

Buy-Now, Pay-Later: Understanding the triggers of financial hardship and possible options to address them

Submission by Christians Against Poverty


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To:
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Executive Summary

Tēnā koe Project Team,

Christians Against Poverty (CAP) welcomes the opportunity to comment on the Ministry of Business, Innovation and Employment's Buy-Now, Pay-Later (BNPL) Discussion document.

BNPL enables consumers to receive goods and services immediately and only pay the first instalment. The debt balance is then paid off in regular instalments later with no interest. It has become increasingly common for CAP to identify unaffordable BNPL payments among our clients. The percentage of CAP clients with new BNPL debt has increased from 2% in 2019 to 17% in 2021.¹ While BNPL can be an advantage over other credit products when used correctly, CAP has seen first-hand how BNPL creates further financial hardship for those in unmanageable debt. We want to see BNPL meet affordability and suitability requirements to protect consumers.

CAP also urges BNPL providers to be aware of how this innovation can cause further harm by disincentivising saving and creating a platform for impulse-buying, particularly when shopping online. Consumers take on more future debt to pay for current purchases, often without fully understanding the implications. This does not align well with the Te Ara Ahunga Ora's work to build financial capability and resilience, so all New Zealanders live within their means and have savings for future needs.²

The submission below contains some general comments from CAP regarding the BNPL sector. The responses to the Discussion document question template are directly following. Overall, CAP agrees with the risks of financial hardship BNPL creates and contends Option 3 (to apply the Credit Contracts and Consumer Finance Act (CCCFA) to regulate BNPL products) is the best option for consumers and the sector. The most significant concern with BNPL is a lack of protection for Aotearoa's most vulnerable and lack of regulation to mitigate the risk of whānau falling into further financial hardship. By including BNPL within the scope of the CCCFA, consumers who benefit from BNPL can continue to do so safely while receiving the same protections which exist for other credit products. Most importantly, regulation will address specific risks of BNPL and prevent further financial harm.

Thank you for the opportunity to provide input, and I welcome any questions.

Nāku noa, nā



Matilda Gaby

¹ Christians Against Poverty. (2021). BNPL Debt. (Unpublished raw data).

² Te Ara Ahunga Ora. (2021). The National Strategy for Financial Capability. <https://retirement.govt.nz/financial-capability/national-strategy/>

Introduction to Christians Against Poverty

Free debt counselling and money education

CAP's free nationwide Debt Help service has now helped thousands of New Zealanders over the last 12 years to live on a budget, pay off debts, and grow in financial capability.

CAP visits approximately 100 households each month. As a result, CAP constantly comes face-to-face with the crushing despair and misery created by debt. Over half of CAP clients could not provide three meals a day for their children. Over 65% of clients owe money for utilities and housing.³ Before coming to CAP, 1 in 4 clients had contemplated or attempted taking their lives.⁴

CAP has helped thousands of clients pay off over 38 million dollars of debts and bills and enabled the write-off of over \$30 million of debt through negotiations with creditors and insolvency. The fruits of this work mean that over 2,000 whānau have become debt-free.

In response to the vast need that we saw in families struggling in debt, Christians Against Poverty also developed the CAP Money course in March 2009. Over 15,000 people have completed a CAP Money course to learn how to take control of their finances.

General Comments

It is encouraging to see that Hon. Minister Dr David Clark has listened to CAP's feedback and recommendations provided earlier this year regarding BNPL. CAP supports the overall aim of the consultation to understand and address potential triggers of financial hardship and achieve an effective BNPL sector for consumers.

The fast-growing BNPL sector

There is an increasing number of BNPL providers in New Zealand, including Afterpay, zipPay, OxiPay, Humm, Klarna, and Bundll. CAP is also aware of new entrants such as HealthNow, a BNPL platform that offers to split the cost of health treatment over time.⁵ BNPL is not harmful in itself as the product offers easy and interest free credit. For example, CAP would prefer BNPL being used to allow those in unmanageable debt to purchase a winter coat over other more traditional forms of credit. However, CAP calls for regulation of BNPL to prevent an unmanageable debt crisis for these vulnerable consumers.

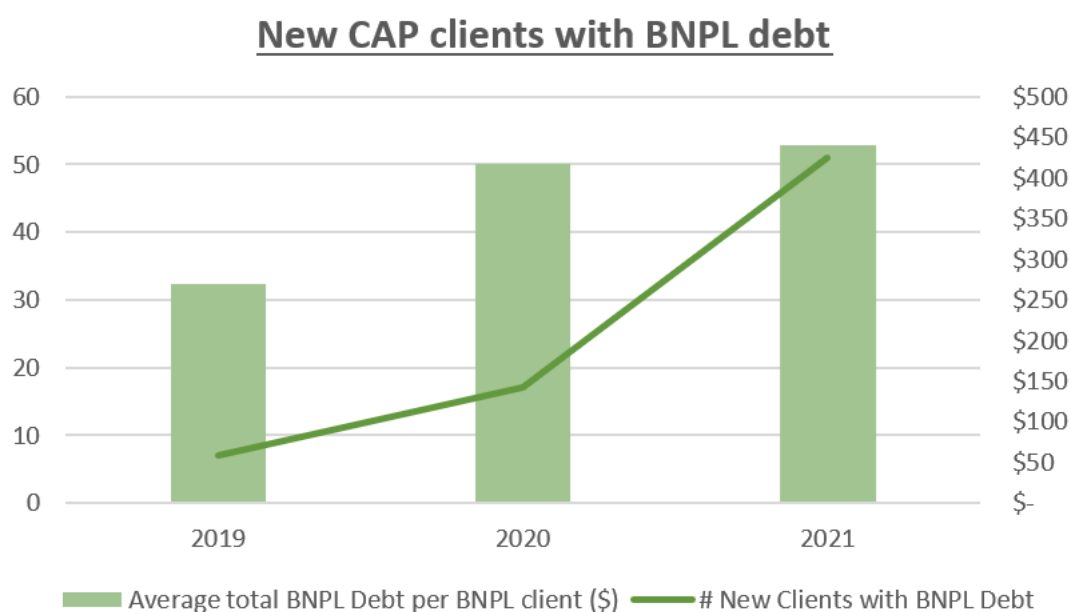
³ Christians Against Poverty New Zealand. (2020). *Below Zero: Living in unmanageable debt in Aotearoa*.

⁴ Ibid.

⁵ HealthNow. (2021). About Us. <https://healthnow.co.nz/about-us/>

We are concerned that during COVID there was a surge in the number of BNPL users in Aotearoa – an increase of 57% from 2019 to 2020.⁶ BNPL was being used to buy food and essentials and being offered to customers as an alternative to paying cash. In the same period, the number of CAP clients that had BNPL debt increased from seven to 17 and the current 2021 figure has more than quadrupled to 51, as shown by the graph below. As a percentage of the total number of clients, 2% had BNPL debt in 2019, 6% in 2020 and 17% in 2021 – nearly tripling each year.⁷ For these clients, they had two BNPL debts on average each.⁸ Furthermore, the average total of new BNPL debt per client has increased from \$269 in 2019 to \$441 in 2021.⁹ We expect that these statistics are underestimated as there is likely to be a significant number of our clients who pay BNPL debts directly and do not inform CAP as we ask our clients to not take out any more debt while working with us. BNPL seems to be recession-proof in that growth has come during a season where hardship has been perpetuated for those already in a tight financial position.

Figure 1:



A ticking time bomb

While some features of BNPL may provide benefits compared with other forms of debt - such as interest-free credit if repayments are made on time - CAP is concerned that BNPL as it currently stands is harmful to those at risk of financial hardship and those who are already vulnerable. With recent regulatory changes to credit contracts, there is a significant risk that

⁶ Ministry of Business, Innovation and Employment. (2021). Buy-Now, Pay-Later. <https://www.mbie.govt.nz/dmsdocument/17817-discussion-document-buy-now-pay-later-understanding-the-triggers-of-financial-hardship-and-possible-options-to-address-them>

⁷ Christians Against Poverty. (2021). BNPL Debt. (Unpublished raw data).

⁸ Ibid.

⁹ Ibid.

retailers may quickly favour and promote comparatively less-regulated BNPL products in place of traditional consumer finance products. This would be despite the efforts by the government and consumer advocates to introduce greater protections for vulnerable consumers through this regulatory change.

Discussion Document Questions

Q1. Do you agree with our assessment of what the benefits are from BNPL? Are there others?

While there are some advantages to BNPL compared to other credit products, the costs of BNPL as a standalone, unregulated product far outweigh the benefits.

Advantages

CAP recognises that BNPL offers a market alternative. When BNPL is provided to those who can afford to repay on time, it is a cost-free way to access credit and cheaper than most alternative forms of credit. An advantage of BNPL compared to other credit products is that BNPL is tied to a specific good or service, unlike a personal loan, where you can fund more debt.

BNPL promotes healthy competition, encouraging traditional credit products to improve and innovate. However, CAP recognises that the cost of BNPL is spread to all consumers by merchants' passing on fees, whether they use and access the benefits of BNPL or not.

Another benefit is that BNPL products are interest-free compared to credit cards, which charge around 20% on average in interest.¹⁰ BNPL provides people with an opportunity to get by and has advantages if people do not end up in default.

Costs

BNPL comes at the cost of people in poverty and unmanageable debt who cannot use this product effectively. CAP notes that the Discussion paper mentions 75% of consumers report extremely high satisfaction with BNPL. CAP is however concerned that the remaining 25% account for those in financial hardship that bear the brunt of default fees. For instance, between the second half of 2019 and the same period in 2020, Laybuy's revenue from late fees increased by 164%. Laybuy earned \$5.8 million in late fees in the second half of 2020 alone.¹¹ Consumer NZ's data also states that BNPL costs shoppers approximately \$10m in fees.¹² A surge in late fees translates as family skipping meals, getting into more debt, and being unable to afford life essentials. In Finder's survey, consumers who repeatedly pay late fees to BNPL are better off paying credit card interest.¹³ Ultimately, CAP sees BNPL as

¹⁰ Moneyhub. (2021). Credit Card Interest Calculator. <https://www.moneyhub.co.nz/credit-card-interest-calculator.html>

¹¹ Finder. (2021). Buy Now Pay Later.

<https://www.finder.com/nz/buy-now-pay-later-report-2021>

¹² Consumer New Zealand. (2021). Buy-now, pay-later costing shoppers \$10m+ in fees.

<https://www.consumer.org.nz/articles/buy-now-pay-later-costing-shoppers-10m-in-fees>

¹³ Ibid.

consumer debt, despite not charging interest like credit cards, and therefore calls for the same regulation as other credit products.

Furthermore, BNPL disincentivises financial capability by encouraging people to live beyond their means and not save. Research by ASB showed that 40 percent of Kiwis have less than \$1000 in their bank account for a rainy day.¹⁴ Those who are living pay-to-pay would likely seek to use BNPL as a way to spread the costs of purchases over time. However, it is not easy to manage and track payments, especially when a client has multiple BNPL contracts with different providers. CAP encourages its clients to build up savings to pay for purchases in full and ensure their budget includes savings for future needs and emergencies. However, with BNPL being convenient and easy to access, the product removes the need for willpower and discipline to put aside savings each week.

In addition, BNPL encourages overspending and impulsive buying. CAP disagrees with BNPL enabling people to spread purchases over holidays as most providers require full payment within 4-6 weeks. BNPL makes overspending easier during the holiday periods by enabling funds that people do not immediately have available. For example, BNPL advertisements target young people that show lower scores on many components of financial capability, including spending restraint, informed product choice and knowledge of money management.¹⁵ Among young people, 1 in 7 struggle with overspending and impulse buying.¹⁶ CAP also disagrees with BNPL being beneficial in purchasing goods and services in bulk to take advantage of discounts. Most of our clients use BNPL to purchase one-off items, e.g., a winter coat, vehicle repairs, or emergency food.

CAP has seen a significant uptake in BNPL products among our clients – these are whānau who are already in unmanageable debt, experiencing financial hardship and have poor credit ratings. BNPL is not required to help a young person increase their credit score, but on the other hand, BNPL does continue to harm someone’s creditworthiness who is already in unmanageable debt. These issues matter to all of society as everyone carries the cost of whānau in poverty and unmanageable debt. Overall, BNPL can be unsuitable and unaffordable for some consumers and regulation is needed to ensure safe, responsible lending.

Q2. As a consumer (or consumer representative), please outline what are the benefits of BNPL?

Please see the answer to Question 1 above.

¹⁴ ASB. (2021). ASB data shows financial wellbeing improving but many ‘just coping’.

<https://www.asb.co.nz/documents/media-centre/media-releases/asb-data-shows-financial-wellbeing-improving.html>

¹⁵ Te Ara Ahunga Ora. (2021). New Zealand Financial Capability Survey 2021. <https://cffc-assets-prod.s3.amazonaws.com/public/Uploads/Research-2020%2B/TAAO-RC-NZ-FinCap-Survey-Report-.pdf>

¹⁶ Ibid.

Q3. As a business accepting BNPL to pay for goods and services, please outline the benefits of BNPL? If you are a small business, are there any additional benefits from accepting BNPL?

N/A

Q4. Do you agree with our assessment of how BNPL will evolve in New Zealand? If not, please provide details.

CAP agrees that as BNPL evolves and grows, the competition impacts of BNPL may also extend to other credit and financial products.

While it is good to have healthy competition, as ideally this leads to lower or no interest for more traditional credit products, regulation still needs to be in place for BNPL products. For example, mobile traders in New Zealand created competition as a market alternative by reducing barriers to credit. These traders were unregulated for several years, leading to further consumer debt, irresponsible lending, and financial hardship.¹⁷ After seeing the detrimental impacts of an unregulated credit product, the government introduced legislation to ensure ethical and responsible lending.¹⁸ By BNPL being regulated now, as the United Kingdom is looking at doing, future investigations of poor lending will be prevented.

Q5. How do you think emerging BNPL business models e.g. partnerships with credit cards, banks etc. will impact consumers? Please provide details.

BNPL partnerships with banks, credit cards, and tech giants have increased the number of businesses that accept BNPL as payment, increasing consumers' financial hardship risk. For example, CAP notes that ASB added Klarna as an alternative form of payment in their mobile app without adequately informing their consumers. In addition, Microsoft Edge plans to add BNPL capability in their browser via a partnership with Zip. This means a consumer's Microsoft account can be linked to their Zip account, and they can make a purchase with one click, expediting the application process.¹⁹ The number of businesses accepting BNPL increases each day making it easier for consumers to use credit and purchase beyond their means.

BNPL's partnerships with banks, credit cards and tech giants legitimise BNPL's place in the industry and underscore the need for regulation to prevent harm and ensure better protection is in place for the financially vulnerable.

Q6. Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL? Please provide details.

¹⁷ Consumer Protection. (2021). Truck shops. <https://www.consumerprotection.govt.nz/general-help/ways-to-buy-and-pay/truck-shops/>

¹⁸ Ibid.

¹⁹ PC World. (2021). Why you should shop Black Friday and Cyber Monday using Microsoft Edge. <https://www.pcworld.co.nz/article/693435/why-should-shop-black-friday-cyber-monday-using-microsoft-edge/>

CAP agrees that BNPL should be viewed as debt and that this product does create financial hardship for some consumers.

CAP agrees that missed instalment fees can contribute to financial hardship. While some providers cap the number and amount of fees, others charge up to 25% of the total good or service cost.²⁰ It is particularly concerning that CAP clients, who are already in unmanageable debt and poverty, are encountering these fees and therefore sacrificing essentials like clothing, medical bills, and groceries. CAP has also noticed that many BNPL debts have gone to collection agencies, which adds further fees and stress on our clients.

CAP also agrees that financial hardship occurs when instalments are not missed because consumers are instead foregoing other expenses or debt repayments. For example, Mary* used two BNPL providers to buy food and had to keep up with these payments. However, she fell behind in her car arrears to the point where her car was at risk of repossession. Mary* was also behind in power and rent arrears and had a cash loan and benefits debt. She has recently gone through insolvency to clear debt.

*Name changed to protect privacy.

Q7. As a consumer (or consumer representative), have you faced financial hardship from BNPL?

If yes, under what circumstances have you faced financial hardship from BNPL? Please select all that apply and provide details, if possible:

- **You had multiple BNPL accounts**
- **Your credit limits were increased beyond what you could afford**
- **Because of the timing of your BNPL instalments and other expenses**
- **Because as a household, you were unable to afford the BNPL instalments**
- **You focused on the first payment rather than the total cost of the product or service**
- **You responded to BNPL marketing and as a result purchased more than you could afford**
- **You missed an instalment and faced missed fees (default fees)**
- **Your circumstances changed (e.g. change in employment) and you were no longer able to afford the instalments**
- **Other**

Yes, CAP has seen each of these financial hardship scenarios due to BNPL.

Case Study 1:

JENNIFER*

SOLE PARENT, 1 DEPENDENT, AUCKLAND

²⁰ Canstar. (2021). Buy Now Pay Later in NZ: Best NZ BNPL Sites. <https://www.canstar.co.nz/buy-now-pay-later/buy-now-pay-later-in-nz-best-nz-bnpl-sites/>

“I was shopping at Farmers when I saw the app for [a BNPL provider], and [the retail assistant] said, ‘You can buy the item and then you can pay back in 10 weekly or eight weekly instalments.’ So, I started off buying small things, like maybe a pair of shoes or a belt for my jeans, or a scarf maybe.”

Jennifer is a stay-at-home mother in her fifties with one primary-school-age child. Her primary source of income is Sole Parent Support; she also receives other government assistance.

She has a mortgage and lives in Tāmaki Makaurau. Jennifer came to CAP with a car on hire purchase, BNPL, Work and Income, legal aid, and credit card debt.

BNPL EXPERIENCE

Jennifer has used two different BNPL providers over time. She used them for clothing or accessories, gifts for family, food, vehicle-related costs and a dental emergency.

Jennifer reports using BNPL to spread larger payments over time, allowing money in the budget for essentials like groceries each week.

However, Jennifer unknowingly fell into what really is a trap: when Jennifer first started using BNPL, she reports starting off with small purchases (between \$20 and \$50). Over time, her use grew to more expensive items, plunging her further into debt.

When Jennifer came to CAP, she had a BNPL debt for a car service, amongst other forms of debt, and could not pay this off within her existing means. She has since cleared this debt. However, her experience highlights the risks of BNPL being granted without consideration of consumer ability to meet repayments: for the clients who CAP sees, BNPL is never their only form of debt. Yet, it continues to be easy to access. (Clients who work with CAP agree to no longer take out debt, and overtime work towards going completely debt-free).

Case Study 2:

SARAH*

SINGLE, BENEFICIARY, HAMILTON

“I think what made them attractive was that it’s ‘pay no interest’”.

Sarah, in her 40s, lives and works in Waikato. Sarah came to CAP with debt to Work and Income for car tyres, a phone headset, a credit card, and a personal loan with a finance company.

BNPL EXPERIENCE

Sarah used multiple BNPL providers before starting to work with CAP. She reports being declined by one provider but could access all others she signed up with.

Sarah used BNPL for online shopping (clothes, vitamins) and vehicle expenses (Warrant of Fitness, tyres).

She explains how BNPL led her to impulse spending:

“It was so easy. I think that’s one of the big things, is that it’s so easy to do. So it’s tempting... like when you haven’t got the money at the time and you know [you can use BNPL].”

The amounts available to Sarah increased as she made repayments. For example, with one BNPL provider, she now has an estimated \$1,930 available to spend with them, and she can view this credit balance as it shows on the app on her phone. Sarah remembers the limit being just a few hundred dollars when she first started with them. Another provider allowed her to borrow \$370, and another BNPL increased her credit limit to \$840.

Sarah is now working with CAP to become debt-free after insolvency and no longer uses BNPL.

“I would just say don’t do it, just save it or if you can go without... I wouldn’t [do it].”

Case study 3:

ANNA*

SOLO MOTHER, THREE DEPENDENTS, EMERGENCY HOUSING

Anna came to CAP with a car HP, phone arrears, court fines, benefits debt and eight unsecured debts. Anna had no option but to go through insolvency due to her unmanageable debt.

BNPL EXPERIENCE

Anna used multiple BNPL providers to make ends meet. However, Anna was forced to reduce her hours and lost income due to COVID, meaning she missed BNPL instalments. Anna then sacrificed essential expenses, with a budget already showing emergency expenditure allowances (e.g., \$1 per month for clothing). Two of Anna’s BNPL debts were referred to collection agencies (although insolvency cleared them).

*Names changed to protect privacy.

Q8. Do you live in a household with multiple BNPL accounts? Yes / No / Prefer not to answer (If Yes), has your household experienced financial hardship because as a household you could not afford the full cost of the good or service?

Please see the answer to Question 7 above.

Q9. As a BNPL consumer (or consumer representative) (select one only)

A) Do you value having a hard credit check being conducted OR

B) Would you prefer a soft credit check that doesn't leave a 'footprint' on your credit score?

C) Please explain the reasons for your answer

None of the above. Credit checks only focus on the risk of non-payment. Affordability assessments are needed instead.

Q10. What are the advantages and disadvantages (including costs) from credit checks being used to determine approval for BNPL?

The advantages of using credit checks are that they focus on the risk of non-payment and, therefore, can mitigate consumers' risk of default. CAP clients have also noted that credit checks have made them think twice before taking out BNPL debt.

The main disadvantage of credit checks is that they do not assess affordability, which is the most critical factor to prevent hardship. Credit checks do not demonstrate whether someone can afford to pay and consider household income or expenses. Consumers who use tomorrow's money for today are also not captured in the credit report. Furthermore, CAP questions the accuracy of credit checks used by BNPL providers as they have said they sometimes write off fees when a customer defaults, defeating the point of credit checks.

Q11. What other/additional steps could BNPL providers take to assess affordability for consumers? What are the disadvantages (including costs) of these steps? What are the benefits of these steps?

CAP recommends that BNPL providers verify income and expenditure via bank statements and payslips. This regulation has recently been introduced to all creditors in the CCCFA.²¹ This step would ensure responsible lending, although CAP is aware that tools such as the open banking system and consumer data rights would need to ensure this is practical.

Q12. How might affordability assessments be conducted when BNPL credit limits are increased?

If BNPL credit limits are increased, CAP would like to see the same CCCFA affordability and disclosure regulations apply to BNPL providers as they do to other products like credit cards. CAP would also like to see BNPL providers stop likening increasing credit limits to a loyalty reward system and enticing customers by showing how much more they can borrow when they make a payment. This increases consumers' reliance on BNPL and discourages them from saving and spending within their means.

Q13. What are the costs and benefits of conducting affordability assessments when BNPL credit limits are increased?

²¹ Commerce Commission. (2021). Changes to credit laws. <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/changes-to-credit-laws>

N/A.

Q14. Are there any other ways to ensure BNPL credit limits are increased responsibly?

N/A.

Q15. Are there any other issues with consumers having multiple BNPL accounts that we have not identified?

An additional issue of having multiple BNPL products is the impact on a consumer's credit rating if they are in unmanageable debt. A lower credit rating impacts a consumer's potential to engage in mainstream services such as housing. Multiple BNPL products can create a debt spiral for those already in unmanageable debt.

Q16. How effective and practical would it be to share information with other BNPL providers of consumer accounts which have been frozen?

Not effective / Somewhat effective / Very effective

Not practical / Somewhat practical / Very practical

Please provide details.

Sharing data between BNPL providers raises concerns about privacy and confidentiality where consumers may not know information will be shared. It would also need to be accurate and real-time to be effective which may be too complex to administer practically.

Q17. How could information about consumers having multiple BNPL accounts be appropriately shared across the BNPL sector?

N/A.

Q18. What are the costs (including disadvantages) of the approaches you describe in Question 17? What are the benefits of the approaches you describe in Question 17?

N/A

Q19. What tools and processes could be introduced for the timing of BNPL instalments to be better aligned to income and other expenses?

CAP recommends that BNPL providers ensure the timing of instalments works well according to the timing of the customer's income and other expenses. For example, weekly instalments may not work if someone is paid fortnightly. BNPL providers need to look at a customer's budget and proof of income when conducting affordability assessments.

CAP also notes that some BNPL providers only allow customers to change their payment date once. CAP would like to see greater flexibility across all providers if consumers change their employment or run into a tight spot one week.

Q20. What are the costs (including disadvantages) of such tools and processes? What are the benefits of such tools and processes?

The main benefit is that consumers avoid incurring late fees or using overdrafts.

Q21. When making BNPL transactions, how could consumers be made more aware of the total costs of their purchases? What are the costs of these tools? What are the benefits of these tools?

CAP would like to see the total cost of a purchase emphasised more than the weekly instalment amount across all providers. CAP also supports using a tool that highlights the timing of instalments, other expenses, and how much total BNPL purchasing they can afford. However, CAP is concerned that many of those in financial hardship often experience literacy and accessibility barriers, so the Personal Finance Management Tool would need to be fit-for-purpose for those who need it most. Ultimately, the responsibility should be on the lender through CCCFA regulation rather than putting onus on the borrower.

Q22. As a consumer (or consumer representative), what has been your experience of receiving help from BNPL provider/s if you missed an instalment and/or faced financial hardship?

CAP has noted that most BNPL providers have transparent policies when consumers miss an instalment or face financial hardship. However, CAP clients and our frontline staff have found it challenging to contact providers, particularly when their offices are based overseas, or everything is done via an app. For example, one client lost her job due to COVID and contacted the two BNPL providers about her financial hardship. She had to wait for one month to get a reply, and CAP could not help as we found it challenging to acquire the correct paperwork acting as a third party. During this time, late fees were piling up, and she ran out of funds for essentials like food. In the end, both of her BNPL debts went to debt collection agencies. One debt was \$602, and the other was \$1593. CAP has discussed with some BNPL providers about having a specific email address for financial mentors and sector-wide recognition of our Client Authority form. It would be a step in the right direction to see this actioned across all providers.

CAP has also faced issues with acting as a third party on behalf of our clients when it comes to paying the BNPL debt. A nominated bank account for third parties to make payments would be another step in the right direction to ensure that instalments are not missed, or that financial hardship situations are resolved quickly.

Q23. How could BNPL providers be more responsive to consumers relying on BNPL to pay for essential goods and services? What are the costs of these tools? What are the benefits of these tools?

A BNPL red flag system could be introduced to track what consumers are purchasing and record how many BNPL transactions a consumer has. Benchmarks could be set for when consumers are likely to be relying on BNPL to pay for essential items. The main cost would be the resources required to set up this system.

Q24. Do you have any comments on the diagrams above summarising the triggers of financial hardship, how they occur, and the features which could mitigate financial hardship?

N/A

Q25. Do you agree with our view that the lack of affordability assessments is likely to be a key reason why some consumers using BNPL face financial hardship?

Yes. In many instances, consumers can access BNPL without credit checks, affordability assessments or lifetime-of-repayment considerations. For example, CAP client Sarah* reports accessing BNPL with all but one provider she attempted to sign up with. The provider who declined her application states on their website that they consider previous repayment history with other lenders and accounts, as well as information consumers provide about their employment status, income, and expenditure. Other BNPL providers do not appear to apply this level of assessment before granting credit.

The recent reforms to the CCCFA have recognised the utmost importance of a fair and realistic affordability assessment for credit contracts to protect borrowers from falling into a debt spiral. However, BNPL products still fall outside the scope of these reforms.

Failure to make payments on BNPL loans can result in fees of up to 40% of the purchase price and can lead to debt collectors and worsened credit scores.²²

“It sounds very simple, but when the time comes to pay it off, if you don’t have the money in your bank, you’re really screwed, and then you get fined and then fined again. And the fines keep piling up, and then, before you know it, you have all these debts to pay.” - Jennifer, CAP Client.

Affordability assessments are an essential way to reduce predictable harm, so it is imperative that BNPL lenders give the borrower the same fair chance to avoid inescapable debt by conducting affordability assessments.²³

Q26. Do you have views on the overall objective of the BNPL sector?

CAP agrees that the overall objective of BNPL is to deliver long-term benefits to the consumer. CAP believes that consumer interests should be at the centre of decision making.

²² Canstar. (2020). Buy Now, Pay Later: What’s the Real Cost If You’re Late With Payments? <https://www.canstar.co.nz/credit-cards/what-to-do-if-youre-always-late-to-buy-now-pay-later-payments/>

²³ Financial Conduct Authority. (2021). The Woolard Review – A review of change and innovation in the unsecured credit market. <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>

Q27. Do you have any views on how the interests of consumers could be protected?

As well as regulating BNPL under the CCCFA, BNPL providers should be required to be part of independent dispute resolution schemes to protect consumers' interests.

Q28. Do you have any views on the criteria used to assess how to achieve an effective BNPL sector?

CAP believes that effectiveness needs to be prioritised above the legitimacy and flexibility criteria to ensure the BNPL sector protects consumer interests well, particularly those already in hardship and unmanageable debt.

Secondly, legitimacy is vital to ensure credibility and trust with the relatively new sector. CAP would like to see regulation under the CCCFA, and a code introduced to achieve this.

CAP does understand the need for flexibility and innovation in the sector. However, innovations such as partnering with banks and tech giants need to consider the first criteria – to protect consumers interests and prevent any financial hardship. As Consumer Action Law Centre states, “so-called innovation in the financial services sector is too often focused on exploiting regulatory loopholes. Innovation that benefits the community should be able to comply with consumer protection laws to enhance people’s financial wellbeing.”²⁴

Q29. Do you have any comments on the discussion of Option One: status quo? Please provide evidence if available.

CAP does not believe that Option One protects the interests of those consumers in hardship or unmanageable debt. We contend that this option will mean BNPL remains unregulated and will continue to contribute to financial hardship and lower financial capability in New Zealand. If BNPL continues to grow and innovate without regulation, financial hardship may become more prevalent among whānau with low-income and poor credit.

Q30. What are the costs and benefits of Option One for any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL? Please provide evidence if available.

CAP agrees with the outlined costs of Option One. Option One is unlikely to address the triggers of financial hardship and protect those consumers who fall into hardship.

Q31. Do you have any comments on the discussion of Option Two: Government establishes appropriate incentives for BNPL providers to have an industry code which addresses the triggers of financial hardship? Please provide evidence if available.

²⁴ Consumer Action Law Centre. (2021). Buy now pay later sector must be regulated by Government not itself. <https://consumeraction.org.au/buy-now-pay-later-sector-must-be-regulated-by-government-not-itself/>

CAP does not believe that Option Two will be enough to protect consumers who risk falling into financial hardship. CAP is aware that BNPL providers in New Zealand have drafted a code of their current practices, similar to the Australian Finance Industry Association's BNPL Code of Practice.²⁵ However, our clients are still experiencing irresponsible lending and financial hardship because of BNPL in Aotearoa.

In Australia, the BNPL industry adopted a voluntary code on the 1st of March 2021. However, research shows that 95 per cent of financial counsellors say BNPL still needs to be regulated to protect consumers under the National Credit Code.²⁶ Consumer Action Law Centre states that this Code is not a substitute for adequate regulation. BNPL is credit and should be regulated like other credit products.²⁷ The Code has failed to address issues such as high fees, inappropriate lending, and misleading marketing of debt. As the Code is still voluntary, there is no legitimate way to hold BNPL providers accountable for not protecting consumers. For example, BNPL providers do not need to become members of the ombudsmen, and the Australian Securities and Investments Commission cannot take compliance or enforcement action when BNPL providers breach lending standards.

Q32. What are the costs and benefits of Option Two to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.

Option Two is preferred over Option 1 as a voluntary code would provide more protection to vulnerable consumers if a Minister directed MBIE to conduct regular reviews.

CAP does not believe that Option Two provides a satisfactory level of protection to vulnerable consumers. A voluntary code lacks credibility as this option relies on self-reporting and self-enforcement, which has not worked in Australia. As the Responsible Lending Code sits alongside the CCCFA, so should a voluntary BNPL code sit alongside the CCCFA.

Q33. How could Option Three be designed (including the timing of requirements) to ensure the BNPL delivers long-term benefits to consumers? Please provide evidence if available.

CAP recommends Option Three should be actioned as a result of this consultation under Section 173A of the CCCFA. Regulation is needed to ensure BNPL is a safe and effective product. CAP recognises that the legislation needs to fit for purpose for this sector to ensure consumers can enjoy the benefits of BNPL while also mitigating consumer harm from this

²⁵ Australian Finance Industry Association. (2021). AFIA BNPL Code of Practice Documents.

<https://afia.asn.au/BNPL-Documents>

²⁶ NZCity. (2021). Beware the buy now, pay later 'debt spiral'. Experts warn it'll be haunting us long after Christmas. <https://home.nzcity.co.nz/news/article.aspx?id=344782&cat=976&fm=newsarticle+-+Business%2Cnur>

²⁷ Consumer Action Law Centre. (2021). Buy now pay later sector must be regulated by Government not itself. <https://consumeraction.org.au/buy-now-pay-later-sector-must-be-regulated-by-government-not-itself/>

product. Proportionality will be vital in ensuring that regulation in this space does not have unintended consequences such as making BNPL unviable.²⁸

CAP would like to see legislation covering the critical issue areas implemented immediately. The CCCFA already covers most of the key areas: misleading advertising, misunderstanding of BNPL by consumers, lack of affordability assessments, unreasonable fees and inconsistent treatment of those in financial hardship.²⁹

Advertising

BNPL advertisements do not always clarify that BNPL is a credit product. CAP is also concerned that advertising encourages unaffordable spending or consumers to buy everything using BNPL, e.g., Bundll. This type of advertising is similar to low-value loans in the past that are now regulated. CAP notes that Advertising Standards Authority in the UK has published guidance in December 2020, which outlines that BNPL providers must ensure that consumers know that BNPL is a credit product, that all the information required is appropriately available, and that adverts should not imply the BNPL is risk-free or suitable for everyone.³⁰

Understanding of BNPL

As BNPL is a credit product, providers must adequately inform consumers before using it. However, BNPL payments options often appear next to debit or credit payment options, resulting in a risk that consumers may not apply the same level of scrutiny to their decision-making as they would for other credit products, including consideration of the potential consequences of failing to repay.³¹ Creating more friction in the transaction, particularly for digital BNPL, could help allow customers to more fully consider whether the credit agreement they are entering meets their needs. As the Citizens Advice Bureau UK report states, “a credit product should not be so easy to sign up to that people can do it without realising.”³²

Affordability assessments

As the recent CCCFA changes outlined, affordability assessments across all creditors will always be critical to ensure a healthy credit market. Beyond this, CAP would also like to see regulation effective across the whole consumer journey and not only the beginning. While affordability assessments are essential to prevent consumers from taking on unmanageable debt at the start, poor affordability checks are not the only cause of problem debt. Changes

²⁸ Pinsent Masons. (2021). UK government sets out plans for regulation of buy now pay later sector.

<https://www.pinsentmasons.com/out-law/news/uk-plans-regulation-buy-now-pay-later>

²⁹ New Zealand Legislation. (2021). Credit Contracts and Consumer Finance Act 2003.

<https://www.legislation.govt.nz/act/public/2003/0052/latest/DLM211512.html>

³⁰ GOV.UK. (2021). Regulation of Buy-Now, Pay-Later: consultation.

<https://www.gov.uk/government/consultations/regulation-of-buy-now-pay-later-consultation>

³¹ Ibid.

³² Citizens Advice Bureau UK. (2021). Buy Now... Pain Later?

[https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/BNPL%20Report%20\(FINAL\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/BNPL%20Report%20(FINAL).pdf)

in circumstances, including health challenges, loss of income or relationship breakdowns, can lead to financial hardship and make previously affordable credit unaffordable.

Reasonable fees

CAP recommends that BNPL providers be subject to the current CCCFA legislation stating that all fees must be reasonable and cost-recovery only.³³ CAP would also appreciate clarity on the additional costs when debt goes to collection agencies.

Consistent financial hardship practices

Approaches to financial hardship situations, late fees and debt collection are inconsistent across BNPL providers. CAP believes that when people struggle to meet repayments, they should expect the same support from all providers. As stated in the UK BNPL consultation, CAP would like to see consistent approaches to late fees and consideration of waiving charges or flexible payment arrangements in the face of financial difficulty.³⁴

As the sector matures and grows, CAP would like to see New Zealand proactive in introducing further aspects of the CCCFA sequentially as the industry develops. For example, it is important to look to the United Kingdom who have also put out a BNPL consultation to regulate this industry and see whether Aotearoa may need to introduce further bespoke BNPL legislation.³⁵

Q34. What are the costs and benefits of Option Three and how it is designed to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.

If enforced effectively, implementing Option Three would protect vulnerable consumers at risk of financial hardship when engaging with BNPL. BNPL would be aligned with other credit products, upholding the effectiveness and legitimacy criteria. CAP believes the government urgently needs to intervene to encourage responsible BNPL lending.

CAP does not believe that regulation will limit innovation and make the industry unviable. Regulation is needed to prevent consumer harm but not to take away the benefits of BNPL to some consumers. CAP also proposes putting the BNPL Code in a clause of the CCCFA to ensure legislation can keep up with this evolving product. Regulating BNPL is important to pave the way for future digital technologies.

³³ New Zealand Legislation. (2021). Credit Contracts and Consumer Finance Act 2003.

<https://www.legislation.govt.nz/act/public/2003/0052/latest/DLM211512.html>

³⁴ GOV.UK. (2021). Regulation of Buy-Now, Pay-Later: consultation.

<https://www.gov.uk/government/consultations/regulation-of-buy-now-pay-later-consultation>

³⁵ Ibid.

Q35. Do you have any suggestions on how we could measure and track progress against whether BNPL is delivering long-term benefits to consumers? Please provide evidence if available.

As well as the suggestions mentioned in the Discussion document, CAP recommends that data from financial mentoring services is collected to monitor and evaluate whether BNPL is delivering long-term benefits to consumers. CAP also proposes whether an agency like the Commerce Commission or Reserve Bank of New Zealand oversees this.

Other comments

While BNPL is being regulated, CAP also calls for regulation for similar debts like mobile phone contracts, which operate similarly to BNPL and upcoming pay-on-demand services.

CAP would also like to see more substantial backing for organisations like Ngā Tāngata microfinance and Good Shepherd as they fill an essential gap in the credit and lending industry with no interest and ethical loans.

CAP supports the submissions made by Fincap, The Salvation Army, Citizens Advice Bureau and Consumer NZ.

Conclusion

CAP wants to see financial capability improve in Aotearoa and see each whānau living within their means and saving to reach their future goals and dreams. CAP advocates for fair and responsible lending practices to ensure those in unmanageable debt and poverty can journey out of the debt and poverty spiral. All of society carries the burden and cost of those experiencing unmanageable debt.

Due to the financial harm and hardship BNPL creates, evident in Aotearoa, CAP urges the government to regulate BNPL under Section 173A of the CCCFA. A code could also support this legislation. Regulation means that vulnerable consumers are protected when using BNPL, as they are for all other credit products.

CAP would like to thank you for taking the time to review our submission. The BNPL consultation is necessary to protect consumers' interests and ensure the financial sector is effective and trusted.

We welcome any further discussion you may wish to have.