



**ASIC**  
Australian Securities &  
Investments Commission



# Buy now pay later: An industry update

Report 672 | November 2020

## About this report

In November 2018, ASIC released [Report 600 Review of buy now pay later arrangements](#) (REP 600).

Following on from REP 600, this report sets out our key observations about the buy now pay later industry, the experiences of consumers and recent regulatory developments.

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## **About ASIC regulatory documents**

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

## **Disclaimer**

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# Overview

This report sets out the observations from our latest review of the buy now pay later industry.

Our observations are grouped into three main areas:

- › [The growth and evolution of the buy now pay later industry](#)
- › [The impact of buy now pay later arrangements on consumers](#)
- › [Recent regulatory developments](#)

Buy now pay later arrangements allow consumers to buy and receive goods and services immediately from a merchant, and repay a buy now pay later provider over time. These arrangements continue to be embraced by many consumers as a payment option for goods and services and as part of the further evolution of the retail payments and consumer credit markets.

## The growth and evolution of the buy now pay later industry

The retail payments market is continually changing with increased innovation and competition and developments in technology. Data from the 2019 survey by the Reserve Bank of Australia (Reserve Bank) of consumer payment behaviour shows that consumers are continuing to shift away from paper-based forms of payment such as cash and cheques. There have been developments in contactless payments technology and, at the same time, use of debit cards has increased.

**Note 1:** See Reserve Bank, [Consumer payment behaviour in Australia](#), March 2020.

**Note 2:** On 21 October 2020, the Government announced a review of the regulatory architecture of the Australian payments system to ensure it remains fit for purpose and responsive to advances in payments technology. See the Hon. Josh Frydenberg MP, Treasurer, [Driving innovation in the payments system](#), media release, 21 October 2020. The review commenced in October 2020 and will report to the Treasurer by April 2021.

While credit card usage steadily increased between 2010 and 2016, usage was in decline in the 2019 survey results. New financial services firms have emerged in payments technologies and gateways, with global companies not traditionally aligned to financial services also launching payments products. The emergence and growth of buy now pay later providers is another example of changes in this market.

The retail credit market is also evolving. Consumers can choose to pay for purchases, big and small, using many different credit products. This includes traditional loans, credit cards and facilities and other point-of-sale products such as in-store finance, leases and more recently, buy now pay later arrangements. New buy now pay later providers are entering the retail credit market and established credit providers are offering buy now pay later options or alternatives.

While the demand for other consumer credit products is showing signs of plateauing, the buy now pay later industry continues to grow rapidly. The total amount of credit extended under buy now pay later arrangements has almost doubled from the 2017–18 financial year to the 2018–19 financial year.

There were more than 6.1 million open accounts as at June 2019, representing up to 30% of the Australian adult population. As at 30 June 2019, there were around 56,000 merchant agreements in place across the buy now pay later providers in our review.

**Note:** The estimate of the percentage of the Australian adult population is based on a sum of the total number of accounts with each buy now pay later provider. Consumers who had accounts with two or more providers are counted more than once. The estimate of the number of merchant agreements is based on the sum of the total number of agreements across the six buy now pay later providers in our review. A merchant may have an agreement with more provider.

## The impact of buy now pay later arrangements on consumers

Competition from the growing buy now pay later industry provides consumers with increased choice and access to payments and credit options with unique features and benefits (e.g. some arrangements give consumers access to short-term credit with no upfront cost).

However, our review shows additional costs are borne by some consumers who are incurring missed payment fees and who report financial stress and difficulty meeting other financial commitments.

While most buy now pay later arrangements are marketed as a budgeting tool or a way to make purchases more affordable, some consumers are missing payments and incurring fees as a result. Our consumer research indicated that 21% of buy now pay later users who were surveyed missed a payment in the last 12 months.

In the 2018–19 financial year, missed payment fee revenue for all buy now pay later providers in our review totalled over \$43 million, a growth of 38% compared to the previous financial year.

**Note:** Over the same period, the number of buy now pay later transactions increased from 16.8 million to 32.0 million, representing an increase of 90%.

From our research we also found that some consumers who use buy now pay later arrangements are experiencing financial hardship, such as cutting back on or going without essentials (e.g. meals) or taking out additional loans, in order to make their buy now pay later payments on time.

There is also a risk that consumers may be paying inflated prices for some goods and services when using a buy now pay later arrangement.

## Recent regulatory developments

Buy now pay later providers are generally considered not to be regulated under the *National Consumer Credit Protection Act 2009* (National Credit Act). However, buy now pay later arrangements are regulated as credit under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Buy now pay later arrangements are subject to ASIC's new product intervention power and the forthcoming design and distribution obligations: see pages 20–21 of this report. These new regulatory tools, which focus on consumer outcomes and harms rather than imposing prescriptive compliance obligations, will play an important role in promoting good consumer outcomes.

There is also a significant role for industry self-regulation with broad industry support and commitment to ensure good consumer outcomes.

## Background to our review

Our review considered aggregated data from six buy now pay later providers (see Table 1) and four major financial institutions. The information was provided voluntarily by the buy now pay later providers. None of the providers were able to provide individual transaction data.

We also commissioned consumer research to help us understand consumer behaviour and experiences with buy now pay later arrangements.

While not originally in the scope of this review, we collected some limited information from providers to understand how they may have been affected by the COVID-19 pandemic.

However, we did not collect more detailed information because we did not want to impose an unreasonable burden on industry at this time and because the purpose of our review was to understand how buy now pay later arrangements operate in a normal environment.

**Note:** See Appendix 1: Methodology of our review.

**Table 1: Buy now pay later arrangements covered by our review**

Arrangement	Provider
Afterpay	Afterpay Australia Pty Ltd (Afterpay)
BrightePay	Brighte Capital Pty Limited (Brighte)
Humm	Certegy Ezi-Pay Pty Ltd (Certegy)
Openpay	Openpay Pty Ltd (Openpay)
Payright	Payright Limited (Payright)
Zip Pay	ZipMoney Payments Pty Ltd (ZipMoney Payments)

**Note:** Humm commenced on 8 April 2019. It is a merger of the Oxipay and Certegy Ezi-Pay arrangements which, before 8 April 2019, were offered by Oxipay Pty Ltd and Certegy.

### ASIC Report 600

This review follows on from our earlier review of the buy now pay later industry: see [Report 600 Review of buy now pay later arrangements](#) (REP 600), released in November 2018.

The following were among the findings of that review:

- › the buy now pay later industry is rapidly growing, diverse and evolving;
- › buy now pay later arrangements have influenced the spending habits of some consumers;
- › overcommitment can be a risk for some consumers;
- › providers take some steps to act fairly with consumers, but can do more; and
- › some arrangements result in the price of goods and services being inflated.

In [REP 600](#) we said that we would continue to monitor this industry and the harms we identified.

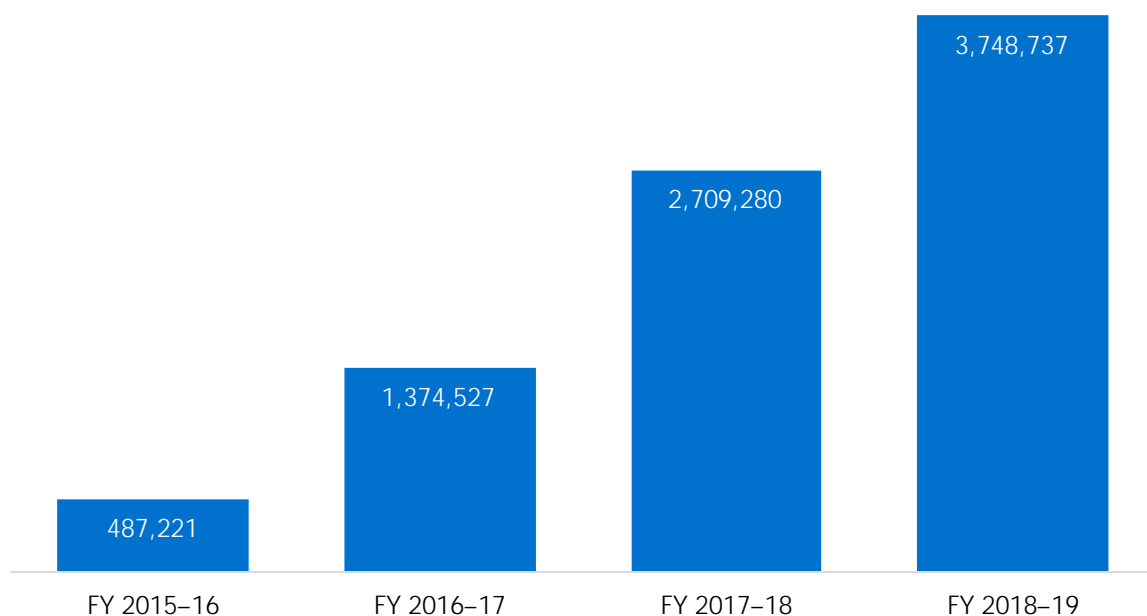
# The growth and evolution of the buy now pay later industry

## Number of active accounts

As at June 2019, the six buy now pay later providers in our review had approved 6.1 million accounts. The number of active accounts grew by 38%, from 2.7 million in the 2017–18 financial year to 3.7 million in the 2018–19 financial year: see Figure 1.

**Note:** An active account is an account where at least one transaction has occurred during the financial year.

**Figure 1: Number of active buy now pay later accounts (FY 2015–16 to FY 2018–19)**

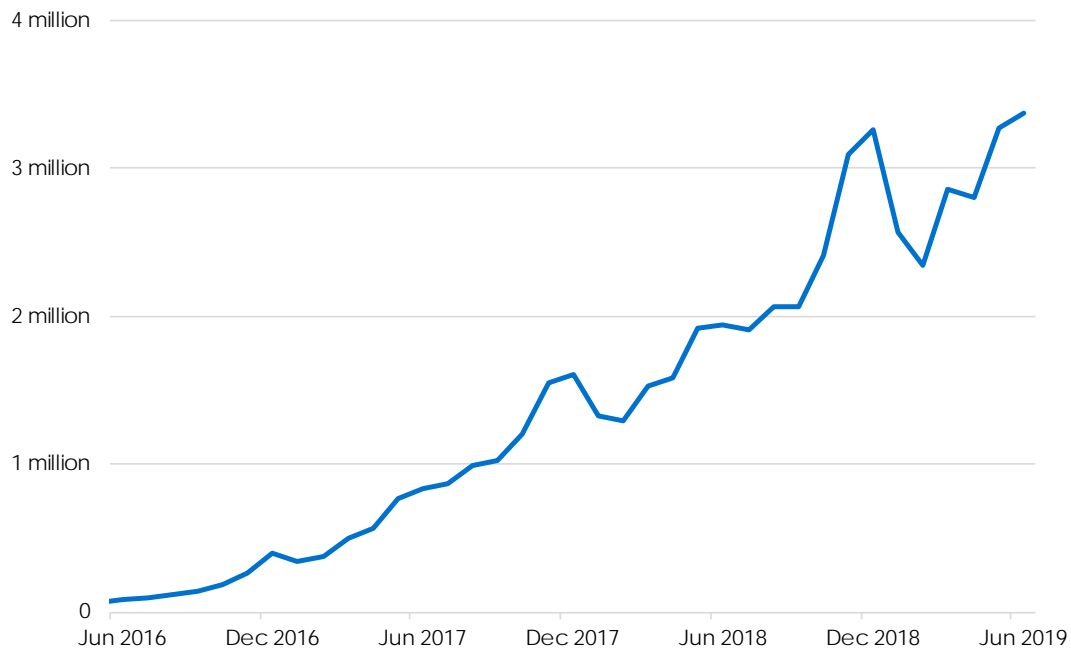


**Note:** See Table 4 for the data shown in this figure (accessible version).

## Number and value of transactions

The number of transactions increased from 1.9 million in June 2018 to 3.4 million in June 2019, representing an increase of 75%: see Figure 2. The number of transactions moves in response to seasonal trends, with an increase in the period leading up to and including December every year.

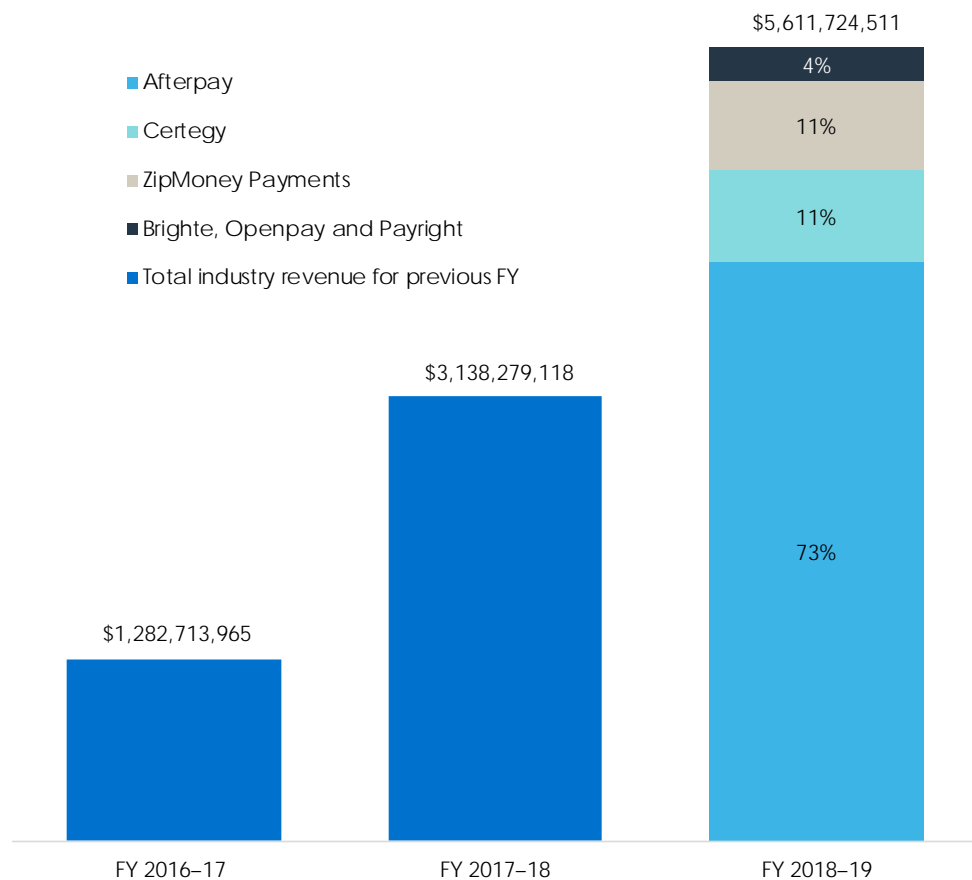
**Figure 2: Number of buy now pay later transactions (June 2016 to June 2019)**



**Note:** For a description of the trends shown in this figure, see paragraph above (accessible version).

The total value of all transactions increased by 79%, from \$3.1 billion in the 2017–18 financial year to \$5.6 billion in the 2018–19 financial year. Figure 3 gives a breakdown of this amount by buy now pay later provider for the 2018–19 financial year.

**Figure 3: Total value of buy now pay later transactions (FY 2016–17 to FY 2018–19)**

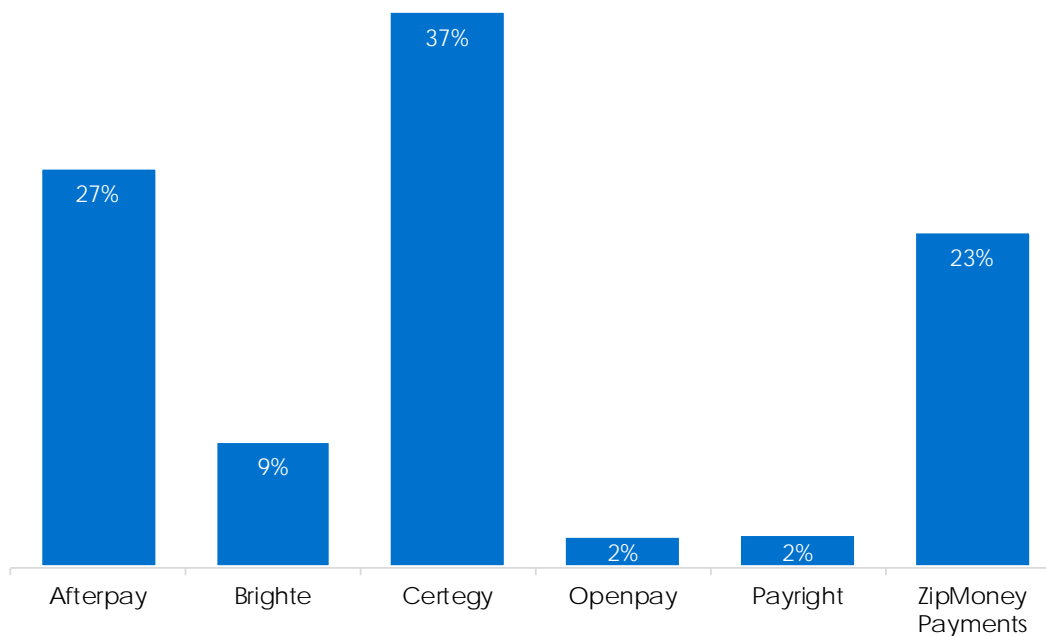


**Note:** The Certegy component in Figure 3 is comprised of the total of Certegy Ezi-Pay and Oxipay from July 2018 to March 2019, and Humm from April 2019 to June 2019. See Table 5 for the data shown in this figure (accessible version).

The total outstanding balance of buy now pay later accounts increased by 53%, from \$907 million as at June 2018 to \$1.4 billion as at June 2019. Figure 4 gives a breakdown of this balance by buy now pay later provider.

**Note:** In [REP 600](#), total outstanding balance as at June 2018 was reported as \$903 million. This figure has been updated as a result of updated figures provided by the buy now pay later providers in our review.

**Figure 4: Percentage of total outstanding balance, by provider, as at June 2019**



**Note:** The Certegy component of Figure 4 is also comprised of the outstanding balance for Oxipay accounts. See Table 6 for the data shown in this figure (accessible version).

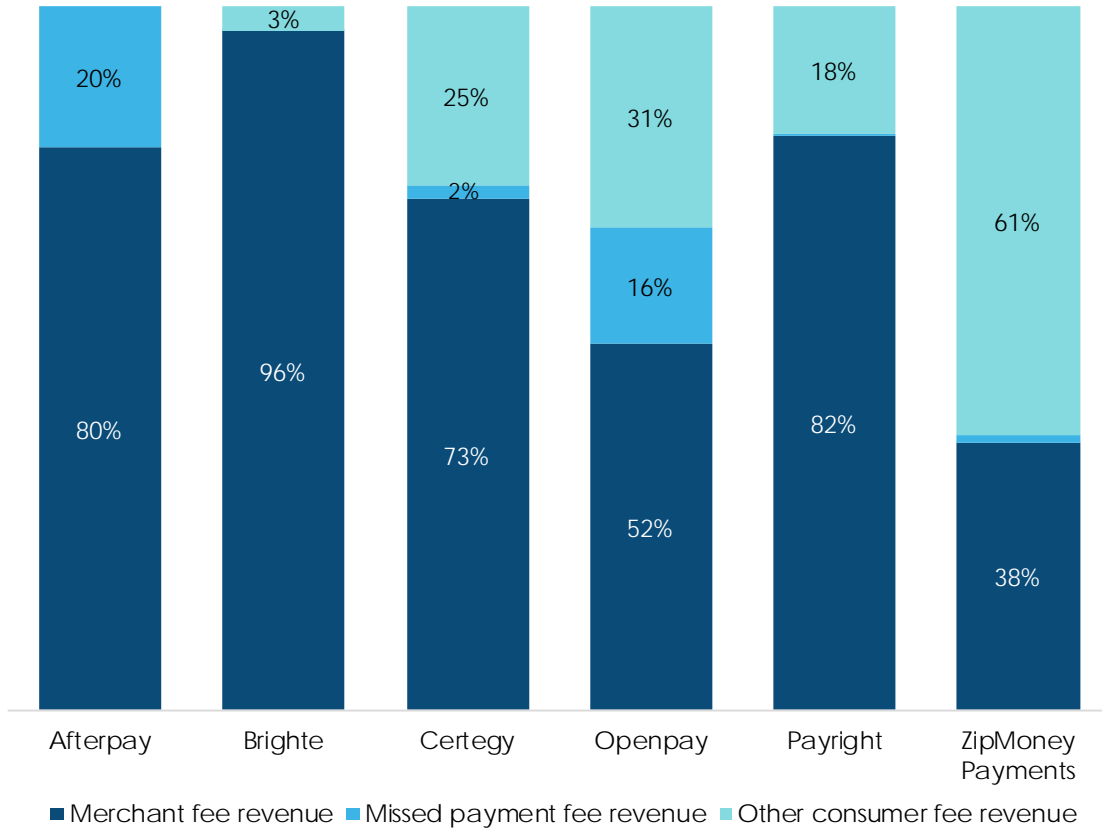
## Revenue

Total revenue from buy now pay later arrangements across the six providers in our review grew by 50%, from \$266 million in the 2017–18 financial year to \$398 million in the 2018–19 financial year.

Revenue sources include merchant fees, missed payment fees, and other consumer fees (e.g. establishment fees, account-keeping fees). The revenue sources differ in proportion across each of the providers, which reflects their different business models: see Figure 5.



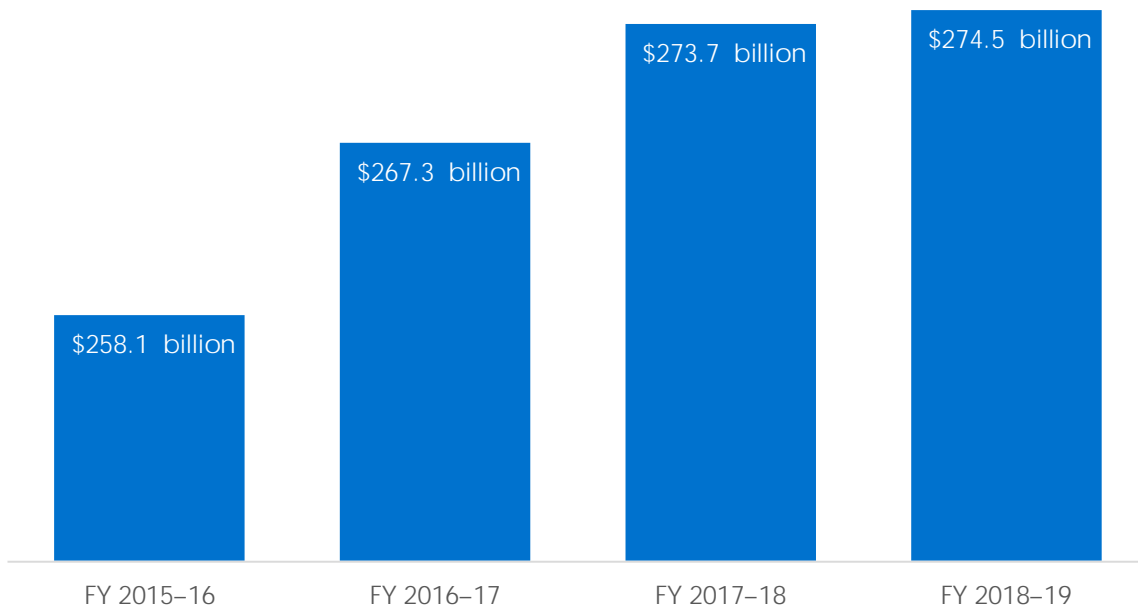
Figure 5: Revenue sources, by provider (FY 2018–19)



Note: See Table 7 for the data shown in this figure (accessible version).

While the buy now pay later industry has continued to grow, the total value of personal credit card transactions has plateaued: see Figure 6. That is, from the 2015–16 financial year to the 2016–17 financial year, the value of personal credit card transactions increased by 3.6%, from \$258.1 billion to \$267.3 billion. From the 2017–18 financial year to the 2018–19 financial year, it grew at a much slower rate of 0.3%, from \$273.7 billion to \$274.5 billion.

Figure 6: Total value of personal credit card transactions (FY 2015–16 to FY 2018–19)



Note: Data is seasonally adjusted and sourced from the Reserve Bank. See Table 8 for the data shown in this figure (accessible version).

## Diverse business models

The maximum loan amount and loan term vary across the buy now pay later providers in our review. In the 2018–19 financial year, the average transaction value differed for each provider: see Table 2.

For example, Afterpay (lowest average transactional value) is commonly offered for lower value items such as fashion products while BrightePay (highest average transaction value) is offered for higher value items such as solar, battery and home improvement products.

Table 2: Comparison of maximum loan amount and loan term

Variable	Afterpay	BrightePay	Humm	Openpay	Payright	Zip Pay
Maximum loan amount	\$2,000	\$30,000	\$30,000	\$17,500	\$20,000	\$1,500
Loan term	6–8 weeks	6–60 months	2–60 months	2–24 months	2–60 months	No term
Average transaction value for FY 2018–19	\$147	\$8,222	\$2,797	\$467	\$2,667	\$171

Note: Average transaction value for Humm was calculated from April to June 2019.

## New and emerging buy now pay later providers and models

### Licensed credit providers

More recently, established licensed credit providers have begun offering a buy now pay later arrangement option or alternative. For example:

- › the Commonwealth Bank of Australia (CommBank) has partnered with Klarna, a buy now pay later provider;
- › Citigroup Pty Limited (Citi) describes its Citi Instalment Plan within a Citi credit card as 'buy now pay later, but for anything'; and
- › the National Australia Bank Limited (NAB) and CommBank have each launched credit card products that can be used as alternatives to buy now pay later arrangements.

### No merchant relationship

Some buy now pay later arrangements are offered through credit card networks. This allows the arrangement to be used outside established merchant relationships.

For example:

- › Flexicards Australia Pty Ltd launched Bundll which allows consumers to make purchases anywhere Mastercard is accepted;
- › ZipMoney Payments allows for the Zip Pay arrangement to be used at any physical or online store where Visa is accepted; and
- › Klarna offers a single-use virtual card which allows Klarna to be used instore or online (Android only) anywhere Visa is accepted.

## Other developments

Traditional buy now pay later arrangements can now be used to pay for a greater range of goods and services. For example, Afterpay's partnership with eBay now allows consumers to shop with Coles on eBay and Zip Pay can be used to pay any bill that offers BPAY.

ASIC has also observed an offering, deferit, which is not used to purchase goods or services. Instead, deferit Pty Ltd pays for bills on behalf of the consumer, and the consumer in return agrees to repay deferit in four fortnightly instalments.

## Continued growth into 2020

Data we collected from the buy now pay later providers in our review to understand the impact of the COVID-19 pandemic shows that the industry continues to grow in 2020.

The number of transactions made, number of transacting users and total value of transactions have each grown by more than 20% from June 2019 to June 2020: see Table 3.

**Table 3: Comparison of total buy now pay later transactions and transacting users in June 2019 and June 2020**

Variable	June 2019	June 2020	Growth
Number of transactions	3,370,122	4,803,940	43%
Number of transacting users	1,532,387	1,911,924	25%
Total value of transactions	\$576,436,127	\$824,653,718	43%

# The impact of buy now pay later arrangements on consumers

## Cost to consumers in missed payment fees

While the buy now pay later providers in our review do not charge interest, most do charge missed payment fees when a consumer misses a payment.

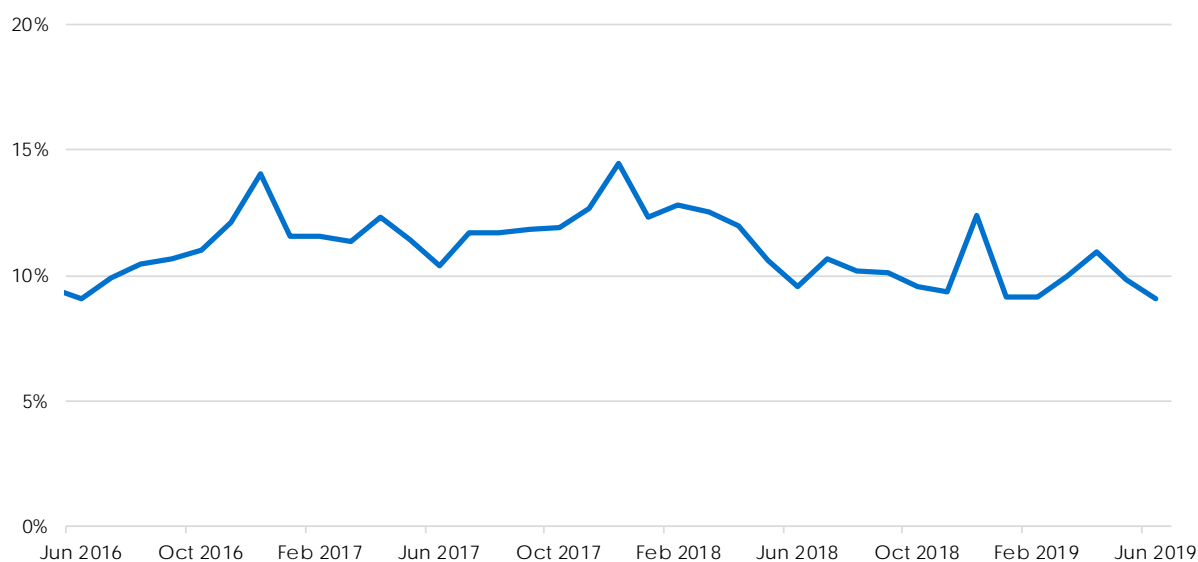
Our consumer research indicated that 21% of buy now pay later users who were surveyed missed a payment in the last 12 months. Among these consumers:

- › 47% were aged between 18 to 29;
- › 39% also held a small and/or medium amount credit contract;
- › 34% made at least six buy now pay later purchases in the last six months; and
- › 55% had used at least two different buy now pay later arrangements in the last six months.

**Note:** A representative sample of randomly selected consumers were invited to participate in the survey. 1,655 consumers who had used buy now pay later arrangements at least once in the last six months responded to this question. See Appendix 1 for the full survey methodology. For the total survey population: 37% were aged 18–29; 22% held a small and/or medium amount credit contract; 22% made at least six buy now pay later purchases in the last six months; and 35% had used at least two different buy now pay later arrangements.

From June 2016 to June 2019, the percentage of buy now pay later transactions that incurred missed payment fees fluctuated between 9% and 15% each month: see Figure 7. This rate is influenced by seasonal changes, including a temporary rise in December every year.

**Figure 7: Percentage of transactions that incurred a missed payment fee (June 2016 to June 2019)**

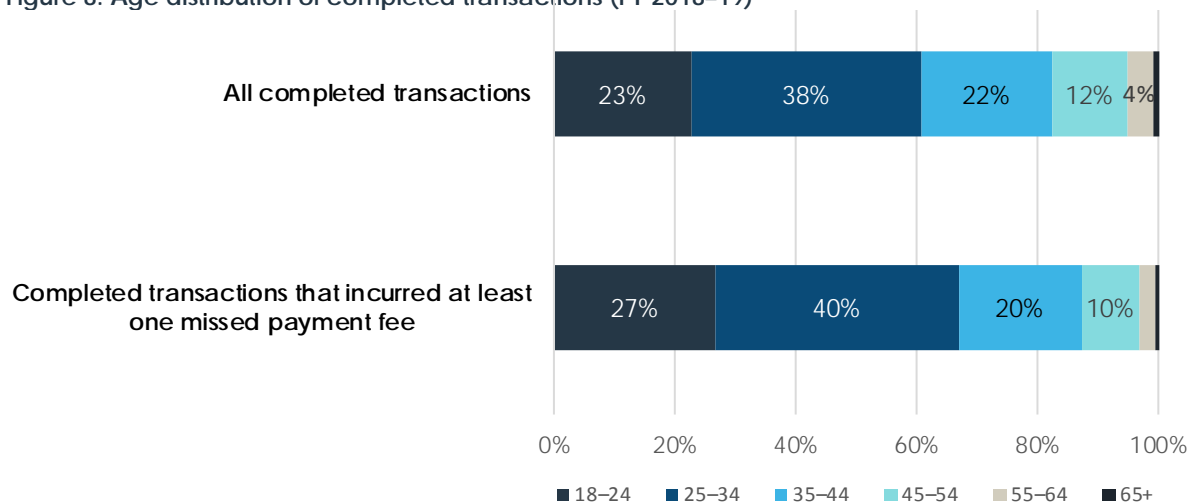


**Note:** Data from ZipMoney Payments and Payright was not included here as they charge missed payment fees at an account level, rather than transaction level. See the paragraph above for a description of this figure (accessible version).

Although the percentage of transactions incurring missed payment fees is relatively stable, the growth of the user base in buy now pay later arrangements means the number of missed payment fees incurred continues to grow. In the 2018–19 financial year, missed payment fee revenue for all buy now pay later providers in our review totalled over \$43 million, a growth of 38% compared to the previous financial year.

In the 2018–19 financial year, most completed transactions were made by consumers under the age of 35. For completed transactions that incurred missed payment fees, the same age cohort accounted for 67% of these transactions: see Figure 8.

Figure 8: Age distribution of completed transactions (FY 2018–19)

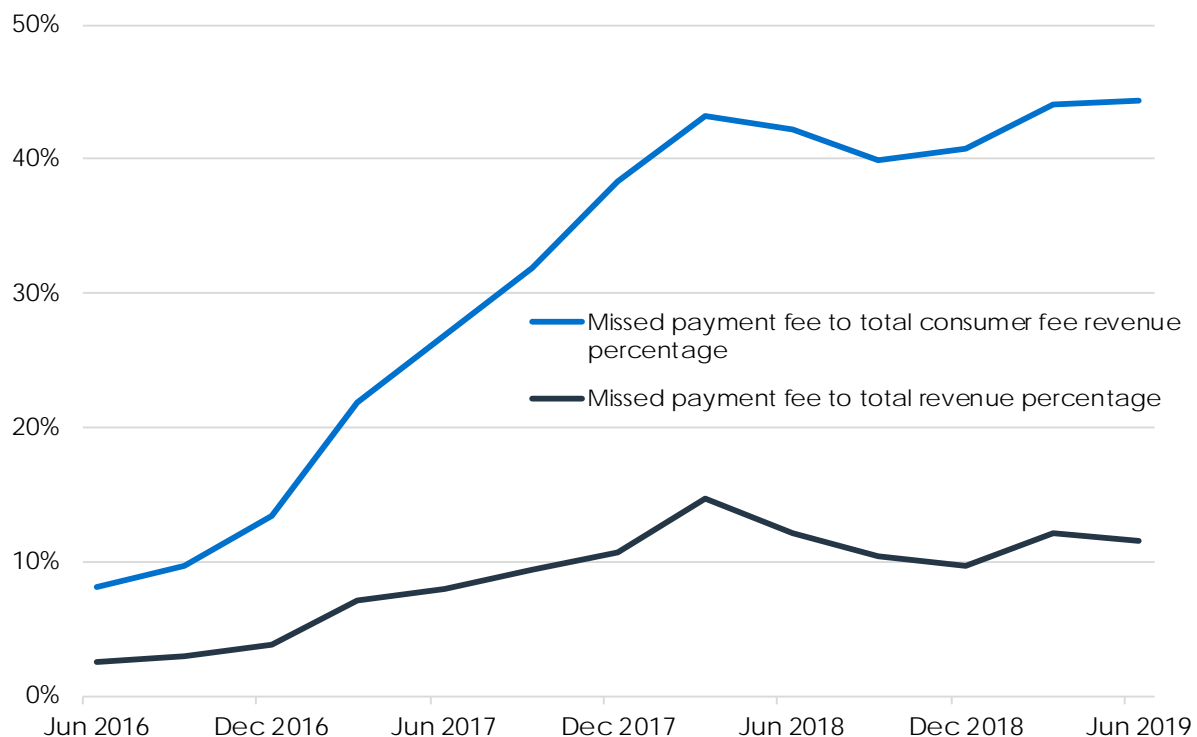


Note: See Table 8 for the data shown in this figure (accessible version).

In the 2018–19 financial year, over 1.1 million transactions incurred multiple missed payment fees, which represents 45% of all transactions that incurred missed payment fees.

The number of missed payment fees incurred is growing at a similar rate to the total number of transactions. Over the three-year period to June 2019, missed payment fees represented up to 15% of total revenue. In the same period, missed payment fees represented up to 44% of consumer revenue from all sources including account-keeping fees: see Figure 9.

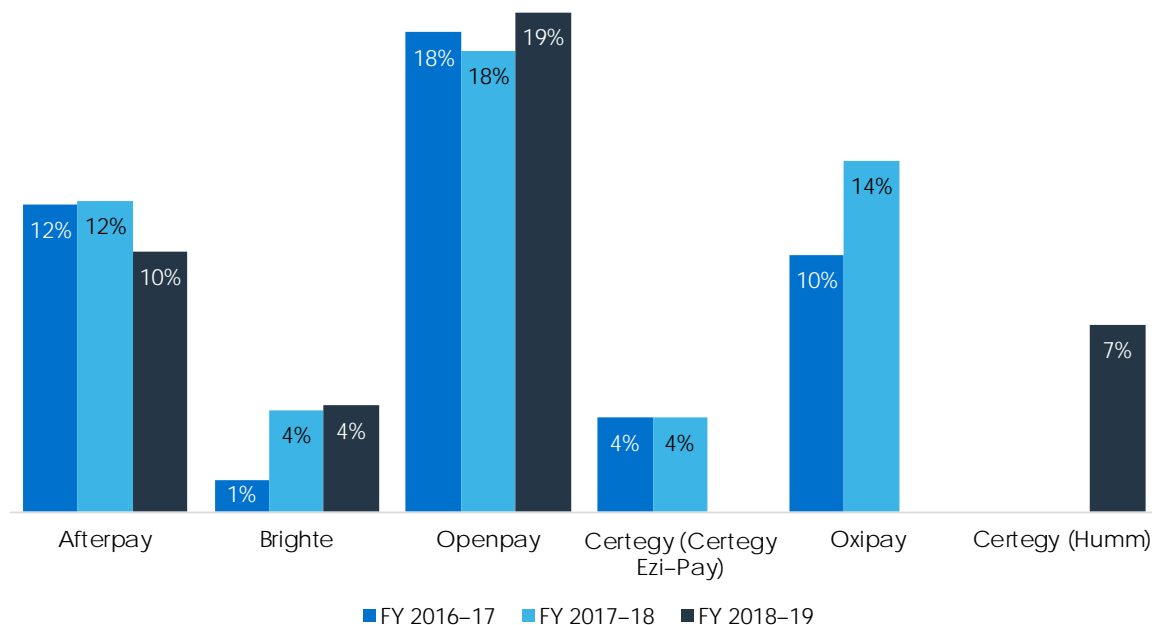
Figure 9: Missed payment fees as a percentage of total revenue and consumer fee revenue (June 2016 to June 2019)



Note: See the paragraph above for a description of this figure (accessible version).

As shown in Figure 5, providers have different sources of revenue due to their varying business models. We found that users of Afterpay, Openpay and Oxipay (before its April 2019 merger with Certegy Ezi-Pay) had a higher percentage of transactions that incurred missed payment fees. These percentages have changed slightly over the past three financial years: see Figure 10.

**Figure 10: Percentage of transactions incurring missed payment fees (FY 2016–17 to FY 2018–19)**



**Note:** The Certegy (Humm) component in Figure 10 represents the Certegy Ezi-Pay and Oxipay arrangements from July 2018 to March 2019. From April 2019 to June 2019, the Certegy (Humm) component represents Humm, being the arrangement offered following the merger of the Oxipay and Certegy Ezi-Pay arrangements. Zip Pay and Payright arrangements are not included in this figure because they charge missed payment fees at an account, rather than transaction, level. See Table 10 for the data shown in this figure (accessible version).

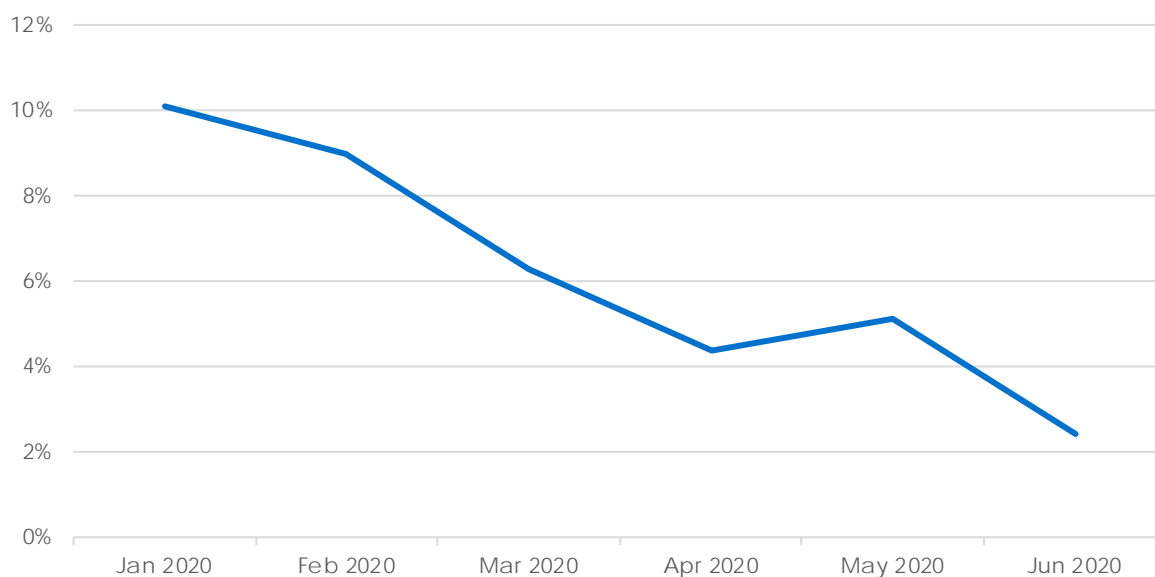
One provider, ZipMoney Payments, offers a continuing credit contract where the consumer is only required to make a monthly minimum payment to avoid incurring a missed payment fee, similar to a credit card. If the consumer only makes the minimum payment and there is a balance remaining, the consumer is charged an account-keeping fee.

Figure 5 shows that while this business model does not generate significant amounts from the consumer in missed payment fees, it does generate more significant account-keeping fees (61% of total revenue in the 2018–19 financial year).

### Missed payment fees in 2020

Based on additional data about the impact of the COVID-19 pandemic collected from the buy now pay later providers in our review, we observe that the percentage of transactions incurring missed payment fees has generally declined between January 2020 and June 2020: see Figure 11.

**Figure 11: Percentage of transactions that incurred a missed payment fee since January 2020**



**Note:** Data from ZipMoney Payments and Payright was not included here as they charge missed payment fees at an account level, rather than transaction level. See Table 11 for the data shown in this figure (accessible version).

## Other consequences for consumers

Our consumer research found that some buy now pay later users experience negative consequences beyond missed or late payment fees or account-keeping fees as a result of their use of buy now pay later arrangements.

In the last 12 months, in order to make their buy now pay later payments on time:

- › 20% of consumers surveyed said they cut back on or went without essentials (e.g. meals); and
- › 15% of consumers surveyed said they had taken out an additional loan.

**Note:** A representative sample of randomly selected consumers was invited to participate in the survey. 1,655 consumers who had used a buy now pay later arrangement at least once in the last six months responded to this question. See Appendix 1 for the full survey methodology.

Of the consumers who said they cut back on or went without essentials in order to make buy now pay later payments on time:

- › 49% were aged between 18 to 29;
- › 32% also held a small and/or medium amount credit contract;
- › 50% also missed a payment with a buy now pay later provider; and
- › 27% made at least six buy now pay later purchases in the last six months.

**Note:** For the total survey population: 37% were aged 18-29; 22% held a small and/or medium amount credit contract; 21% missed a payment; and 22% made at least six buy now pay later purchases in the last six months.

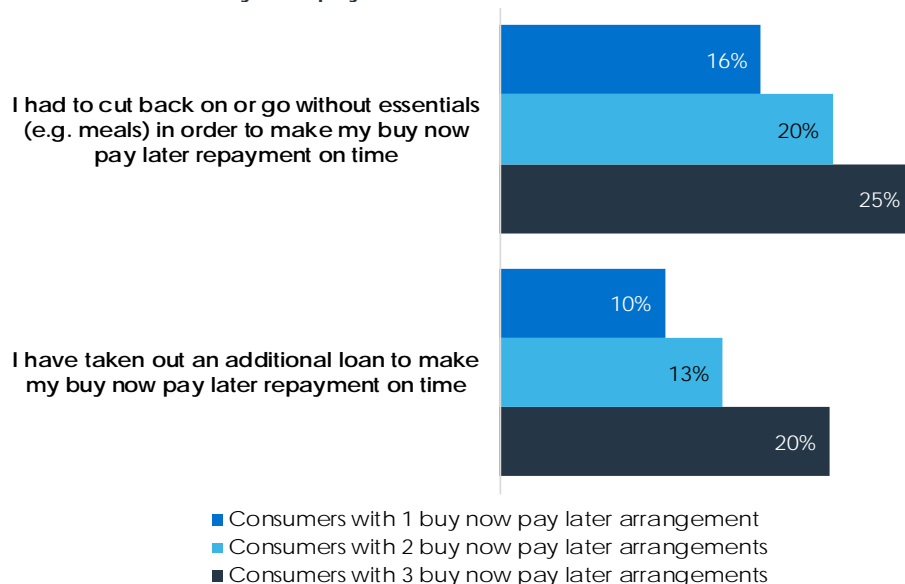
Of the consumers who said they had taken out an additional loan in order to make their buy now pay later payments on time:

- › 50% were aged between 18 to 29;
- › 44% also held a small and/or medium amount credit contract;
- › 68% also missed a payment with a buy now pay later provider; and
- › 31% made at least six buy now pay later purchases in the last six months.

These consequences were more prevalent among consumers who used multiple buy now pay later arrangements (see Figure 12):

- › While 16% of consumers who used one buy now pay later arrangement in the last 12 months reported having to cut back on or go without essentials to meet their payments, this increased to 20% of consumers with two such arrangements and 25% of consumers with three.
- › While 10% of consumers who used one buy now pay later arrangement in the last 12 months reported having to take out an additional loan to meet their payments, this increased to 13% of consumers with two such arrangements and 20% of consumers with three.

Figure 12: Some outcomes for buy now pay later users



**Question:** Have you experienced any of the following in the last 12 months? Multiple responses allowed.

**Base:** Consumers who have used one buy now pay later arrangement in the last six months (n=927); consumers who have used two buy now pay later arrangements in the last six months (n=493); consumers who have used three buy now pay later arrangements in the last six months (n=132).

**Note:** See Table 12 for the data shown in this figure (accessible version).

One in five consumers surveyed told us that in the last 12 months they had missed or were late paying other bills in order to make their buy now pay later payments on time. These consumers missed paying things such as household bills (44%), credit card payments (32%), and home mortgage payments (22%).

Among these consumers:

- › 50% were aged between 18 to 29;
- › 52% used at least two different buy now pay later arrangements in the last six months; and
- › 29% made at least six buy now pay later purchases in the last six months.

**Note:** For the total survey population: 37% were aged 18-29; 35% had used at least two different buy now pay later arrangements; and 22% made at least six buy now pay later purchases in the last six months.



## Buy now pay later users with credit cards

We collected data from four major financial institutions to understand how the use of buy now pay later arrangements fits into a consumer's overall financial circumstances.

Aggregate information was sourced on the incidence of interest charges and high credit limit use for:

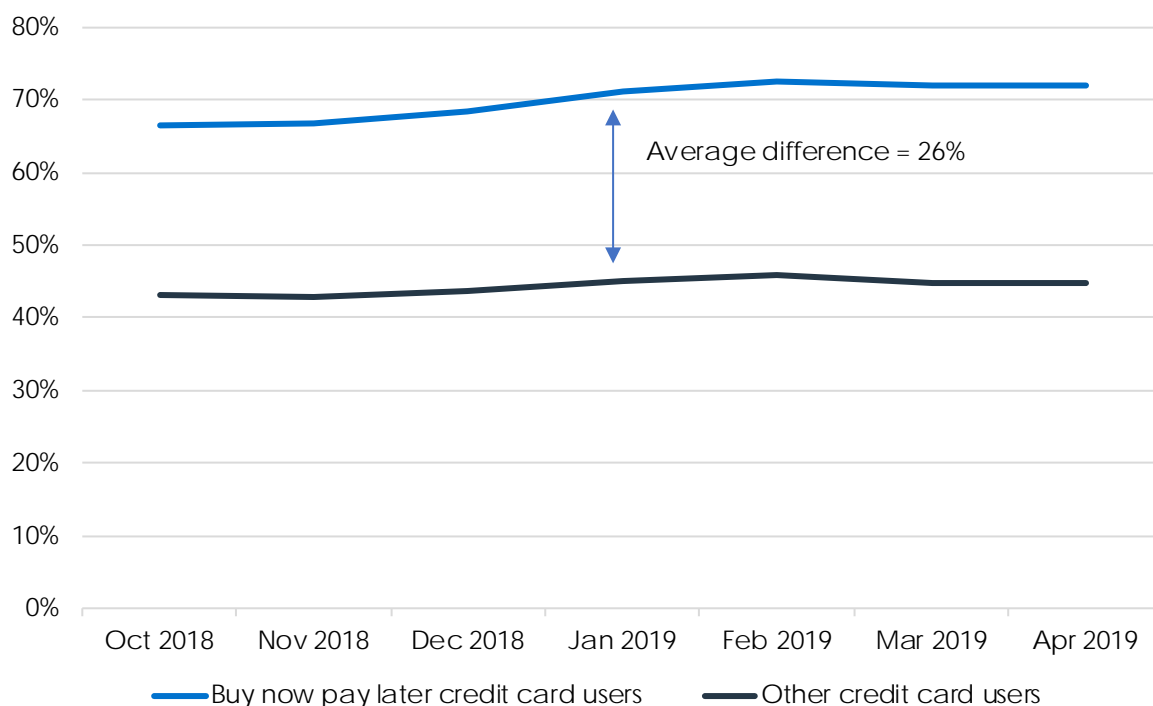
- › credit card accounts that made payments to at least one buy now pay later provider between October 2018 to January 2019 inclusive (buy now pay later credit card users); and
- › credit card accounts that transacted in the same period but made no payments to any buy now pay later provider (other credit card users).

### More likely to incur interest charges

We found that a consistently higher proportion of buy now pay later credit card users incurred interest charges on their credit cards: between 66% and 73% for all months between October 2018 and January 2019 inclusive. In the same period, only 42% to 46% of other credit card users incurred an interest charge on their credit card: see Figure 13.

Buy now pay later credit card users also showed a higher proportion of interest charges incurred on their credit cards in a comparison of gender and age ranges.

**Figure 13: Percentage of credit card accounts that incurred a monthly interest charge (October 2018 to April 2019)**



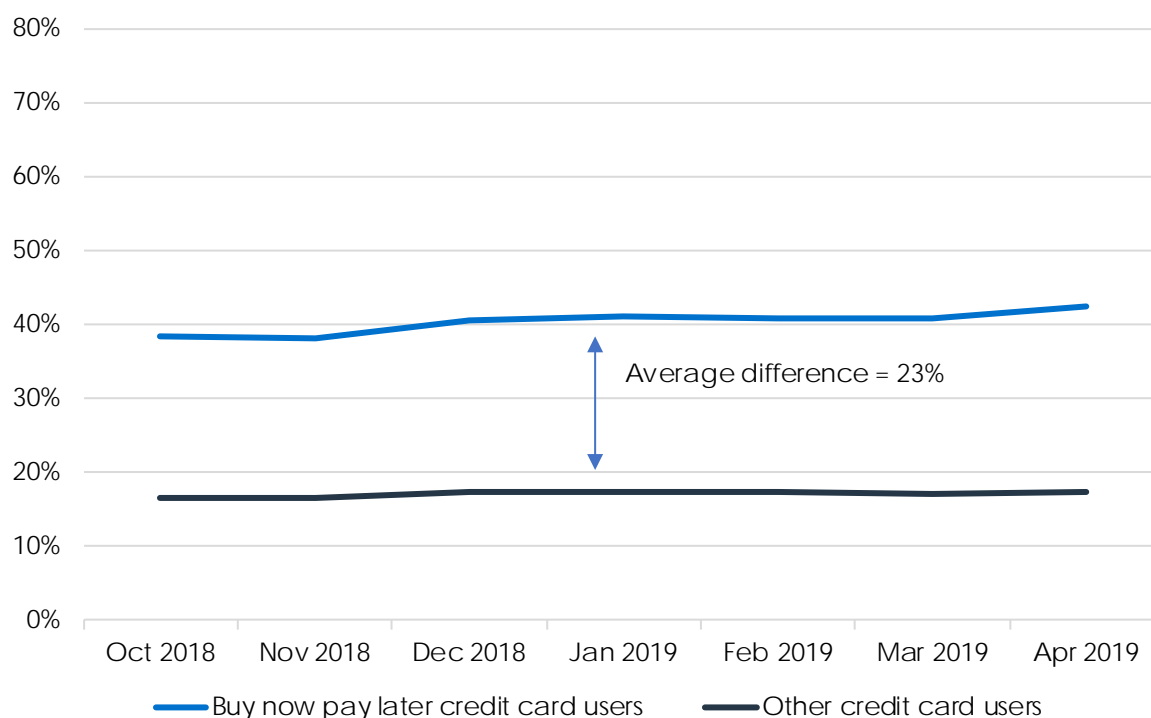
**Note:** While we requested data for payments that occurred between October 2018 and January 2019 Inclusive, this figure shows the period up to April 2019 to factor in interest charges which are incurred after the payment has occurred. See Table 13 for the data shown in this figure (accessible version).

## More likely to have higher credit limit use

We found that between 38% and 43% of buy now pay later credit card users used over 90% of their allocated credit limit on their credit cards for each month between October 2018 and January 2019 inclusive. In the same period, only 16% to 18% of other credit card users did so: see Figure 14.

Buy now pay later credit card users continued to be more likely to have higher limit use on their credit cards in a comparison of gender and age ranges.

**Figure 14: Percentage of credit card accounts with over 90% use of credit limit (October 2018 to April 2019)**



**Note:** While we requested data for payments that occurred between October 2018 and January 2019, this figure shows the period up to April 2019 to factor in credit limit usage after the payment has occurred. See Table 14 for the data shown in this figure (accessible version).

## Surcharging

As part of their business models, all the buy now pay later providers in our review charge fees to their partnered merchants. The size of the merchant fee varies between different providers and merchants. Providers generally contractually prohibit merchants from increasing the cost of goods and services to the individual consumer where their buy now pay later arrangement is used (also known as 'merchant surcharging' or 'surcharging').

Despite the contractual prohibitions in place, it is still possible for surcharging to occur, and for consumers to be charged more when using a buy now pay later arrangement.

It is difficult, however, to obtain reliable data on when surcharging occurs because surcharges can be hidden. Surcharging may be hidden by:

- › arguing that the particular good or service was unique to the consumer's circumstances and therefore warranted a higher price;
- › arguing that the higher fee was the result of negotiation rather than buy now pay later costs;

- › only offering a quote for a buy now pay later arrangement, leaving the consumer with no way to detect whether an extra cost has been added to the cash price; and
- › offering a ‘false’ cash discount to consumers but no explicit surcharge for buy now pay later arrangements.

Surcharging is also not likely to occur across the whole buy now pay later industry, as it is difficult for merchants to surcharge where there is transparent and standardised pricing of goods and services.

In [REP 600](#) we said that surcharging was more likely to occur:

- › for higher value purchases;
- › where the price of goods is less transparent and ‘negotiable’; or
- › where consumers are acquiring services.

### **Action by ASIC and the ACCC on hidden surcharging**

ASIC and the Australian Competition and Consumer Commission (ACCC) wrote to over 5,000 merchants partnered with buy now pay later providers warning them that it is illegal to mislead or deceive consumers about:

- › goods and services, including their price, under the Australian Consumer Law; and
- › the cost of using credit arrangements, such as buy now pay later, under the ASIC Act.

The merchants were chosen because ASIC believed their industries were more likely than others to engage in surcharging.

**Note:** Where merchants pass on surcharges to consumers, in a way that is misleading or deceptive, the relevant regulatory jurisdiction is split between ASIC and the ACCC.

### **Review by the Reserve Bank of retail payments regulation**

In November 2019, the Reserve Bank commenced its periodic review of retail payments regulation. As a part of this review, the Reserve Bank asked for stakeholder views on the ‘no-surcharge’ rules that are typically imposed by buy now pay later providers on merchants.

However, because of the COVID-19 pandemic, in March 2020 the Reserve Bank announced that it was temporarily putting the review on hold. The review is now expected to be completed in 2021.

**Note:** See Reserve Bank, [Payments System Board update: February 2020 meeting, Review of Retail Payments Regulation—Postponement](#) and [Payments System Board update: August 2020 meeting](#), media releases 21 February 2020, 26 March 2020 and 21 August 2020.

# Recent regulatory developments

## International perspective

The international regulatory framework for buy now pay later arrangements is not uniform. However, in the jurisdictions we engaged with as part of our review, buy now pay later arrangements generally remain outside the regulatory perimeter of their ordinary consumer credit laws.

**Note:** We engaged with the following foreign regulators to understand the regulatory landscape and future developments for similar products: the Financial Conduct Authority (UK), the New Zealand Commerce Commission and the Swedish Finansinspektionen.

The Financial Conduct Authority (UK) has announced that it will undertake a review of the regulation of unsecured credit, which will include unregulated buy now pay later arrangements offered in its jurisdiction. The review will concentrate on how regulation can better support a healthy unsecured lending market. The review is expected to be finalised in early 2021.

**Note:** See Financial Conduct Authority (UK), [Christopher Woolard to chair review of unsecured credit market regulation](#), press release, 16 September 2020.

In New Zealand, legislation was passed in December 2019 to give the New Zealand Government a regulation-making power enabling it to declare an arrangement or facility, such as a buy now pay later arrangement, to be a consumer credit contract.

**Note:** See *Credit Contracts and Consumer Finance Act 2003 (NZ)*.

Finally, Sweden has passed specific legislation as a policy response to unnecessary debt that credit options such as buy now pay later arrangements can create.

The E-Commerce Payments Bill was passed in February 2020, amending the Swedish Payment Services Act (2010:751), which now includes regulations that:

- › require e-payments providers to offer the lowest-cost direct payment options to consumers purchasing goods before higher-cost alternative credit payment options are mentioned;
- › prohibit e-payments providers from presenting credit payment options to consumers ahead of direct payment methods; and
- › prevent e-payments providers from marketing online delayed credit payment as 'first choice' ahead of the lowest-cost direct payment option for consumers.

These provisions came into force on 1 July 2020.

**Note:** See Swedish Government Bill 2019/20:79 [Credit options must not be displayed first when payment options are presented in electronic commerce](#), 4 February 2020.

## Design and distribution obligations

From October 2021, design and distribution obligations will apply to most products that ASIC regulates, including buy now pay later arrangements.

**Note:** See the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Product Regulation Act) and ASIC [Consultation Paper 325 Product design and distribution obligations](#) (CP 325). The design and distribution obligations are set out in Pt 7.8A of the *Corporations Act 2001* (Corporations Act).

The design and distribution obligations in Pt 7.8A of the Corporations Act require issuers of products to identify in advance the class of consumers for whom their products are appropriate, and to direct distribution to that target market, through a target market determination.

In defining a target market for the product, the issuer will need to consider whether the product and its key attributes are likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market. The issuer will also need to specify conditions and restrictions in the determination which make it likely that the product will reach its target market. Issuers will need to keep records of their decisions in preparing the determination, including the reasons (and underlying data) for those decisions.

Issuers and distributors are required to take reasonable steps that will, or are reasonably likely to, result in distribution of the product being consistent with the determination. Issuers are required to regularly review the determination both on a periodic basis and in response to events or circumstances that reasonably suggest that the determination is no longer appropriate. Distributors are required to keep records and report certain information to the issuer, including information specified in the determination, so it can be promptly reviewed as necessary.

We consider that buy now pay later providers will use resources such as industry knowledge, information about their users (including past outcomes) and other data in defining the target market for their particular buy now pay later arrangement. We also think issuers will use these resources in setting distribution conditions in the determination and in considering the reasonable steps that are likely to result in distribution of the arrangement being consistent with its target market. Factors that are relevant to how an arrangement is distributed could include how key attributes of the arrangement are marketed and the sales practices that are adopted.

Importantly, buy now pay later providers must monitor and review the outcomes of their arrangement and consider whether changes are required to the arrangement itself, to the way it is sold, and to whom it is being sold.

Our review highlights that while buy now pay later arrangements have been embraced as a way to make purchases more affordable, some consumers are missing payments, paying missed payment fees and struggling to meet other financial commitments.

Where providers offer retail consumers buy now pay later arrangements that are designed and marketed as offering cost-free, or low-cost, access to deferred payment, this should form a central consideration for the provider in terms of their design and distribution obligations.

If the buy now pay later provider's data indicates that consumers are paying missed payment fees repeatedly, for example, or that these fees represent a significant proportion of the amount borrowed, the provider will need to consider why this is occurring (e.g. whether the arrangement is being inappropriately distributed) and how this can be addressed (e.g. by amending the target market for the arrangement or improving the controls in the distribution process).

Similarly where buy now pay later arrangements are designed and marketed to consumers as providing the ability to access deferred payment without affecting the price of the goods consumers are acquiring, this will also be a central consideration for the provider in terms of their design and distribution obligations.

If the buy now pay later provider's data indicates that accessing this arrangement does affect the price of goods—and, for example, this practice is widespread—the provider will need to consider why this is occurring and how it can be addressed (e.g. whether they can improve their controls) to continue to offer this feature.

## Industry self-regulation

In December 2019, the Australian Finance Industry Association (AFIA) announced it intended to develop an industry code of practice for buy now pay later providers (BNPL Code).

**Note:** See AFIA, [AFIA announces a new buy now pay later code of practice](#), media release, 19 December 2019.

The BNPL Code seeks to respond to the findings in [REP 600](#) and the recommendation by the Senate Economics References Committee in its report *Credit and financial products targeted at Australians at risk of financial hardship* (Senate inquiry report) that the buy now pay later industry develop an industry code of practice.

**Note:** See [Senate inquiry report](#), 29 February 2019, Recommendation 10.

On 18 May 2020, AFIA announced that consultation on the BNPL Code had closed and an industry working group had been formed to review feedback and plan the next steps of the development of the BNPL Code. Areas of feedback that required further work included:

- › identifying what fair, reasonable, and capped fees might look like;
- › reviewing the upfront assessments of suitability for a consumer; and
- › introducing additional actions to support vulnerable consumers.

**Note:** See AFIA, [BNPL Code of Practice public consultation closes](#), media release, 18 May 2020.

AFIA expects the BNPL Code will be published and become effective from 1 March 2021.

**Note:** See AFIA, [AFIA appoints BNPL Code Compliance Committee Chair and confirms new publication date](#), media release, 11 November 2020.

Industry codes can play an important role in delivering benefits to both consumers and those who are bound by and must comply with the provisions of the code to which they subscribe. An effective code can help to improve consumer confidence in a particular industry.

In ASIC [Regulatory Guide 183](#) *Approval of financial services sector codes of conduct* (RG 183), we state that we expect an effective code to do at least one of the following:

- › address specific industry issues and consumer harms not covered by legislation;
- › elaborate on legislation to deliver additional benefits to consumers; and/or
- › clarify what needs to be done from the perspective of a particular industry, practice or product to comply with legislation.

**Note:** See [RG 183](#) at RG 183.5.

RG 183 was developed for those seeking ASIC approval of their code. However, our guidance and expectations as set out in RG 183 are relevant factors for consideration in the development of any financial services industry code, including the BNPL Code.

We consider that an important challenge for the buy now pay later industry will be to work collectively to develop a code that provides good consumer outcomes across the diverse range of business models operating in the industry. These models cater to different consumer needs across the spectrum of buy now pay later arrangements such as frequency of use, purchase amounts, credit duration and ease of use, which in turn produce different outcomes.

Where the BNPL Code sets standards or different obligations at different thresholds—for example, operating differently for products with higher credit limits or longer terms—these thresholds should be supported by data and evidence indicating why the particular threshold is suitable. The thresholds should be reviewed periodically as the industry matures and new features and products emerge.

In [REP 600](#) we highlighted two important safeguards that some buy now pay later providers applied to help reduce the harm when a consumer becomes overcommitted:

- › capping the amount of missed or late payment fees a consumer can be charged; and
- › preventing consumers from making further purchases when they have missed a payment.

At the time of our data request, only two providers capped or limited the amount of fees a consumer could be charged for missing payments. Since that time, two more providers have started capping or limiting these fees. Not all providers prevent consumers from making another purchase where they have missed a payment for an existing purchase.

More recently, the Australian Competition Tribunal authorised a new consumer code for retailers of ‘new energy tech’ (NET) products, which include solar panels. The NET Code requires signatories to the code, which would include solar panel installers, to provide a comparison of the cost of the installation if the consumer uses a deferred payment option, such as a buy now pay later arrangement or a traditional loan, and the cost of purchasing the goods and services outright on the day.

These industry practices are some examples of what an effective code can achieve, in that they:

- › seek to address specific industry issues and consumer harms not covered by legislation; and/or
- › provide additional benefits to consumers.

ASIC encourages industry and AFIA, in developing the BNPL Code, to develop targeted solutions in response to each of the specific harms identified in [REP 600](#) and further outlined in this report.

A robust code that is outcomes focused, accommodates the different business models in the industry (including emerging models where possible), and has strong review and compliance mechanisms can help promote good consumer outcomes in line with community expectations.

## Product intervention power

In April 2019 the Product Regulation Act gave ASIC a product intervention power including in relation to buy now pay later arrangements. This power complements the design and distribution obligations and an industry code of practice, both of which provide opportunities for the buy now pay later industry to address the harms highlighted in [REP 600](#) and in this report.

The product intervention power gives ASIC a further regulatory tool to address any significant consumer detriment resulting from buy now pay later arrangements that is not addressed by industry. This power allows us to temporarily intervene in a range of ways where we see a product has resulted in, or is likely to or will result in, significant detriment to consumers.

This power enables ASIC to confront and respond to harms in a targeted and timely way. It is unique in its focus on reducing significant detriment to consumers, rather than stepping in only after a breach of the law has occurred.

ASIC can order that a person not engage in specified conduct in relation to a product or class of product, or except in accordance with certain conditions.

**Note:** See ASIC [Regulatory Guide 272](#) *Product intervention power* (RG 272).

# Appendix 1: Methodology of our review

## Information requests

In the second half of 2019, we sent an information request to the six buy now pay later providers in our review (provider information request), which sought qualitative and quantitative data over the three-year period from April 2016 to June 2019.

In the same period, we also sent an information request to four major financial institutions (Australia and New Zealand Banking Group Limited, CommBank, NAB and Westpac Banking Corporation) (bank information request) which sought quantitative data on buy now pay later payments made using banking products.

### Provider information request

For the qualitative component of the provider information request, we asked for information including a business overview, procedures for assessing creditworthiness, and policies on missed payments, hardship and complaints and dispute resolution. This included any further changes or developments implemented by the providers since our last information request for [REP 600](#).

For the quantitative component, we asked for aggregate-level data including the number of accounts, transactions, key sources of revenue and the prevalence of missed payments.

In response to the COVID-19 pandemic, we also collected limited information to understand how providers had been impacted by, and responded to, the pandemic.

All information from the buy now pay later providers in our review was provided voluntarily.

### Bank information request

In the bank information request, we sought seven months of aggregate-level quantitative data on established credit cards that made transactions over the period from October 2018 to January 2019 inclusive. Accounts were further classified using the condition that they had made at least one transaction with common buy now pay later providers.

Information obtained for these accounts included whether the account holder had incurred a credit card interest charge, and the use of their credit limit.

We also collected aggregated gender and age information on account holders to control for the demographic differences commonly displayed among buy now pay later users relative to the rest of the Australian population.

## Stakeholder consultation

As part of our review, we engaged with a range of stakeholders including:

- › Treasury;
- › other regulators including the Reserve Bank and the ACCC;
- › the Australian Financial Complaints Authority (AFCA);
- › the Australian Financial Security Authority;
- › Consumer Action Law Centre (CALC);
- › the Australian Finance Industry Association (AFIA); and
- › foreign regulators to understand the regulatory landscape and future developments for similar products including the Financial Conduct Authority (UK), New Zealand Commerce Commission, and the Swedish Finansinspektionen.



## Quantitative consumer research

The quantitative research was conducted in October 2019 and involved a 15-minute online survey conducted with 1,655 consumers who had made a buy now pay later payment in the last six months. We engaged an independent online panel provider, iLink Research Solutions, to program the survey and conduct the fieldwork. Survey invitations were sent to a nationally representative sample of Australians aged 18 and over.

Of the 7,506 consumers who responded to the invitation, 1,655 had used buy now pay later arrangements in the last six months and qualified to complete the full survey.

The total responses to the survey (completed surveys and screen-outs on participation criteria) were weighted by age, gender and location to ensure total responses were nationally representative.

### Margin of error

- › The margin of error on the total sample size of 1,655 is  $\pm 2.4\%$  at the 95% confidence level (on a proportion of 50%).

### Limitations of the research

- › The data collected was self-reported and therefore is limited to the subjective experiences and perceptions of the respondents.
- › Respondents may have experienced recall bias, caused by the passage of time and possible differences in the accuracy of their recollection of experiences which occurred in the past.
- › While consumers were asked about their experiences with buy now pay later, they may have been thinking about their financial situation as a whole. Where possible, we asked consumers to consider outcomes and experiences in the context of buy now pay later only, or only as a result of their buy now pay later arrangement.

## Appendix 2: Accessible versions of figures

Table 4: Number of active buy now pay later accounts (FY 2015–16 to FY 2018–19)

Year	Number of active accounts
FY 2015–16	487,221
FY 2016–17	1,374,527
FY 2017–18	2,709,280
FY 2018–19	3,748,737

**Note:** This table shows the data contained in Figure 1. 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 5: Total value of buy now pay later transactions (FY 2016–17 to FY 2018–19)

Year	Afterpay (% of total transaction value)	Certegy (% of total transaction value)	ZipMoney Payments (% of total transaction value)	Brighte, Payright and Openpay (% of total transaction value)	Total value of transactions (all providers)
FY 2016–17	n/a	n/a	n/a	n/a	\$1,282,713,965
FY 2017–18	n/a	n/a	n/a	n/a	\$3,138,279,118
FY 2018–19	73%	11%	11%	4%	\$5,611,724,511

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

Table 6: Percentage of total outstanding balance, by provider, as at June 2019

Provider	Percentage
Afterpay	27%
Brighte	9%
Certegy	37%
Openpay	2%
Payright	2%
ZipMoney Payments	23%

**Note:** This table shows the data contained in Figure 4.

Table 7: Revenue sources, by provider (FY 2018–19)

Provider	Merchant fees	Missed payment fees	Other consumer fees
Afterpay	80%	20%	0%
Brighte	95%	0%	3%
Certegy	72%	2%	25%
Openpay	52%	16%	31%
Payright	82%	0%	18%
ZipMoney Payments	37%	1%	61%

**Note:** This table shows the data contained in Figure 5. Other consumer fees include such fees as establishment fees and account-keeping fees.

**Table 8: Total value of personal credit card transactions (FY 2015–16 to FY 2018–19)**

Year	Total value of transactions
FY 2015–16	\$258.1 billion
FY 2016–17	\$267.3 billion
FY 2017–18	\$273.7 billion
FY 2018–19	\$274.5 billion

**Note:** This table shows the data contained in Figure 6.

**Table 9: Age distribution of completed transactions (FY 2018–19)**

Category of transactions	18–24 years	25–34 years	35–44 years	45–54 years	55–64 years	65+ years
All completed transactions	23%	38%	22%	12%	4%	1%
Completed transactions that incurred at least one missed payment fee	27%	40%	20%	10%	18%	12%

**Note:** This table shows the data contained in Figure 8.

**Table 10: Percentage of transactions incurring missed payment fees (FY 2016–17 to FY 2018–19)**

Provider	FY 2016–17	FY 2017–18	FY 2018–19
Afterpay	12%	12%	10%
Brighte	1%	4%	4%
Openpay	18%	18%	19%
Certegy (Certegy Ezi-Pay)	4%	4%	n/a
Oxipay	10%	14%	n/a
Certegy (Humm)	n/a	n/a	7%

**Note:** This table shows the data contained in Figure 10.

**Table 11: Percentage of transactions that incurred a missed payment fee since January 2020**

Month	Percentage
Jan 2020	10.08%
Feb 2020	8.96%
Mar 2020	6.29%
Apr 2020	4.35%
May 2020	5.12%
Jun 2020	2.40%

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

Table 12: Some outcomes for buy now pay later users

Category of consumers	I had to cut back on or go without essentials (e.g. meals) in order to make my buy now pay later repayments on time	I have taken out an additional loan to make my buy now pay later repayments on time
Consumers with one buy now pay later arrangement	16%	10%
Consumers with two buy now pay later arrangements	20%	13%
Consumers with three buy now pay later arrangements	25%	20%

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

Table 13: Percentage of credit card accounts that incurred a monthly interest charge (October 2018 to April 2019)

Category of consumers	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019
Buy now pay later credit card users	66.50%	66.78%	68.46%	71.12%	72.47%	71.93%	71.84%
Other credit card users	43.24%	42.93%	43.60%	45.11%	45.74%	44.87%	44.69%

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

Table 14: Percentage of credit card accounts with over 90% use of credit (October 2018 to April 2019)

Category of consumers	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019
Buy now pay later credit card users	38.28%	38.06%	40.56%	41.07%	40.96%	40.95%	42.33%
Other credit card users	16.56%	16.48%	17.30%	17.36%	17.42%	17.19%	17.49%

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

# Key terms and related information

## Key terms

<b>ACCC</b>	Australian Consumer and Competition Commission
<b>AFCA</b>	Australian Financial Complaints Authority
<b>AFIA</b>	Australian Finance Industry Association
<b>ASIC</b>	Australian Securities and Investments Commission
<b>ASIC Act</b>	<i>Australian Securities and Investments Commission Act 2001</i>
<b>BNPL Code</b>	An industry code of practice for buy now pay later providers announced by AFIA on 29 January 2020
<b>buy now pay later arrangement (arrangement)</b>	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
<b>buy now pay later provider (provider)</b>	An entity that provides buy now pay later arrangements to consumers
<b>buy now pay later user (user)</b>	A person who has used a buy now pay later arrangement within the last six months
<b>Citi</b>	Citi Group Pty Limited
<b>CommBank</b>	Commonwealth Bank of Australia
<b>consumer</b>	A natural person or strata corporation <b>Note:</b> See s5 of the National Credit Act.
<b>continuing credit contract</b>	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 <b>Note:</b> See s204 of the National Credit Code.
<b>Corporations Act</b>	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
<b>credit contract</b>	Has the meaning given in s4 of the National Credit Code <b>Note:</b> See also s3–6 of the National Credit Code.
<b>design and distribution obligations</b>	Obligations on financial services firms to appropriately design products for and direct distributions towards the right consumers <b>Note:</b> See the Product Regulation Act and Pt 7.8A of the Corporations Act.
<b>financial hardship</b>	When a consumer has difficulty making loan and debt payments or meeting their other basic financial needs
<b>NAB</b>	National Australia Bank Limited

<b>National Credit Act</b>	<i>National Consumer Credit Protection Act 2009</i>
<b>National Credit Code</b>	National Credit Code at Sch 1 of the National Credit Act
<b>merchant</b>	A supplier of goods or services
<b>product intervention power</b>	The intervention power that allows 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  <b>Note:</b> See Product Regulation Act.
<b>Product Regulation Act</b>	<i>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019</i>
<b>REP 600 (for example)</b>	An ASIC report (in this example numbered 600)
<b>Reserve Bank</b>	Reserve Bank of Australia
<b>responsible lending obligations</b>	The legal obligations set out in Ch 3 of the National Credit Act
<b>RG 183 (for example)</b>	An ASIC regulatory guide (in this example numbered 183)
<b>s5 (for example)</b>	A section of the National Credit Act (in this example numbered s5, unless otherwise specified)
<b>Senate inquiry report</b>	Senate Economics References Committee, <a href="#">Credit and hardship: Report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship</a> , February 2019

## Related information

### Headnotes

Buy now pay later, consumer credit, design and distribution obligations, merchant surcharging, missed payments, product intervention power, short-term credit

### Legislation

ASIC Act

Corporations Act, Pt 7.8A

*Credit Contracts and Consumer Finance Act 2003 (NZ)*

National Credit Act, Ch 3, s5

National Credit Code, s3–6, 204

Product Regulation Act

Swedish Payment Services Act (2010:751)

## ASIC documents

[CP 325](#) *Product design and distribution obligations*

[REP 600](#) *Review of buy now pay later arrangements*

[RG 183](#) *Approval of financial services sector codes of conduct*

[RG 272](#) *Product intervention power*

## Other references

AFIA, [AFIA announces a new buy now pay later code of practice](#), 19 December 2019

AFIA, [BNPL Code of Practice public consultation closes](#), 18 May 2020

AFIA, [AFIA appoints BNPL Code Compliance Committee Chair and confirms new publication date](#), 11 November 2020

Financial Conduct Authority (UK), [Christopher Woolard to chair review of unsecured credit market regulation](#), 16 September 2020

Reserve Bank, [Consumer payment behaviour in Australia](#), March 2020

Reserve Bank, [Payments System Board update: February 2020 meeting](#), 21 February 2020

Reserve Bank, [Review of Retail Payments Regulation—Postponement](#), 26 March 2020

Reserve Bank, [Payments System Board update: August 2020 meeting](#), 21 August 2020

Senate Economics References Committee, [Credit and hardship: Report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship](#), February 2019

Swedish Government Bill 2019/20:79 [Credit options must not be displayed first when payment options are presented in electronic commerce](#), 4 February 2020

The Hon. Josh Frydenberg MP, Treasurer, [Driving innovation in the payments system](#), 21 October 2020