our review were aged between 18 and 34 years old. Further analysis of this data shows that younger consumers are over-represented in the population of buy now pay later users, compared to the overall Australian population and the population of credit card holders in Australia.

40 In our consumer research, more than two in five buy now pay later users (44%) had an annual income of less than \$40,000. Within this group, almost 40% described themselves as either students or in part-time work.

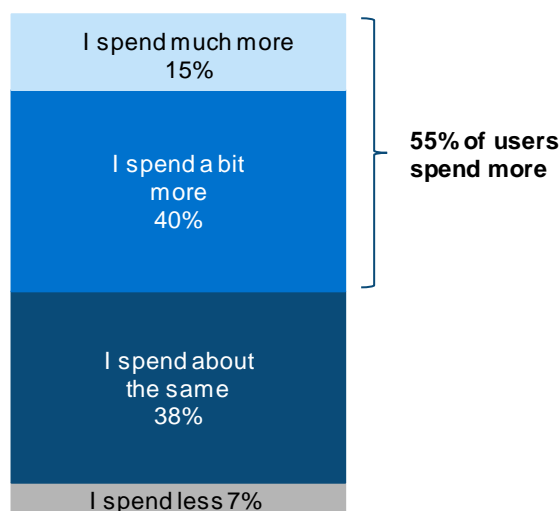
41 We are doing further research to understand how the emergence of buy now pay later arrangements is influencing the choices that consumers make in relation to traditional credit products, such as credit cards.

#### **Finding 5: Buy now pay later arrangements have influenced the spending habits of some consumers**

42 Our consumer research found that users saw buy now pay later arrangements as easy to use, convenient, and ‘less risky’ than other payment options. More than four in five users (86%) planned to use an arrangement again.

43 Most users (90%) believed that buy now pay later arrangements helped them ‘manage their spending by spreading payments over time’.

44 But consumers also believed these arrangements allowed them to buy more expensive items that they otherwise could not afford in one payment (81%), spend more than they normally would (64%), and make more spontaneous purchases (70%). More than half (55%) of buy now pay later users believed that they were spending more on some items than before they started using these arrangements: see Figure 3.

**Figure 3: Effect of buy now pay later arrangements on spending behaviour**

Note: For the underlying data shown in this figure, see Table 5 in Appendix 2.

45 The design and sales process of buy now pay later arrangements can also influence how consumers make purchasing decisions. Our consumer research identified several behavioural factors in the buy now pay later process—such as over-confidence, how the price of a purchase is framed, and the speed and ease of the sales process—which can influence consumers to make a purchase without careful consideration of the cost.

46 Using a credit card to make payments on a buy now pay later arrangement can expose consumers to potential interest charges on a purchase. Our consumer research showed that 23% of users made repayments on their arrangement with a credit card.

### **Finding 6: Over-commitment can be a risk for some consumers**

47 Our survey, consumer research and stakeholder consultation identified a real risk that some buy now pay later arrangements can increase the amount of debt held by consumers and contribute to financial over-commitment.

48 Over-commitment can cause a consumer to miss repayments on a buy now pay later arrangement. It can also contribute to other difficulties—even when a consumer has not missed repayments—such as difficulty affording essential goods and services (e.g. utilities or groceries) and financial stress.

49 Our consumer research found that one in six buy now pay later users (16%) believed they had experienced at least one type of negative impact due to a buy now pay later arrangement. This included becoming overdrawn, delaying bill payments, and borrowing additional money from family, friends or another loan provider.

50 Less than 10% of buy now pay later users with five providers were charged missed payment fees more than once on the same transaction in each quarter. This compares with 19% of credit card holders in Australia who had problematic debt.

Note: See [Report 580](#) *Credit card lending in Australia* (REP 580). This comparison is subject to qualifications: see paragraphs 184–185.

51 The responsible lending obligations in the National Credit Act do not apply to buy now pay later arrangements. This means that when providers decide whether to approve an application for an arrangement, they are not required to inquire into the consumer's financial position, verify the consumer's financial position or make an assessment as to whether the consumer would be able to repay the credit without substantial hardship.

52 Each provider takes some steps to refuse some credit applications. For example, if a consumer misses a scheduled repayment, five of the six buy now pay later providers in our review suspend that consumer's ability to make additional purchases until they have remedied the missed payment.

53 This can help reduce the risk of a consumer taking on additional debt when they may already be having trouble making repayments. However, consumers who have missed payments to one provider might access another provider. This is a risk we will monitor.

54 Our consumer research found that one in three (31%) users believed that their buy now pay later provider checked to make sure consumers would be able to meet the repayment terms. But only one of the six providers in our review actually considers the income and existing debts of consumers when assessing an application.

55 Our stakeholder consultation also highlighted instances where consumers were allowed to use a buy now pay later arrangement despite having limited or no income and substantial existing debt.

56 The case studies in this report have been provided by the Consumer Action Law Centre, which operates the National Debt Helpline. They are presented as examples and they are not intended to be representative of the broader consumer experience.

#### Case study 1: Debts on top of further debts

Vicki was in her early 20s and a mother to three preschool-aged children. She was unemployed but received Centrelink payments.

Vicki had multiple payday loan debts totalling \$4,000 and a \$9,000 car loan. Vicki also had a \$1,000 debt to Certegy Ezi-Pay that had been referred to a debt collector and several telecommunications and utility debts.

Vicki explained that she then incurred a \$740 debt to Afterpay to buy goods at a butcher and several clothing stores.

### **Finding 7: Buy now pay later providers take some steps to act fairly with consumers, but can do more**

- 57 We identified some measures taken by buy now pay later providers to help consumers stay in control and make informed decisions about their purchases and repayments.
- 58 For example, some providers send consumers updates about upcoming repayments, and some providers also present prospective repayment terms to consumers in a way that is straightforward and written in plain English. Consumers can also keep track of their repayment deadlines through online accounts and mobile applications made available by the provider.
- 59 All buy now pay later providers have a detailed written policy for responding to consumer complaints and to requests for hardship assistance.
- 60 But we also identified instances where buy now pay later providers could have done more. For example, some of the providers in our review did not tell consumers how they could complain or ask for help with their repayments.
- 61 We consider that buy now pay later providers should ensure that:
- (a) consumers adequately understand the terms of their arrangement;
  - (b) a complaints process is visible and accessible for consumers;
  - (c) consumers understand that they can request financial hardship assistance from their provider; and
  - (d) merchants act consistently with guidelines supplied by the provider which limit how these arrangements may be promoted and provided to consumers.
- 62 Each provider in our review demonstrated a readiness to work with ASIC to improve how they can act fairly with consumers. After feedback from ASIC, all six providers began a review of their practices.
- 63 Some providers have already implemented several improvements. For example:
- (a) two providers became members of an EDR scheme;
  - (b) one provider made information about their complaints and hardship processes more accessible by placing it on their website; and
  - (c) one provider now refers consumers to a financial counselling service if they tell the provider they cannot meet repayment obligations.

### **Finding 8: Buy now pay later providers included potentially unfair terms in their contracts with consumers**

- 64 Buy now pay later providers are prohibited from including terms in their standard form contracts with consumers that are ‘unfair’.

Note: See Div 2 of Pt 2 Subdiv BA of the ASIC Act.

- 65 In our view, each buy now pay later provider in our review included some terms in their standard contracts that are potentially unfair to consumers. This includes terms that:
- (a) gave the buy now pay later provider a very broad unilateral discretion to vary the contract;
  - (b) provided a very broad range of circumstances in which a consumer will be regarded to be in ‘default’ on their arrangement;
  - (c) limited and excluded the liability of provider for goods or services supplied by the merchant;
  - (d) held the consumer liable for unauthorised transactions, even when the provider knows or suspects the transaction may be unauthorised; and
  - (e) very broadly indemnified the provider against losses, costs, liabilities and expenses.
- 66 We have raised our concerns with each provider in our review to highlight terms in their consumer contracts that are potentially unfair, and we will continue to keep all regulatory options open to address these concerns. Each provider is reviewing their contracts to amend or remove unfair terms.
- 67 All providers must ensure that their standard form contracts do not contain contract terms that are potentially unfair.

## Next steps for ASIC

### The regulatory framework

- 68 The National Credit Act does not apply to buy now pay later arrangements. In particular, buy now pay later providers do not need to comply with the responsible lending obligations in the National Credit Act, which prohibit credit licensees from providing credit that would be unsuitable for the consumer.

Note: See Pt 3.2 of the National Credit Act.

- 69 Because these arrangements are regarded as ‘credit facilities’ under the ASIC Act, ASIC has some jurisdiction over these arrangements. For example, we are responsible for administering laws which prohibit buy now pay later providers from engaging in misleading, deceptive, or unconscionable conduct.

Note: See Div 2 of Pt 2 of the ASIC Act.

- 70 As a first step, we consider that ASIC’s proposed product intervention power should be extended to all credit facilities regulated under the ASIC Act. This would allow us to act quickly and effectively to address the causes of problems if we identify a significant detriment to consumers that cannot be resolved through voluntary action.

71 In using the product intervention power, we would look for interventions that represent the most targeted and appropriate regulatory solutions to address identified consumer detriment.

Note: See ASIC, [Submission to the design and distribution obligations and product intervention power: Revised exposure draft legislation](#) (August 2018).

72 As a further step, it may be that buy now pay later providers should be required to comply with the National Credit Act. ASIC has not yet formed a view that this is necessary. Our ongoing monitoring of this industry (see paragraphs 73–79) will help us to assess whether we should advise the Government to consider further law reform.

### **The potential harms we will monitor**

73 The growth of the buy now pay later industry means that it will remain an area of ongoing focus for ASIC.

74 Specifically, we are examining situations where consumers may be charged more by merchants for using buy now pay later arrangements, and we are considering our regulatory options.

75 More broadly, there are already signs that some consumers are struggling with taking on too much debt through these arrangements. Some buy now pay later providers are mitigating the risk of over-commitment by:

- (a) capping or limiting the missed payment fees that can be charged; and
- (b) preventing consumers from making another purchase using an arrangement if they have not remedied a missed payment for an existing purchase.

76 We consider these to be important protections and safeguards, particularly where buy now pay later providers are otherwise not required to comply with the responsible lending obligations in the National Credit Act.

77 Whether these protections are adequate, and whether additional safeguards are required, remains an open question. For example, a consumer who has missed payments with one buy now pay later provider can still access credit with another provider. We will actively monitor this potential risk.

78 More generally, we will:

- (a) collect data on a recurrent basis to monitor risks;
- (b) continue to give consumers information about these arrangements on our MoneySmart website and through social media; and
- (c) continue to review changes made by buy now pay later providers, including to remove potentially unfair contract terms.

79 Where we identify evidence of serious misconduct or poor consumer outcomes, we will consider regulatory action under the ASIC Act and further recommendations for law reform.



## A The buy now pay later industry

### Key points

Our review highlights a market that has grown rapidly in two years.

The population and demographic of buy now pay later users in Australia is still smaller and younger than the credit card market in Australia.

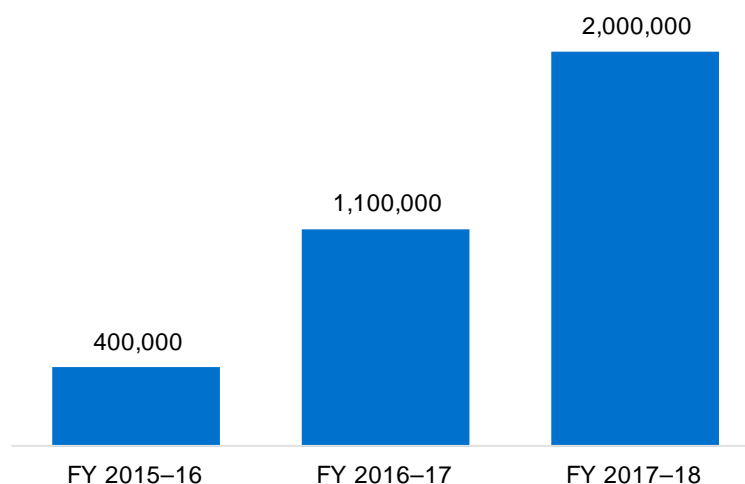
While the total value of all transactions in each month has risen, smaller and more frequent transactions have become more common.

### Size and volume of the industry

#### Number of active customers

80 Based on our data, the number of consumers who used at least one buy now pay later arrangement from a provider in our review within the last 12 months increased from an estimated 400,000 consumers in the 2015–16 financial year to over 2 million consumers in the 2017–18 financial year: see Figure 4.

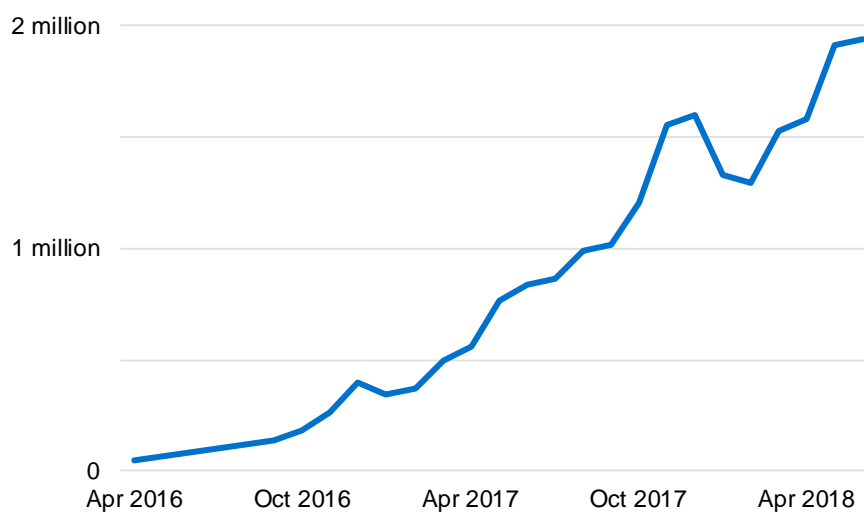
**Figure 4: Estimated number of active buy now pay later users**



Note: For the underlying data shown in this figure, see Table 6 in Appendix 2. This estimate is based on a sum of the total number of consumers with each buy now pay later provider. Consumers who had arrangements with two or more providers are counted more than once.

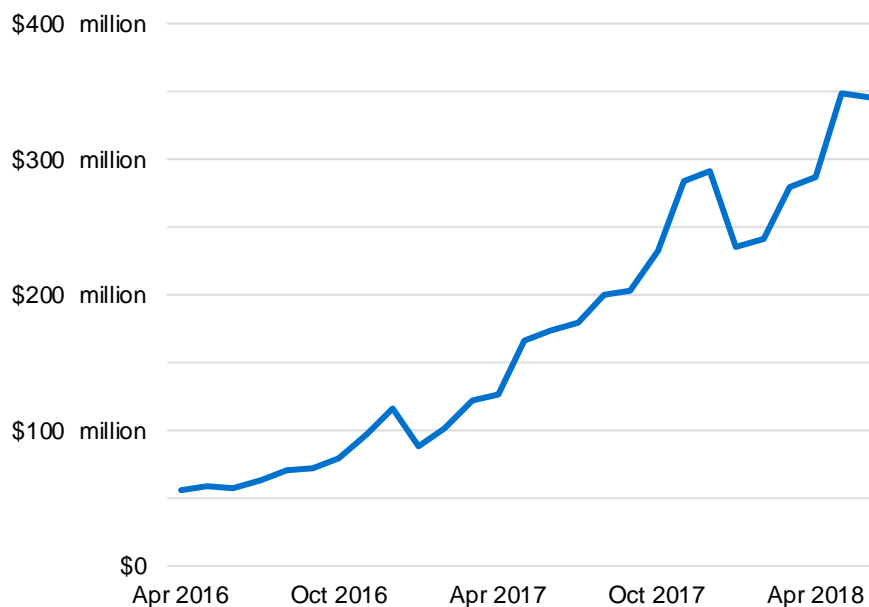
#### Transaction volume

81 The number of transactions in each month rose from 51,000 in April 2016 to 1.9 million in June 2018. Our data highlights seasonal trends involving a temporary rise and subsequent fall in the number of transactions at the end of each year: see Figure 5.

**Figure 5: Number of transactions (April 2016–June 2018)**

Note: For a description of the underlying trends shown in this figure, see paragraph 82.

82 The total value of all transactions in each month rose from \$56 million in April 2016 to \$346 million in June 2018: see Figure 6.

**Figure 6: Monthly transaction value**

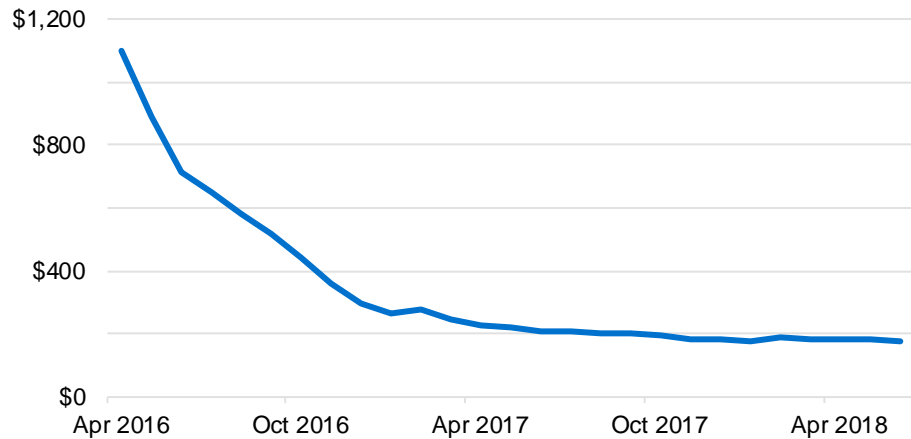
Note: For a description of the underlying trends shown in this figure, see paragraph 83.

83 From April 2016 to 30 June 2018, outstanding balances rose from \$476 million to \$903 million. Outstanding balances have increased less than the total value of all transactions, due to the substantial growth in the volume of buy now pay later arrangements with shorter repayment schedules.

## Average transaction value

84 Smaller and more frequent transactions have become more common. The average transaction value for the buy now pay later arrangements in our review fell from \$1,098 in April 2016 to \$178 by June 2018: see Figure 7.

**Figure 7: Implied average transaction value**

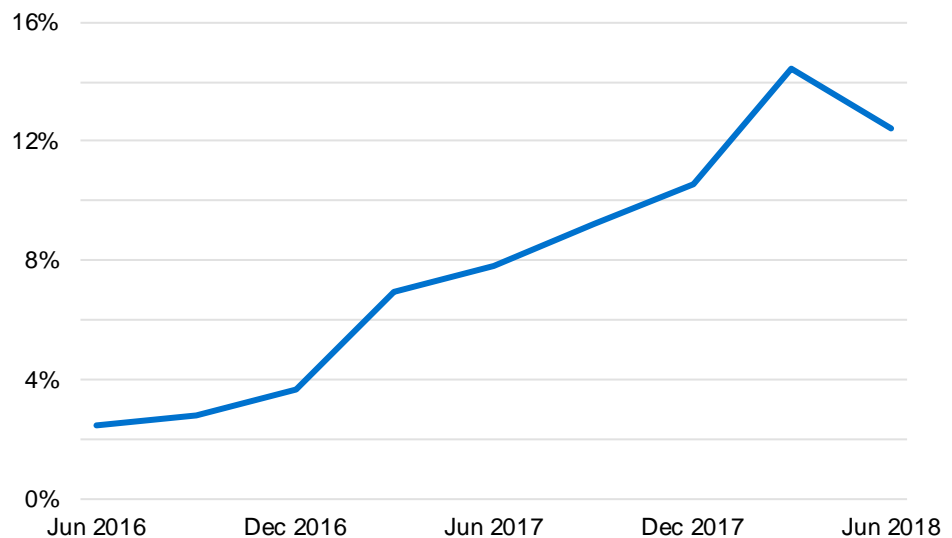


Note: For a description of the underlying trends shown in this figure, see paragraph 84.

## Revenue

85 The total revenue earned by the six providers in our review rose from \$32 million in the quarter ended 30 June 2016 to \$78 million in the quarter ended 30 June 2018. While the percentage of revenue from merchant fees remained stable, the percentage of revenue from missed payment fees rose from just 2% of total revenue in the quarter ended 30 June 2016 to a high of 14% in the quarter ended 31 March 2018 before dropping back to 12% in the quarter ended 30 June 2018: see Figure 8.

**Figure 8: Missed payment fees as a percentage of total revenue**

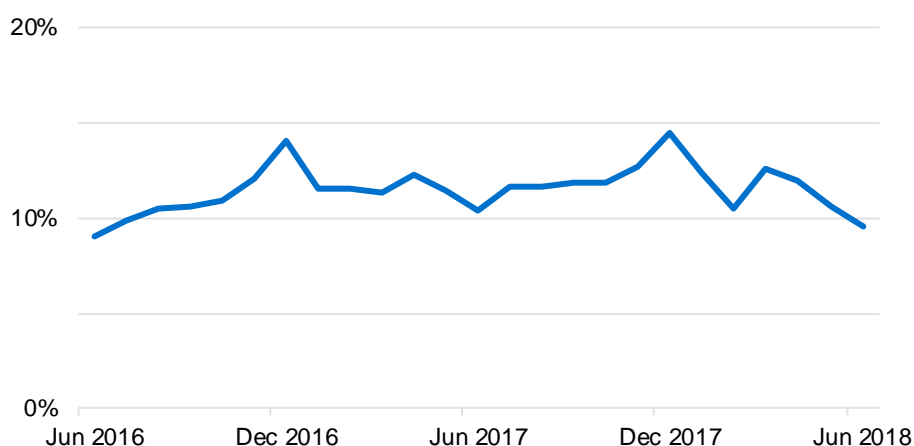


Note: For a description of the underlying trends shown in this figure, see paragraph 85. Our data highlights seasonal trends involving a temporary rise and subsequent fall in the number of transactions at the end of each year.

- 86 Part of this growing revenue in missed payment fees is attributable to:
- (a) the entry and growing popularity of buy now pay later providers who charge multiple missed payment fees;
  - (b) the increase in lower-value purchases, which attract merchant fees that are smaller relative to the amount of a fixed missed payment fee; and/or
  - (c) the recent entry of many first-time users, who may be less likely to miss a payment when they start using these arrangements for the first time but become more likely to miss one or more payments over time.

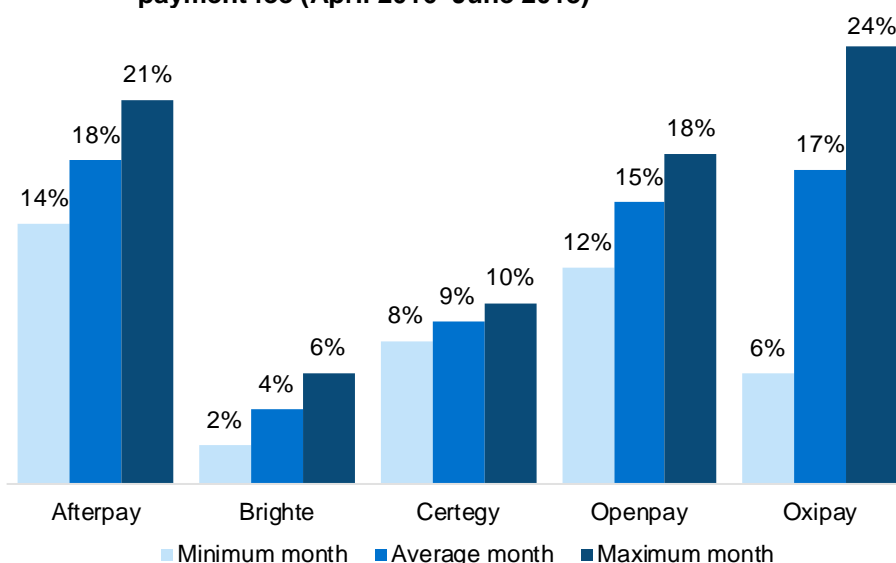
87 Overall, the percentage of buy now pay later transactions that incurred a missed payment fee remained relatively stable at between 8% and 14% of transactions from June 2016 to June 2018: see Figure 9 and Figure 10.

**Figure 9: Percentage of transactions that incurred a missed payment fee**



Note: For a description of the underlying trends shown in this figure, see paragraph 87. This data covers five providers as zipPay arrangements do not incur missed payment fees at a transaction level.

**Figure 10: Percentage of active users who were charged a missed payment fee (April 2016–June 2018)**



Note: For the underlying data shown in this figure, see Table 7 in Appendix 2. This data covers five providers as zipPay arrangements do not incur missed payment fees at a transaction level.

- 88 Providers that offer smaller arrangements had a relatively higher proportion of users who had been charged a missed payment fee.

## Application approvals

- 89 Our survey found that some applications can be declined for reasons that may not be immediately apparent to consumers, including:
- (a) a poor credit score or credit report;
  - (b) making several applications within a short amount of time;
  - (c) poor past repayment history with the provider; or
  - (d) failed external identity verification.
- 90 Our survey also found that previous exposure to particular credit products such as small amount credit contracts could negatively affect the likelihood that an application would be approved.
- 91 Our review identified substantial differences in declined application rates between providers, ranging from 6% to 43% of all applications.

## Comparison with other types of credit

- 92 Buy now pay later arrangements can be cheaper than other types of credit. However, the relative cost of these arrangements depends on a number of factors, such as the type of arrangement and purchase, and whether the consumer misses repayment deadlines.

**Table 3: Comparison between buy now pay later arrangements and other credit options**

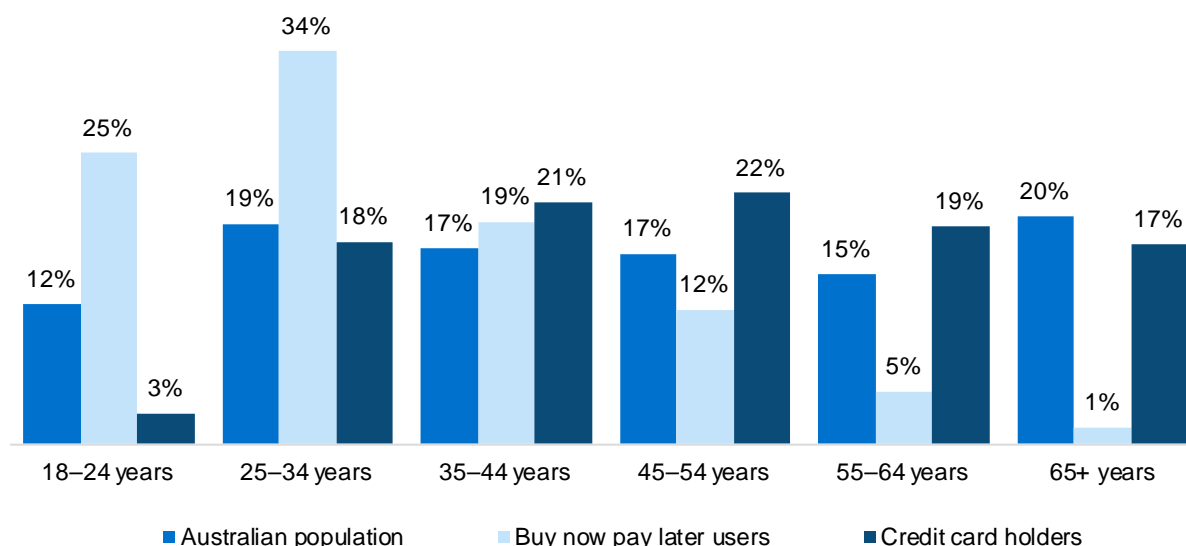
Credit products	Summary	Cost limit (excluding missed payment fees)
<b>Short-term buy now pay later arrangements</b>	Credit is available for up to \$1,000–2,000. The purchase price is repaid in equal instalments.	Consumers pay no extra charges if they pay within a specified period.
<b>Buy now pay later arrangements that are continuing credit contracts</b>	Credit is available for up to \$30,000. Some arrangements require a minimum periodic repayment. Others involve a fixed repayment plan for each purchase. Multiple advances of credit may be available.	Fees and charges are limited to \$200 in the first year and \$125 in each subsequent year.
<b>Small amount credit contracts</b>	Unsecured credit is available up to \$2,000 repaid over 16 days to one year.  At the cost limit, a \$2,000 small amount credit contract over 12 months could incur additional costs of \$1,360.	The establishment fee is limited to 20% of the borrowed amount, and any account management fee is limited to 4% of the borrowed amount.  The credit provider cannot collect more than 200% of the borrowed amount, including missed payment fees.

Credit products	Summary	Cost limit (excluding missed payment fees)
<b>Medium amount credit contracts</b>	Credit is available from \$2,001–5,000, repaid over 16 days to two years. This is not a continuing credit contract and is not offered by an authorised deposit-taking institution (ADI). The debt can be secured or unsecured.	The establishment fee is limited to \$400. The annual cost rate is limited to 48% of the borrowed amount.
<b>Continuing credit contracts such as credit cards</b>	This is a credit contract where multiple advances of credit are contemplated. Consumers may not be charged interest if they pay on time but may still pay an annual fee.	There is no cost limit if the contract is offered by an ADI. Otherwise, the annual cost rate is limited to 48% of the borrowed amount.

### Credit cards

- 93 The buy now pay later industry is still smaller than the credit card market in Australia. Based on our data, an estimated 2 million consumers had used a buy now pay later arrangement within the last 12 months by 30 June 2018, while almost 10 million adult Australian residents had a credit card account in June 2017.
- 94 Buy now pay later users are over-represented among younger age groups compared to credit card holders: see Figure 11.

**Figure 11: Percentage of buy now pay later users and credit card holders by age group compared to Australian population**



Note: For the underlying data shown in this figure, see Table 8 in Appendix 2.

- 95 Due to this younger age profile, buy now pay later users are also more likely to have lower incomes than credit card holders. Our consumer research found that 44% of buy now pay later users have an annual income of less

than \$40,000, while ASIC data shows that only 14% of credit card holders reported an income less than \$41,599.

- 96 It is difficult to compare consumers' use of credit cards to their use of buy now pay later arrangements, due to the variety of fee structures and the inherent differences between these arrangements and credit cards. For example, the buy now pay later arrangements in our review:
- (a) do not attract interest charges;
  - (b) do not offer promotional and balance transfer periods;
  - (c) do not offer supplementary benefits, such as promotional and balance transfer periods, rewards programs and travel insurance;
  - (d) usually involve fee structures that are rarely used for credit card accounts, such as missed payment fees for individual transactions and payment processing fees (whereas credit cards often have annual fees, missed payment fees that are charged at an account level, and interest charges on outstanding balances); and
  - (e) are part of a rapidly growing and evolving market, while the credit card market in Australia is relatively mature.

## Interaction with merchants

### Uptake of buy now pay later options

- 97 Our stakeholder consultation with retail industry groups suggests that most merchants are choosing to offer buy now pay later options in response to apparent demand from consumers for these arrangements.

### Promotion of buy now pay later options

- 98 Each buy now pay later provider in our review had entered into an agreement with merchants requiring the merchant to actively promote the arrangements to customers by making the provider's advertising and branding material visible online and at shopfronts.
- 99 The agreements used by each provider also require merchants to comply with advertising guidelines that are supplied by the provider. Some buy now pay later providers require all merchants to distribute any promotional material that is supplied to them.
- 100 In some instances, buy now pay later payment options can be repeatedly advertised to consumers before they choose to buy certain goods and services. For example, promotions for buy now pay later arrangements from some providers can be found on social media, websites, billboards, during telephone sales calls, and in-store.

### **Costs to merchants**

- 101 For each buy now pay later arrangement in our review, merchants are charged a fee equal to a percentage of the amount of the purchase. Some providers also charge merchants a fixed fee for each arrangement.
- 102 The size of these fees depends on factors such as the volume of buy now pay later arrangements used by the merchant, the risk profile of the merchants, and the types of goods and services offered by the merchant.

### **Refund policies**

- 103 As the supplier of the goods or services purchased by consumers, merchants are generally liable to provide the consumer guarantees set out under the Australian Consumer Law. Consumers have certain rights for their purchase to be repaired, replaced or refunded. The refund and returns policy of the merchant applies to purchases made with a buy now pay later arrangement.

Note: See Pt 3-2, Div 1 of the Australian Consumer Law (Sch 2 of the *Competition and Consumer Act 2010*).



## B Consumer demographics and behaviour

### Key points

A significant number of consumers who use buy now pay later arrangements are young (18–34 years), which is also reflected in lower levels of income and employment among users.

Most consumers use at least one other credit facility in addition to buy now pay later arrangements; one third of users reported they do not have any other credit facility.

Consumers intend to keep using buy now pay later arrangements; they see these arrangements as convenient, allowing them to buy things they might otherwise be unable to afford upfront.

55% of consumers reported they are spending more than they did before they used buy now pay later arrangements.

Most consumers used a transaction account to make repayments. One quarter of consumers reported having missed a repayment.

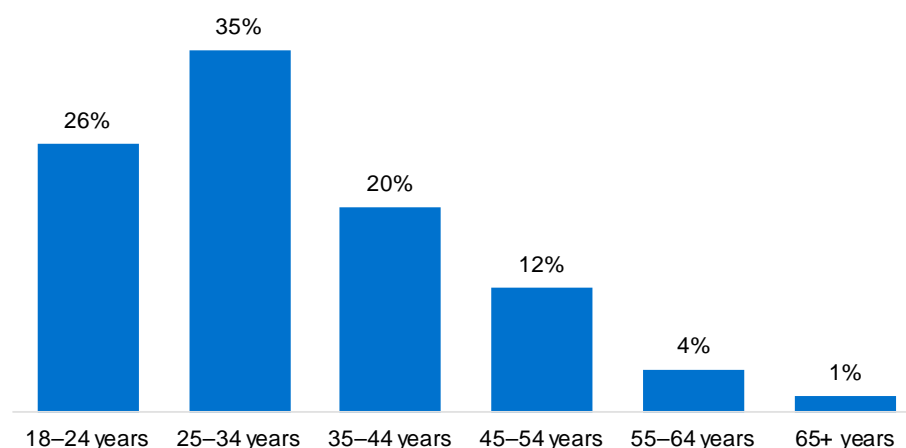
### Which consumers use arrangements

104 Much of the growth in this industry has been recent. In consumer research, 70% of users said they used a buy now pay later arrangement for the first time in the last 12 months.

105 Our data shows that 60% of buy now pay later users are 18–34 years old (see Figure 12); 57% of users were female and 42% male.

Note: These figures do not exclude instances in which consumers were counted in our data more than once if they had arrangements with more than one provider.

**Figure 12: Age profile of buy now pay later users (FY 2017–18)**



Note: For the underlying data shown in this figure, see Table 9 in Appendix 2.

106 Our data also highlighted substantial variations in the age profile of buy now  
pay later users who have arrangements with each provider.

107 Some of these variations may be attributable to aspects of the business model  
of each provider. For example, some providers offer arrangements that may  
be more suitable for particular types of purchases (e.g. arrangements with  
higher credit limits may be more suitable for higher-value purchases such as  
home improvements). Additionally, our survey indicated that some providers  
focus their businesses on specific product segments, such as fashion products.

108 These factors can affect the age profile of the users who use arrangements  
with each buy now pay later provider.

### **Income and employment**

109 Of the participants in our consumer research:

- (a) 44% reported an annual income of less than \$40,000;
- (b) 39% had an income between \$40,000 and \$100,000; and
- (c) 8% said they earned over \$100,000.

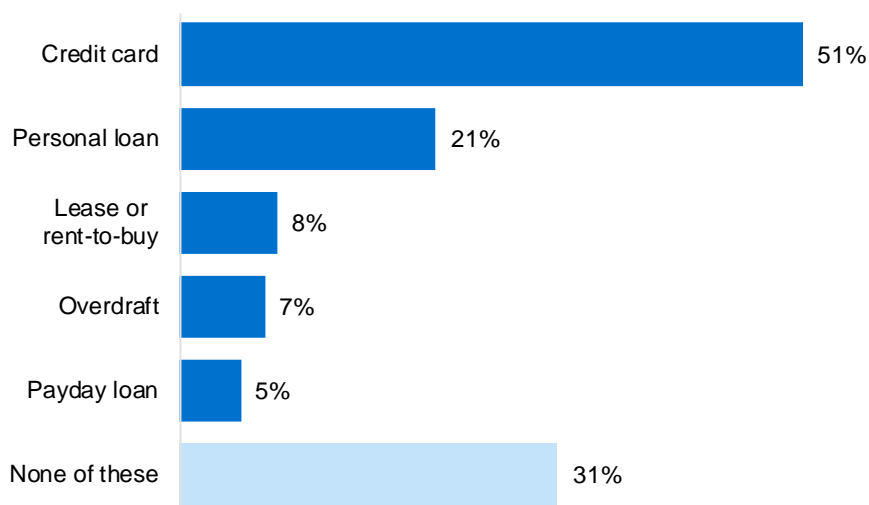
Note: The remaining consumers did not provide an estimate of their income.

110 Our analysis of data from the Australian Bureau of Statistics (ABS) indicates  
that this breakdown of income is likely to be consistent with the income and  
age profile of the broader Australian population.

111 Most (65%) of the buy now pay later users in our consumer research  
described themselves as employed full time or part time. Of the users who  
earned less than \$40,000 a year, 40% said they were either employed part  
time or students.

### **Other credit arrangements**

112 Our consumer research indicated that almost one in five buy now pay later  
users (19%) had two or more other types of credit facilities besides a buy  
now pay later arrangement. Almost one-third of users (31%) had no other  
credit facility: see Figure 13.

**Figure 13: Other credit facilities held by buy now pay later users**

Note: For the underlying data shown in this figure, see Table 10 in Appendix 2.

## How consumers use arrangements

- 113 Based on our consumer research, an estimated 69% of users had made three or more buy now pay later purchases within the last 12 months and 30% of users had used more than one provider during that time.
- 114 Consumers predominantly used buy now pay later arrangements to buy clothing, technology, electronics or software, personal care items, furniture, homewares, and appliances. These arrangements are also available for more expensive purchases such as home improvements and cosmetic procedures.

## Why consumers use arrangements

### Triggers

- 115 Our consumer research found that 62% of consumers used a buy now pay later arrangement for the first time when they bought goods or services online.
- 116 Almost one in five of users (19%) believed that a sales assistant had 'encouraged' them to use a buy now pay later arrangement for the first time.
- 117 Although this varied between each provider, consumers believed that their decision to use an arrangement had been influenced by:
- word of mouth (28%);
  - advertising (24%);
  - a suggestion by a staff member in a shop (14%); and
  - seeing a poster or advertising in a retail store (14%).

118 Our consumer research indicated that consumers generally chose to use a buy now pay later arrangement as part of their decision to buy an item from a particular merchant. This suggests that users generally select a particular ‘merchant’ and use an arrangement from whatever provider is available to facilitate a purchase.

### **Motivations**

119 86% of users believed that they would use a buy now pay later arrangement again. Our findings about what consumers believed motivated them to use a buy now pay later arrangement are summarised below.

#### **Access to higher-value purchases**

120 Most buy now pay later users agreed that buy now pay later arrangements allowed them to buy more expensive items and spend more.

‘My shopping exceeded the intended amount I wanted to spend, so I decided to opt for it.’ (30–35 years, Female, Vic)

‘I have purchased some more expensive items I probably wouldn’t of (sic) bought if I had to pay all the money at the time.’ (46–54 years, Female, Qld)

#### **Access to time-sensitive purchases**

121 Some users said buy now pay later arrangements allowed them to take advantage of ‘sales’ or ‘limited offers’ from merchants. Other consumers needed to meet unexpected expenses.

‘I wanted the bag and it was on promotion, so I wanted to buy it. But I was \$50 short. So, I decided to pay in four instalments as I didn’t have to pay anything extra. And I was paid fortnightly from [my] part-time job so I could pay it easily.’ (18–24 years, Male, Vic)

‘I love this way because sometimes I don’t have enough money to buy it, but they have something which was [on] sale so I can buy it and pay later.’ (25–29 years, Male, Vic)

‘I have used...for things we have needed for our car and home, which has been really convenient as well because these are expensive items we needed without notice and I could get them straight away without being late for other bills.’ (30–35 years, Female, NSW)

#### **Convenience and ease of use**

122 Compared to other payment options, 81% of users believed that a buy now pay later arrangement was more convenient. Users also commented on the ease of using these arrangements.

‘It’s easy, quick finance and easy to repay.’ (30–35 years, Female, Vic)

‘I just signed up the online account when at checkout. It was pretty simple, took me less than five minutes. My limit was \$500.’ (18–24 years, Male, Vic)

‘It was an easy way to pay off a large amount at your own pace.’ (36–45 years, Female, NSW)

### Flexibility and choice

- 123 Some consumers said that they actively considered their payment options and concluded that using a buy now pay later arrangement would be more cost-effective.
- 124 More than three in five users (65%) agreed that the consequences of missing repayments on a buy now pay later arrangement are less risky compared to other payment options.
- ‘I always think about if it fits into my budget for the week, if so I pay cash. If I know I won’t be able to pay it back within the 55 days interest-free period on my credit card than I opt for the buy now pay later option.’ (25–29 years, Female, NSW)
- ‘For the larger, more expensive purchases especially travel, I try to put whatever I can on credit card, so I can accumulate reward points but still stay within my credit limit. I also like to use buy now pay later methods for larger more expensive luxury items such as technology or furniture that I can pay off over time, as this option lets me still make these purchases where I otherwise would not be able to afford them immediately.’ (36–45 years, Female, NSW)
- ‘It gives me flexibility to pay back, and if it’s interest free, why would I use my credit card?’ (36–45 years, Male, NSW)

### Possible effects of product design and sales process

- 125 The design and sales process of buy now pay later arrangements can also influence how consumers make purchasing decisions. Our consumer research identified three behavioural factors that appeared to influence consumer decisions to use buy now pay later arrangements. These behavioural factors can also affect how consumers behave with other deferred payment methods, such as credit cards.

#### Overconfidence and over-optimism

- 126 A consumer can underestimate the possibility that unexpected or bad events will happen or overestimate their ability to handle those events.
- 127 For example, a consumer may be overly optimistic about the risk of unexpected events or expenses arising that could make it hard to make repayments, or overly confident in their ability to understand the terms of their buy now pay later arrangement.
- ‘I don’t envisage myself ever having any problems with buy now pay later unless an unforeseen incident occurred in my life. I am very good at budgeting for bills and for amounts I owe.’ (36–45 years, Female, SA).

#### Framing

- 128 The way in which the prices and key features of a product are presented in the sales process can downplay the costs and risks of a purchase.

129 For example, prices for goods and services can be displayed to emphasise the amount of each instalment, rather than the full price. This can make a purchase seem more affordable.

‘The main disadvantage to buy now, pay later for me is that it blurs the line for what is “affordable”. I often find myself considering (and buying) things that I don’t necessarily think are a good price or good value just because I am not paying the full amount up front, it kind of seems like it actually costs less than it does.’ (30–35 years, Female, NSW)

‘Before I used to see that price as \$400. Now, when you buy using buy now pay later, I see it as just \$100 per instalment. I think it just makes me feel less guilty on spending on some expensive things.’ (18–24 years, Male, Vic)

### **Ease and speed of spending**

130 An easy, quick, and seamless application process can create a positive and convenient user experience. But this can also lull consumers into ‘fast’ or ‘automatic’ thinking. This can increase the likelihood of making a purchase quickly without careful consideration.

131 For example, some buy now pay later providers make mobile applications available so that existing buy now pay later users can buy goods or services quickly, simply by pressing a few icons on their mobile phone.

132 The ease of applying for a buy now pay later arrangement can reduce the feeling of parting with money.

‘I get a false sense of security that I can afford some things which I might have thought twice about in the past, because of the fact that I don’t have to pay for them immediately and have the gift of time to pay them out.’ (36–45 years, Female, NSW)

‘The sign-up process was very easy, it was all done online. I filled in a form with my details and what I was buying. We got an answer within 30 seconds.’ (30–35 years, Male, NSW)

‘It was really easy for [provider name], I just gave my details and credit card info and I got \$400 credit. The [other provider] was a big hassle and took about an hour and I had to give every detail about my life.’ (36–45 years, Female, SA)

## **How arrangements influence spending behaviour**

133 90% of users believed that buy now pay later arrangements allowed them to ‘manage spending by spreading payments over time’. However, over half of users believed they were spending more than before they started using these arrangements (see Figure 3), and many users agreed that these arrangements allow them to buy items that would have otherwise been out of reach.

‘I don’t have a lot of spare money each fortnight so pay later lets me buy things I can’t really afford.’ (36–45 years, Female, Qld)

‘I spend more, knowing then that I could pay with future income. Hence I’m more likely to buy more expensive items than necessary.’ (30–35 years, Male, NSW)

- 134 Our consumer research also found:
- (a) 81% of users believed that buy now pay later arrangements allowed them to ‘buy more expensive items that I couldn’t afford to buy in one payment’;
  - (b) 70% of users believed that these arrangements allowed them to ‘be more spontaneous when I’m buying goods and services’; and
  - (c) 64% of users believed that these arrangements allowed them to ‘spend more than I normally would’.

## How consumers make repayments

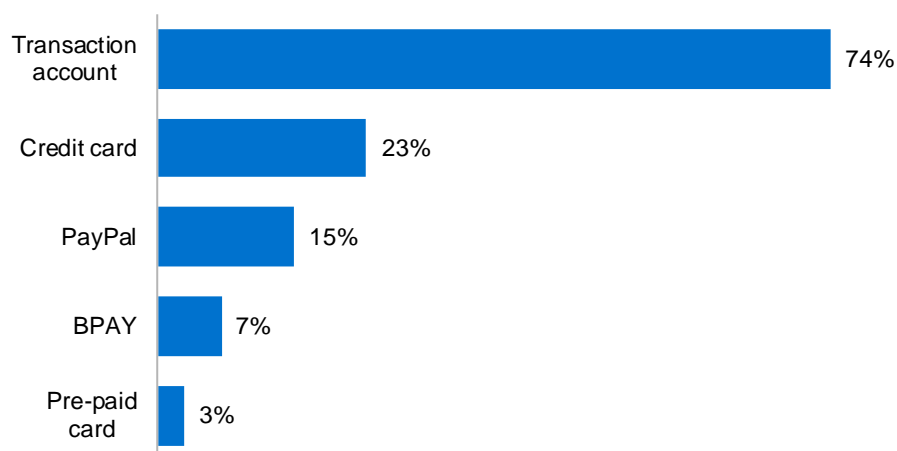
### Repayment methods

135 All six buy now pay later providers in our review require consumers to nominate a bank account, debit card or credit card from which fees and repayments can be automatically debited. Some providers allow users to pay by BPAY, cheque or cash.

136 The percentage of buy now pay later transactions that are paid for with a credit card varies significantly between providers. This percentage, at an industry level, remained relatively steady from April 2016 to March 2018.

137 Our consumer research indicated that 74% of buy now pay later users used a debit card or direct debit from a transaction account to make payments, even though more than half (51%) of users had a credit card.

**Figure 14: How buy now pay later users made repayments**



Note: For the underlying data shown in this figure, see Table 11 in Appendix 2.

## Keeping track of repayments

138 Our consumer research found that 75% of buy now pay later users reported that they used notifications, a mobile app or online account supplied by their buy now pay later provider to keep track of their repayments. Only a third of users (31%) tracked their repayments by using an independent tool (e.g. with a diary, spreadsheet or budgeting app).

## How often and why do consumers miss repayments?

139 At an industry level, the percentage of buy now pay later transactions that incurred a missed payment fee remained relatively stable at between 9% and 14% from 1 April 2016 to 30 June 2018.

140 Our consumer research indicated that 74% of buy now pay later users reported never missing a repayment. Reasons for missing a payment included forgetting to put money in an account (11%), needing to prioritise paying other bills (9%), and buying too many items and losing track (5%).

141 The likelihood of missing a repayment did not vary significantly by gender, income, education, the buy now pay later provider, or the tools that the consumer used to keep track of their repayments.

## Consequences of missing repayments

142 All six buy now pay later providers charge consumers a fixed fee every time they missed a repayment. These fees range from \$4.99 to \$15. One provider limits the total amount of missed payment fees that a consumer can be charged, and a second provider will be introducing a limit on these fees.

Note: See Table 2 for a summary of the missed payment fees charged by each provider.

143 For low-value buy now pay later transactions, the amount of a missed payment fee can be expensive for a consumer relative to the total price paid for the purchase.

144 Five of the six buy now pay later providers in our review suspend the use of arrangements for new purchases if a user has not remedied a missed payment. Brighte indicated that it will start suspending accounts with outstanding missed payment fees.

145 Some missed payments are referred to an external debt collection agency.



## C The risk of over-commitment

### Key points

Our survey, consumer research and stakeholder consultation identified a risk that some buy now pay later arrangements can increase a consumer's overall debt or contribute to financial over-commitment.

While each provider took steps to refuse some applications, the responsible lending obligations do not protect consumers when they use a buy now pay later arrangement.

### What is over-commitment?

- 146 Over-commitment can occur when a consumer uses a credit arrangement that results in new or additional financial difficulty. While consumers may miss repayments if they are over-committed, they can also experience other challenges, such as difficulty affording essential goods and services (e.g. utilities or groceries) and financial stress.
- 147 Because consumers can pay by direct debit or prioritise repayments on a buy now pay later arrangement, a consumer can be over-committed even when they have been making repayments on time. This issue is not unique to buy now pay later arrangements.
- 148 Our stakeholder consultation, consumer research and our review of the procedures of buy now pay later providers identified that these arrangements, for some consumers, can increase their overall level of debt or contribute to a consumer becoming financially over-committed.
- 149 Our stakeholder consultation highlighted case studies where consumers had been allowed to use a buy now pay later arrangement despite limited or no income and substantial existing debt.

### Case study 2: Buy now pay later adds to increasing debts

Sophia was a mother of two children in her early twenties. She had recently separated from her partner and was struggling to pay off mounting gas, electricity and phone debts.

Sophia had about \$10,000 of debt, including \$700 of debt with zipMoney for several pairs of shoes and clothing.

## How can these arrangements contribute to over-commitment?

- 150 The features of the buy now pay later arrangements that are offered by each provider can create different types of risks for consumers.
- 151 Larger buy now pay later arrangements also translate to a larger overall financial commitment.
- 152 Buy now pay later arrangements with a longer repayment term and small repayment amounts may be less likely to cause over-commitment in the short term, but it can take longer for consumers to finish making repayments.

### Example 1: Implications of longer-term arrangements

If a consumer buys something for \$1,000 and only makes the minimum \$40 monthly repayments, it will take them over two years to repay that amount. The consumer will also pay a \$6 fee each month, which means that it will take them two years and five months to repay the full amount.

The consumer can access further credit after repayments have been made, potentially extending the time it takes to repay the debt and the fees.

- 153 Buy now pay later arrangements with a shorter repayment term can mean that consumers finish making repayments relatively quickly, but this short timeframe requires them to make larger repayments. This can be more difficult for consumers with a lower disposable income.

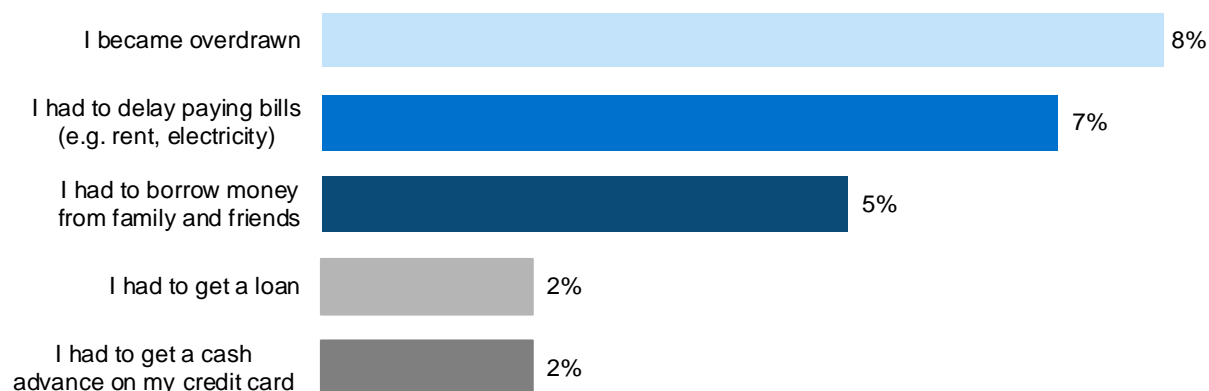
### Example 2: Implications of short-term arrangements

If a consumer who earns \$1,250 a fortnight after tax uses a \$1,000 buy now pay later arrangement with fortnightly repayments of \$250, each repayment would be equal to 20% of their income.

With a larger portion of the consumer's income being absorbed by the repayments, more credit could be needed to cover living expenses.

## Are consumers having difficulty making repayments?

- 154 Of the participants in our consumer research, 22% of users reported that they have had to be more careful with their usual spending as a result of using a buy now pay later arrangement. Some users reported experiencing a negative impact in making a scheduled buy now pay later repayment: see Figure 15.

**Figure 15: Percentage of users who reported a negative financial impact in making a scheduled repayment**

Note: For the underlying data shown in this figure, see Table 12 in Appendix 2. Respondents to this survey question could select more than one financial impact.

## Do providers assess the financial situation of consumers?

155 While each buy now pay later provider in our review rejects some applications, the responsible lending obligations do not apply to buy now pay later arrangements.

156 In contrast, credit licensees must take reasonable steps to inquire about and verify a consumer's financial situation. The steps that are required are depend on the circumstances of each credit application.

Note: See Pt 3.2 of the National Credit Act.

157 These steps can include inquiries about the consumer's current amount of income or benefits, fixed and variable living expenses, debts, assets, and other circumstances such as their age, location, and any reasonably foreseeable change to their financial circumstances.

Note: See [Regulatory Guide 209](#) *Credit licensing: responsible lending conduct* (RG 209) at RG 209.28–RG 209.33.

158 Buy now pay later providers are not required to make or verify these inquiries. Only one of the six providers in our review made inquiries about the income, expenses, assets and debts of prospective customers.

159 Despite this, our consumer research suggested that nearly one in three (31%) users believed their buy now pay later provider checked to make sure they could meet the repayment terms.

160 Our stakeholder consultation highlighted case studies where consumers have been allowed to use a buy now pay later arrangement despite limited or no income and substantial existing debt.

**Case study 3: Sold goods that the consumer didn't need**

John received a carer's pension. He was cold-called by a merchant who sold him a solar power system financed through Certegy Ezi-Pay. John said he did not have a job at the time and the salesperson said that he would write down John's last job. 18 months later, he owed over \$6,100. John also owed over \$7,000 on a loan and \$3,000 in other debt.

John said he started using Afterpay in early 2018 and now owes them \$960. He said he doesn't recall being asked about his expenses when he signed up for this arrangement.

**Case study 4: No inquiries about the consumer's financial position**

Ben was unemployed, received a disability support pension, and lived with his father who assisted him as a carer. Ben said he had a shopping addiction.

Ben reported feeling overwhelmed with debt. He had a \$5,000 credit card debt, and he was able to accrue a \$1,500 debt with Afterpay, and a \$1,000 debt with zipMoney.

## D Conduct of providers

### Key points

Buy now pay later providers could do more to help consumers stay in control of their repayments and make informed decisions. Each provider in our review has demonstrated a readiness to work with ASIC by improving their practices in response to our recommendations.

Attempts by merchants to charge consumers a higher price for using a buy now pay later arrangement can be misleading and result in detrimental outcomes for consumers. ASIC is acting to address this behaviour, but law reform may be necessary.

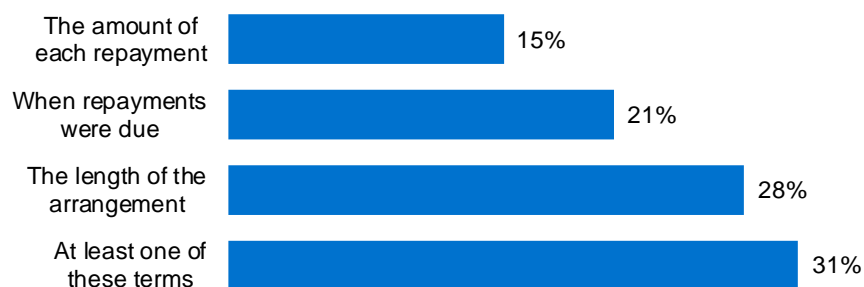
The consumer contracts of all six buy now pay later providers contained terms which we considered may be unfair. ASIC will continue to require providers to amend or remove terms that are potentially unfair to consumers.

### Interacting with consumers

- 161 We identified instances where buy now pay later providers should have done more to act fairly with consumers.
- 162 While the providers in our review demonstrated a readiness to work with ASIC, we consider that it is necessary to extend product intervention powers over all credit facilities under the ASIC Act so that ASIC can take appropriate action if we identify a significant detriment to consumers that cannot be addressed through voluntary action.

### Helping consumers understand key terms

- 163 We expect consumers to be able to adequately understand the terms of their buy now pay later arrangement.
- 164 Our consumer research found that just over half (56%) of consumers considered that they had been made fully aware of the terms and conditions when they signed up for the arrangement. Three in ten consumers (31%) indicated they did not understand at least one of the key repayment terms for their buy now pay later arrangement: see Figure 16.

**Figure 16: Percentage of users who did not understand key repayment terms**

Note: For the underlying data shown in this figure, see Table 13 in Appendix 2.

165 Our review of communications with consumers (e.g. consumer agreements, emails and text messages) found that buy now pay later providers set out the repayment terms and fees to consumers before a transaction and provided users with tools to keep track of repayments through online accounts, mobile applications and payment reminders. However, several consumer contracts could have been written in a way that is more accessible to consumers.

## Complaints

166 We expect a complaints process to be visible and accessible for consumers.

167 All six providers in our review have a written complaint handling policy. But our consumer research suggests that many buy now pay later users have a limited understanding about their ability to complain. If a user had a complaint about their buy now pay later provider, only 57% of users think they would raise the complaint with their provider. A further 23% of users do not know where they would direct a complaint.

168 This could be exacerbated if providers do not make information about the complaints process accessible to consumers. For example, three of the six providers did not include any information on their websites or consumer contracts stating that users could complain to their provider and how they could complain.

169 Two buy now pay later providers in ASIC's review that were not members of an ASIC-approved EDR scheme have since become members in response to our feedback.

## Helping consumers in financial hardship

170 We consider that it is important for consumers to understand that they can request assistance from their buy now pay later provider when they have trouble making their repayments due to an unexpected financial situation.

171 Our data indicates that three providers had received no hardship requests from July 2017 to March 2018, while one provider had received 10 hardship

requests during the same period. This suggests that consumers may have limited knowledge about the fact that they can request hardship assistance from their buy now pay later provider.

172 In our view, most providers did not adequately inform consumers that hardship assistance was available. For example, some providers did not send consumers information that made it clear that consumers could request assistance for financial hardship.

173 Although all providers have a detailed written hardship policy, we consider that such policies are likely to be ineffective unless consumers are informed that they can access hardship assistance under the policy.

## Unfair contract terms

174 Our review found that buy now pay later providers included potentially unfair terms in their standard contracts with consumers: see Div 2 of Pt 2, Subdiv BA of the ASIC Act.

175 A term of a contract is unfair if:

- (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
- (b) it is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and
- (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

176 If a court finds that a term in a standard form contract is unfair, and makes a declaration to that effect, then the term is void as if it never existed. The term is void from the outset, not from the time of the court's declaration and the term is likely to be unfair and void in all identical contracts (although in some cases, the circumstances of a particular customer may affect a finding of unfairness for that particular contract). The remainder of the contract will continue to bind parties if it can operate without the unfair term.

Note: See s12GND and 12BF of the ASIC Act, and *Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd* (2015) 239 FCR 33 where the court declared a term void in all identical contracts.

177 We have written to each provider in our review to highlight potential unfair contract terms in their contracts with consumers. We will ensure that each buy now pay later provider amends their contracts to remove any potentially unfair contract terms.

## Appendix 1: Methodology

### Selection of review participants

- 178 In January 2018, we identified and approached seven providers of buy now pay later arrangements to be involved in our review. One provider initially agreed to participate in our review but subsequently withdrew due to resourcing issues that would have affected their ability to respond to ASIC's information requests in the required timeframe.
- 179 We selected the providers based on the following considerations:
- (a) our understanding of the market and the most prominent providers;
  - (b) complaints data from consumer groups and our internal systems;
  - (c) our intention to capture different business models; and
  - (d) analysis of financial statements available to us.

### Information requests

- 180 In January 2018, we sent an information request (the first of two) for background information about each provider's business activities, including copies of policies and procedures, and consumer and merchant agreements.
- 181 In March 2018, we consulted with the providers about their ability to respond to our second information request, which sought qualitative and quantitative data about their operations over a two-year period from 1 April 2016 to 31 March 2018. This process allowed us to understand how each provider collects and stores information, which would help to inform the final survey.
- 182 In April 2018, we sent the second information request to the six providers involved in our review. The qualitative questions in the first part of the request helped to supplement our review of the policies and procedures from the first information request. These questions focused on the provider's business model, including:
- (a) business overview including operational and legal structure, minimum and maximum amount of credit offered, and fee structure;
  - (b) processes for assessing the creditworthiness of an application including information collected about a consumer;
  - (c) distribution channels and details of merchants offering the arrangement;
  - (d) methods available for repayments, capping of missed payment fees and the amount of these missed payment fees; and
  - (e) approach to hardship and complaints and dispute resolution.



- 183 In October 2018, we requested updated quantitative data from the six providers in our review, up to 30 June 2018. These questions focused on:
- (a) characteristics of consumers using the arrangements;
  - (b) volume and characteristics of transactions;
  - (c) amount of money generated from key sources of revenue; and
  - (d) the prevalence of missed payment fees.

## Comparison with credit cards

- 184 In paragraph 50, we compare the data on multiple missed payments for buy now pay later arrangements to problematic debt indicators for credit cards.
- 185 Our measure for missed payments on buy now pay later arrangements is narrower than our measure for problematic credit card debt, because our credit card measure includes behaviours such as minimum monthly repayment behaviour and high balance use. Our credit card measure is also calculated on an annual basis, while our buy now pay later measure is calculated on a quarterly basis.
- 186 We used this measure for missed payments on buy now pay later arrangements because it is clear, understandable and practically relevant to consumers who may be experiencing problematic buy now pay later debt.

## Stakeholder consultation

- 187 In February 2018, we began consulting with key stakeholders about the buy now pay later industry. We consulted with:
- (a) other regulators including the Reserve Bank of Australia, the Australian Competition and Consumer Commission, and the Australian Prudential Regulation Authority;
  - (b) both ASIC-approved EDR schemes, the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO);
- Note: From 1 November 2018, the AFCA started receiving all complaints as the single point of contact for all EDR complaints about financial services.
- (c) community legal centres and consumer groups including Consumer Action Law Centre, Financial Rights Legal Centre, Legal Aid, Financial Counselling Australia, Good Shepherd Microfinance and Youth Action; and
  - (d) industry associations including Australian Retailers Association, National Retail Association, and Australian Retail Credit Association.

## Consumer research

- 188 We commissioned an independent market research consultancy to conduct consumer research. The research aimed to:
- (a) profile users of buy now pay later arrangements;
  - (b) understand motivations for use;
  - (c) understand usage and repayment behaviour;
  - (d) explore if buy now pay later arrangements have impacted consumer spending and credit use; and
  - (e) determine the extent to which consumers understand the arrangement and relevant fees and charges.
- 189 This research was done in two stages. The first stage was an online qualitative discussion board, which informed the design of the subsequent online quantitative survey.
- 190 The online discussion board was conducted with 18 consumers who reported they had used a buy now pay later arrangement in the past six months:
- (a) Most participants had used more than one buy now pay later provider.
  - (b) Participants had used arrangements from a range of buy now pay later providers, including Afterpay, zipMoney, Oxipay, Openpay, Certegy, and Brighte.
  - (c) The sample was stratified by age, with 12 participants aged 18–34 years and six were aged over 35 years.
  - (d) The sample include a range of consumers based on income and household composition.
  - (e) Participants were required to answer a range of questions over a three-day period, from Wednesday 3 to Friday 5 April 2018.
  - (f) Participants were provided with a gratuity valued at \$80.
- 191 The purpose of the second stage of the consumer research (the quantitative online survey) was to quantify the outcomes of the online discussion board and determine the profile of buy now pay later users. Key elements of this stage were as follows:
- (a) A total of 7,308 people aged over 18 years were screened to achieve a final sample of 600 consumers who reported they had used a buy now pay later arrangement in the last 12 months.
  - (b) The sample of 7,308 Australians over 18 years represented a margin of error of +/- 1.1% at a 95% confidence level and the sample of 600 users a margin of error of +/- 4.0% at a 95% confidence level.
  - (c) The final sample was weighted by age by gender based on data from the ABS ([3235.0](#) Population by age and sex, Regions of Australia, 2016).

- (d) The survey took an average 15 minutes to complete and included both open and closed ended questions.
- (e) The survey was available online from 19–30 April 2018.

192

The following limitations applied to the consumer research:

- (a) There was an over-representation of Afterpay users in the participant sample for both the qualitative and quantitative research, particularly compared to Certegy users. This potentially reflects a lack of understanding among consumers of what constitutes a buy now pay later arrangement.
- (b) Standard trade-offs associated with self-reported data (e.g. subjective accounts reported by real people can be subject to a range of biases such as recall bias, hindsight bias and social desirability bias and may be subject to post-rationalisation of behaviours).
- (c) Qualitative research outcomes from the online discussion board cannot be generalised to the wider population and are illustrative only.
- (d) Participants in the online survey were sourced from an online research panel. While every effort is made to ensure that online panels are representative of the Australian population, they do not cover consumers who have no internet access.

## Appendix 2: Accessible versions of figures

193 This appendix is for people with visual or other impairments. It provides the underlying information for the figures presented in this report.

**Table 4: Revenue earned by buy now pay later providers (FY 2017–18)**

Provider	Merchant fees	Missed payment fees	Other fees
Brighte	94%	0%	6%
zipMoney	37%	2%	61%
Certegy	64%	2%	34%
Oxipay	90%	10%	0%
Openpay	59%	12%	29%
Afterpay	75%	25%	0%

Note: This table shows the data contained in Figure 2.

**Table 5: Effect of buy now pay later arrangements on spending behaviour**

Effect on spending behaviour	Percentage of users who experienced this
I spend less	7%
I spend about the same	38%
I spend a bit more	40%
I spend much more	15%

Note: This table shows the data contained in Figure 3.

**Table 6: Estimated number of active buy now pay later users**

Year	Number of active users
FY 2015–16	400,000
FY 2016–17	1,100,000
FY 2017–18	2,000,000

Note: This table shows the data contained in Figure 4. This estimate is based on a sum of the total number of consumers with each buy now pay later provider. Consumers who had arrangements with two or more providers are counted more than once.

**Table 7: Percentage of active users who were charged a missed payment fee (April 2016–June 2018)**

Provider	Minimum month	Average month	Maximum month
Afterpay	14.2%	17.7%	21.0%
Brighte	2.1%	4.0%	6.1%
Certegy	7.8%	8.9%	9.9%
Openpay	11.8%	15.4%	18.1%
Oxipay	6.0%	17.2%	23.9%

Note: This table shows the data contained in Figure 10. This data covers five providers as zipPay arrangements do not incur missed payment fees at a transaction level.

**Table 8: Percentage of buy now pay later users and credit card holders by age group compared to Australian population**

Age group	Australian population	Buy now pay later users	Credit card holders
18–24 years	12%	25%	3%
25–34 years	19%	34%	18%
35–44 years	17%	19%	21%
45–54 years	17%	12%	22%
55–64 years	15%	5%	19%
65+ years	20%	1%	17%

Note: This table shows the data contained in Figure 11.

**Table 9: Age profile of buy now pay later users (FY 2017–18)**

Age group	Percentage of users
18–24 years	26%
25–34 years	35%
35–44 years	20%
45–54 years	12%
55–64 years	4%
65+ years	1%

Note: This table shows the data contained in Figure 12.

**Table 10: Other credit facilities held by buy now pay later users**

<b>Other credit facility</b>	<b>Percentage of users who held this product</b>
Credit card	51%
Personal loan	21%
Overdraft dipped in and out of from time to time	8%
Lease or rent-to-buy	7%
Payday loan	5%
None of these	31%

Note: This table shows the data contained in Figure 13.

**Table 11: How buy now pay later users made repayments**

<b>Repayment method</b>	<b>Percentage of users who made repayments using this method</b>
Transaction account	74%
Credit card	23%
PayPal	15%
BPay	7%
Pre-paid card	3%

Note: This table shows the data contained in Figure 14.

**Table 12: Percentage of users who reported a negative financial impact in making a scheduled repayment**

<b>Negative financial impact</b>	<b>Percentage of users who said they experienced this</b>
I became overdrawn	8%
I had to delay paying bills (e.g. rent, electricity)	7%
I had to borrow money from family and friends	5%
I had to get a cash advance on my credit card	2%
I had to get a loan	2%

Note: This table shows the data contained in Figure 15. Respondents to this survey question could select more than one financial impact.

**Table 13: Percentage of users who did not understand key repayment terms**

<b>Key repayment term</b>	<b>Percentage of users who did not understand this term</b>
The amount of repayments	15%
When repayments were due	21%
The length of the arrangement	28%
All these terms	31%

Note: This table shows the data contained in Figure 16.

## Key terms

Term	Meaning in this document
ABS	Australian Bureau of Statistics
ADI	Authorised deposit taking institution
AFCA	Australian Financial Complaints Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	Australian Securities Exchange
buy now pay later arrangement (arrangement)	An arrangement that allows consumers to buy and receive goods and services immediately from a merchant, and repay a buy now pay later provider over time
buy now pay later provider (provider)	An entity that provides buy now pay later arrangements to consumers
buy now pay later user (user)	A person who has used a buy now pay later arrangement within the last 12 months
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act
continuing credit contract	A credit contract under which multiple advances of credit are contemplated and the amount of available credit ordinarily increases as the amount of credit is reduced. Note: See s204 of the National Credit Code
credit contract	Has the meaning in s4 of the National Credit Code Note: See also s3–6 of the National Credit Code
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities Note: See s35(1) of the National Credit Act
credit provider	Has the meaning given in s8 of the National Credit Code
credit facility	Has the meaning given in s12BAA(7)(k) of the ASIC Act and reg 2B of the Australian Securities and Investments Commission Regulations 2001
EDR	External dispute resolution
EDR scheme	An EDR scheme approved by ASIC under the National Credit Act Note: See s11(1)(a) in accordance with ASIC requirements in <a href="#">Regulatory Guide 139</a> <i>Approval and oversight of external complaints resolution schemes</i> (RG 139)



Term	Meaning in this document
financial counsellor	Agencies that provide free and independent financial counselling and advocacy services to people in financial difficulty
financial hardship	When a consumer has difficulty making loan and debt repayments or meeting their other basic financial needs
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 of the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010
merchant	A supplier of goods or services
product intervention power	The intervention power that will allow ASIC to make certain orders if it is satisfied that a credit product has resulted in, or will or is likely to result in, significant detriment to consumers  Note: See Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018
responsible lending obligations	The legal obligations set out in Ch 3 of the National Credit Act

## Related information

### Headnotes

Buy now pay later, consumer credit, credit contract, credit licence, EDR scheme, financial hardship, responsible lending obligations, unfair contract terms

### Regulatory guides

[RG 139](#) *Approval and oversight of external complaints resolution schemes*

[RG 209](#) *Credit licensing: responsible lending conduct*

### Legislation

ASIC Act and regulations, Pt 2.2, s12BAA(7)(k), 12GND, 12BF, reg 2B

Australian Consumer Law (Sch 2 of the *Competition and Consumer Act 2010*)

National Credit Act, s47, Pt 3.2

National Credit Code, s6

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018

### Cases

*Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd* (2015) 239 FCR 33

### Reports and submissions

[ASIC's Corporate Plan 2018–22](#)

[REP 580](#) *Credit card lending in Australia*

[Submission to the design and distribution obligations and product intervention power: Revised exposure draft legislation](#) (August 2018) (PDF, 518 KB)

### Media and other releases

[16-027MR](#) *Payday lender penalised for overcharging consumers* (9 February 2016)

[15-278MR](#) *Federal Court finds Fast Access Finance breaches National Credit Act* (1 October 2015)

[13-090MR](#) *ASIC accepts enforceable undertaking from Solar Rental Company* (29 April 2013)

### **Other references**

ABS, [3235.0](#) Population by age and sex, Regions of Australia, 2016