

22 December 2021

Response to Discussion Paper: ‘Buy Now, Pay Later – Understanding the triggers of financial hardship and possible options to address them’.

Introduction

Citizens Advice Bureaux New Zealand | Ngā Pou Whakawhirinaki o Aotearoa (CAB) welcomes the opportunity to provide a written submission on the Ministry of Business Innovation and Employment’s (MBIE) discussion paper on Buy Now, Pay Later.

Our service

CAB provides a free, confidential, and independent service of information, advice, and advocacy. We help people know and understand their rights and responsibilities, feel empowered to act on them, and find the community services they need. When we see that policies or laws aren’t working well for people, we act as a voice for positive social change.

Our service is provided from over eighty locations around the motu by our 2,500 trained CAB volunteers. In the past financial year (amidst the challenges presented by COVID-19), the CAB assisted with 367,794 client interactions across the range of issues that affect people in their daily lives, including tenancy rights, relationship issues, employment problems, faulty goods or poor service, immigration processes, budgeting and financial difficulties, issues relating to law enforcement and the justice system, and neighbourhood disputes. Every time a person seeks the CAB’s help, we record what they sought help with and what we did in response; this gives us unique information about the issues affecting people in communities nationwide.

Our submission

We have focused on responding to those questions where we feel we can make an informed contribution within the timeframe provided. We look forward to future opportunities to give feedback on issues relating to hardship and Buy Now, Pay Later as the consultation progresses and as we continue to experience growth in the use of BNPL in Aotearoa and corresponding growth in BNPL enquiries to the CAB.

The main recommendation we have in relation to this consultation is for the Buy Now, Pay Later sector to be regulated and brought under the Credit Contracts and Consumer Finance Act. Our experience with clients tells us that people are being harmed by the lack of obligation on BNPL providers to ensure their lending is responsible. We see that regulation is necessary for providing adequate consumer protection.

4. Do you agree with our assessment of how BNPL will evolve in New Zealand?

We see evidence of the growth of BNPL in our own service. While the number of client enquiries relating to specific BNPL providers has been comparatively small, there has been a marked increase in such enquiries from 2020 to 2021. We expect the increase in enquiries in this area to continue as BNPL becomes more widely available and marketed in New Zealand and a more commonly used form of consumer credit. BNPL should be regulated so that the public receive the same consumer protections as they do for other types of consumer credit, such as credit cards.

5. How do you think emerging BNPL business models eg partnerships with banks and credit card companies etc. will impact consumers?

We are concerned at some of the business models emerging in the marketplace which pose a risk for vulnerable consumers. For instance, Humm's new Bundll product which can be used almost exactly like a credit card, being accepted anywhere that takes a Mastercard and with no deposit required for purchases. People are being encouraged through the marketing of this product to use it for "everything" including essential everyday items, and with the ability to roll up repayments into larger amounts of up to \$4000. Debt products structured and marketed in these ways will trap financially vulnerable people into unsustainable debt.

Evidence from Citizens Advice in the UK, where BNPL services have been around for longer than in New Zealand, shows that BNPL users are more likely to be in financial difficulty (Citizens Advice UK, 'Buy Now, Pain Later?', 2021, p. 13) and they are more likely to have other debt in addition to their BNPL payment (Citizens Advice UK, 2021, p. 13). 17% of people already in debt when they started using BNPL have seen their debt worsen in the last year and 45% attribute this to using BNPL (Citizens Advice UK, p. 16).

Our worry is that people in vulnerable financial situations will feel encouraged to sign up to products like Bundll and similarly structured (and marketed) products, risking unsustainable debt. If people regularly have to put basic items like groceries, fuel, and public transport on their BNPL - as they are being encouraged to do by providers like Humm with their Bundll product - they are likely in financial hardship and may instead need help with their general financial situation, for example, to ensure they are receiving their full entitlement, to address any other existing debts, and to develop a budget – rather than taking on a new line of credit.

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

We agree that financial hardship from BNPL can occur both when repayment instalments are missed and late fees are incurred, and when they are not missed but repayments affect a person's ability to cover the purchase of essential goods and services. Another way in which BNPL can cause hardship is where it is used as a temporary fix for inadequate income meaning people seek help later than they would otherwise do, causing their financial situation to worsen.

With the evolving nature of BNPL products, a further way in which BNPL may increasingly trigger hardship in the future is where multiple purchases can be made and rolled into one larger repayment amount; for example, as mentioned earlier, there is a \$4,000 limit for repayment amounts for the new Bundll product. This is a substantial amount of money, particularly for low-income customers, and in the absence of proper affordability checks, credit limits this high are a risk for financially vulnerable people.

7. 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?

- **You had multiple BNPL accounts**
- **Your credit limits were increased beyond what you could afford**
- **The timing of your BNPL instalments and other expenses**
- **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 (eg change in employment) and you were no longer able to afford the instalments**
- **Other**

Multiple consumer credit debts

The client enquiries we receive involving BNPL demonstrate a variety of ways in which people can face hardship from this type of consumer debt product. This includes where clients are juggling multiple BNPL repayments, and also where clients are managing multiple debts across a range of retailers/providers and different forms of consumer debt products.

For example, we have assisted in a case where, in addition to debt on their BNPL account, the client was also in arrears on finance for their car, in arrears on their power account, and being pursued by a debt collection agency for missed payments for wedding expenses. The total consumer debt faced by this client was over \$20,000. The client's spouse had ended the relationship and left the client with the bills which are all under the client's name. The client does not have the income to pay off the debts on their own and had come to the CAB in desperation, for advice on how to file for bankruptcy. As stated earlier, affordability checks for BNPL are important to ensure providers are lending responsibly and their products are not creating or exacerbating unsustainable consumer debt.

Unforeseen change in circumstances

An unforeseen change of circumstances, where a person experiences a 'life shock', can be a cause of hardship and we have people seek our help when this happens and they find themselves no longer able to meet their financial commitments. During the COVID-19 pandemic there has been an increase in client enquiries to the CAB of people experiencing financial hardship and requiring support to meet basic needs.

We have seen this issue in BNPL-related enquiries; for example, we have had a client come to us with a substantial debt to a BNPL provider which he is now unable to pay because he lost his job due to COVID-19 and has been unemployed for a period of time. Our client has seen a financial mentor but, although he now has employment again, he simply does not have enough income currently to make any repayments. A debt collection agency is now pursuing our client for the outstanding amount. Like the case mentioned earlier, this client also came to the CAB for advice on how to go about filing for bankruptcy as he cannot see another way out of this predicament.

If this client's debt had been incurred using a credit card, he would have been able to use the hardship provision under the Credit Contracts and Consumer Finance Act (CCCFA) and applied to the provider for, for example, a repayment holiday to give him some time to resolve the problem. This is an example of how the lack of regulation of the BNPL sector, and the lack of protection that the CCCFA can provide, is disadvantaging people who use BNPL as opposed to other forms of consumer credit. With BNPL becoming increasingly widely used, and with higher levels of uncertainty and instability in some industries and occupations due to pandemic conditions, it is important that BNPL customers in New Zealand are afforded better protection, and soon.

Family or friends reneging on repaying debt the client has incurred on BNPL on their behalf

We have assisted in cases where the client has either made purchases using BNPL on behalf of others or they have let another person use their BNPL account on the agreement that the client will be paid back, but the repayments are not made, leaving the client with debt they have not budgeted for. In one case, a client's family members left them with a bill of almost two thousand dollars.

While personal responsibility plays a part and someone could do the same thing with a credit card, we suspect that the ease of obtaining this kind of consumer credit, and the way it is marketed, is contributing towards a more casual approach by consumers towards this form of debt compared to others, meaning that people may feel more comfortable, for instance, allowing others to use their BNPL than they would be with credit cards or other types of consumer credit.

Research by our partner organisation in the United Kingdom, Citizens Advice UK, shows that BNPL isn't always felt by those who use it, to be as serious as other forms of credit; *40% of people who have used BNPL in the last year don't view it as 'proper' borrowing, compared to 17% of people who haven't used BNPL in the last 12 months ... The ease of using BNPL has relaxed people's attitudes to credit ...*" (Buy Now ... Pain Later? Citizens Advice UK, 2021, p.19).

It's important for people to understand before taking on a BNPL product that it *is* a credit product, what it means if they are not able to repay the debt incurred on their BNPL – including for their credit rating, and where they can go when they need help. Bringing the BNPL sector under the CCCFA would go some way to improving disclosure practices in the sector and ensure more people understand the commitment they are signing up to when they enter a BNPL contract.

Stolen identity and fraudulent use of BNPL accounts

We have also assisted in cases where the client has been a victim of fraud. Typically, this has involved situations where, unknown to the client, someone has obtained their personal details, used their identity to establish and use new BNPL accounts, and the client has not discovered this until being contacted by a debt collection agency over unpaid BNPL accounts. In one case, somebody had established three different BNPL accounts in our client's name. In another case, the identity of a client's deceased mother was used to set up a BNPL account.

In the latter case, when the client contacted the BNPL provider they refused to believe the client. It was only when the CAB contacted the provider on the client's behalf that they gave out their fraud team's contact details so that the problem could begin to be addressed. Inadequate checks at the entry point to BNPL and a lack of customer care and responsiveness in situations like this clearly pose risks to consumers. We believe regulation of the sector is necessary to prevent and remedy such harm.

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

Do you value having a hard credit check being conducted OR

Would you prefer a soft credit check that does not leave a 'footprint' on your credit score?

In our view credit checks are inadequate because they only show the risk of non-payment, not the risk of hardship in taking up a BNPL. We support the introduction of affordability assessments for BNPL which not only look at an applicant's other debt obligations and defaults, but at their wider financial situation. Affordability assessments will help to ensure that, in taking up a BNPL loan, a person will be able to continue to afford essential items and meet any other existing financial commitments. We believe this to be a requirement of responsible lending.

Citizens Advice UK's research on BNPL demonstrates how an unregulated system, where affordability checks are not consistently carried out, causes harm. Forty percent of BNPL users surveyed by Citizens Advice UK have been unable to pay for essentials such as food, rent, and bills because they were paying off a BNPL debt (Citizens Advice UK, 2021, p. 16). People are also defaulting on household bills, credit card and home loan repayments to make their BNPL payments (Citizens Advice UK, p. 16). Forty percent of BNPL users' credit ratings have been affected by using BNPL (Citizens Advice UK, p. 16).

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

We would like to see the end of unsolicited increases to credit limits for BNPL and other forms of consumer credit in Aotearoa. We believe that credit limit increases should only be made on the request of the customer – and only after an affordability assessment has taken place. A customer's financial situation may have changed since signing up for a BNPL, or, even if they have been successfully managing the level of credit they currently have, that does not necessarily mean they will be able to manage a higher credit limit. Affordability assessments would give some insight into the impact of the BNPL on the customer and allow credit limit increases to take place only if the customer has the capacity to pay off amounts up to the level of the credit limit. If hardship is revealed, the customer could be connected with help to address their financial situation and get back onto a firm footing.

19. What tools and processes could be introduced to better align the timing of BNPL instalments with income and other expenses.

We have seen a number of cases where clients have been consistently making their regular fortnightly repayments but the provider claims either the repayments have not been made at all or payments have been missed. We suspect there is rigidity within some providers' systems that mean even if the customer is consistently making their regular repayments, if the payments do not go through on the specific day of the week identified in the BNPL agreement, they are either not registered and recognised within the system as having been made, or they are considered to be late payments.

We have had a client who set up her fortnightly repayment day to be on a Tuesday, because

this was convenient for her, whereas the provider had specified the repayment day to be a Saturday. After making three of her six fortnightly repayments, she was told that the provider had not received any payments from her. Another client made one of their repayments a day early and was told this payment had never gone through. In both cases, the clients had bank records to show the payments had been made to the providers.

A degree of flexibility is important for allowing people to manage their repayments effectively. Customers should be able to identify which week day they will make their regular instalments on, and should have the ability to negotiate changes with the provider if their circumstances change. This is especially important for customers who live from payday to payday where just one day can make all the difference to their ability to meet their regular outgoings.

21. 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?

To begin with, providers must be required to make a disclosure which includes highlighting that the product they are providing is a form of credit, what the total cost of the loan is, how repayments work, the consequences for missing payments, and where customers can go to for help should they need it. It is clear that not all BNPL providers are ensuring their customers have this information, understand what they are signing up for (and in some cases, who with) and what they need to do in order to honour the debt without incurring fees or penalties. One of our clients came to us in a stressed state because she knew a BNPL repayment instalment was soon to be deducted from her bank account but could not even remember which BNPL provider it was for let alone how much the deduction was going to be.

The way in which key information about the loan is provided is also important. It must be in plain language and available to the customer through multiple channels – not just digital – so that people who, for whatever reason, are not able to receive this information digitally can receive it in another form they can access. A digital-only approach to customer communication poses a risk both for digitally excluded customers and also for other customers in situations where an issue cannot be resolved through digital channels.

We believe that BNPL providers should be subject to the disclosure obligations for lenders under the Credit Contracts and Consumer Finance Act.

22. 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?

The experience of our clients when they have sought help from their BNPL providers has been varied to date. Often clients come to us only after they have already tried communicating with their provider and they have either not been able to make contact or the provider has not been helpful. Following are examples of where clients have come up against a barrier when they have contacted their provider:

A client who was informed by the provider that they had missed a payment, when in fact the client had made the payment; despite the fact that the client has sent in proof of all of their payments, including payment confirmation emails from the provider, the provider is still refusing to acknowledge and remedy the issue.

A client who is a victim of identity fraud, where someone used her details to set up a BNPL account, was dismissed by the provider who told her they believed she was just trying to avoid paying her BNPL debt. This is despite the client having reported the case to the police and to her bank.

The client's 14-year-old daughter had, without the knowledge or consent of her parents, signed up for a BNPL. The daughter is now 16 and the parents have only just found out about the daughter's BNPL account which has \$200 owing on it. The client has contacted the provider to get more information and to close the account but the provider will not agree to do so, despite the fact that the daughter was underage when she entered into the BNPL contract – and still is.

23. How could BNPL providers be more responsive to consumers relying on BNPL to pay for essential goods and services? Link with community financial mentors/counsellors/budget advisors.

What are the costs of these tools?

What are the benefits of these tools?

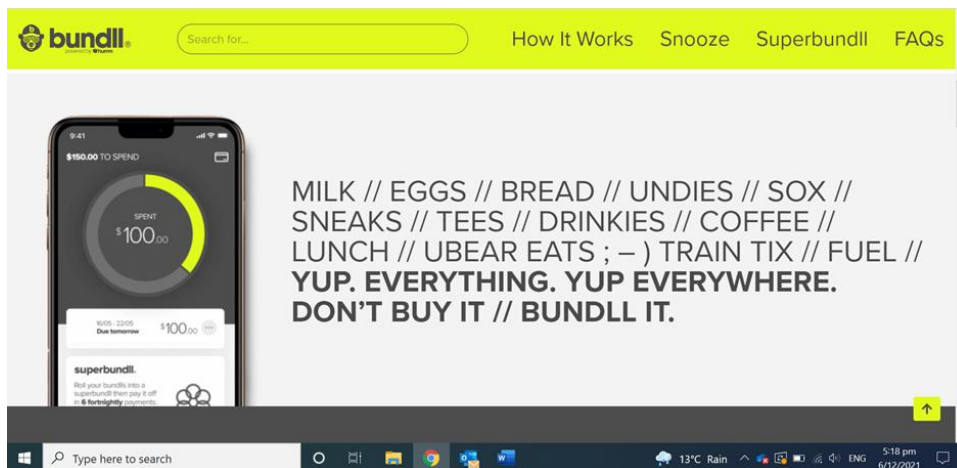
If people regularly have to use BNPL to pay for essential goods and services, what they may actually need instead is some assistance with their general financial situation – for example, to ensure they are receiving their full entitlements/address any other existing debts/develop a budget – rather than taking on a new line of credit which they may not have the financial capacity for. This is why affordability assessments for BNPL are important. BNPL providers should be required to complete affordability assessments under the CCCFA and to make referrals to financial mentors when they have reason to believe that an applicant or customer is experiencing, or at risk of getting into, financial hardship.

25. 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?

We agree that lack of affordability assessments is one of the key reasons why some consumers using BNPL face financial hardship. Effective affordability assessments should prevent some consumers from taking on debt (or more debt) that they do not have the financial capacity for.

However, we are also of the opinion that the advertising of BNPL products is creating harm and this problem needs to be addressed. In the marketing of some BNPL products, the aesthetics, language and channels target younger people – a lower income audience, people are encouraged to use BNPL as their default method of payment for “everything” – especially risky for low income groups and an unethical message for providers to promote to consumers, and the tone of the messaging is relaxed and casual, giving the impression that using these products is no big deal – “sweet as”.



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The experience in the UK may provide insights into some of the ways that the increasing presence of BNPL advertising in this country is likely to impact here in terms of people's exposure to BNPL and the perceptions (or misperceptions) they develop about it. In the UK, 60% of people aged 18 – 34 have seen BNPL adverts in the past year compared to 38% of 35 – 64 year olds and 24% of people over 65, and 53% of people who have seen BNPL advertised are under the false impression that the industry is regulated, leaving them “at risk of making decisions under the impression that they’ll be covered by certain protections.” (Citizens Advice UK, 2021, p. 9).

We recommend that the government looks further into the advertising of BNPL products in New Zealand with a view to introducing measures to prevent harmful advertising of these products.

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

Our experience with clients tells us that people are being harmed by the lack of obligation on BNPL providers to ensure their lending is responsible. We are of the view that regulation – bringing BNPL lending under the Credit Contracts and Consumer Finance Act - is necessary for providing adequate protection for people in Aotearoa.

Bringing BNPL under the CCCFA would:

- Require BNPL lenders to undertake comprehensive affordability checks both for activating accounts and for increasing credit limits
 - Give some protection for consumers who experience unforeseen hardship
 - Place requirements on BNPL for disclosing certain information to consumers such as the initial unpaid balance (total amount owed), the payments required, any fees payable, consumer hardship rights, the provider's contact details and dispute resolution scheme details
 - Provide some protection for consumers against unreasonable fees
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This will address some of the problems which are contributing to financial hardship, such as people:

- taking on a BNPL when they don't have the financial capacity to pay it off
- experiencing a change in their financial circumstances and their debt becoming unsustainable
- not fully understanding what they have signed up to – that it is a BNPL product and a form of consumer credit with specific requirements for repayment, including for the timing of repayments, and comes with fees and penalties for late or missed payments

29. Do you have any comments on Option One: status quo?

Maintaining the status quo is not an option. The examples we have provided in this submission demonstrate a variety of ways in which people are being impacted by a lack of effective and consistent consumer protection across this sector. Not only will the harm continue under the status quo, it will increase as the BNPL market is growing in popularity and take-up in New Zealand. When people use BNPL they should receive the same level of consumer protection as for other forms of consumer credit.

31. Do you have any comments on Option Two: Government establishes appropriate incentives for BNPL providers to have an industry code which addresses the triggers of financial hardship?

We are not confident that this option will be robust enough to ensure a consistent approach to consumer protection across the BNPL sector. Our experience with voluntary codes of practice in a number of other sectors, including in, for example, the wider financial and the utilities sectors, tells us that while some providers will adhere to a voluntary code, others will not. We believe regulation, enforced by the Commerce Commission, is necessary to prevent harmful practices in the BNPL sector and give the public the consumer protection they need and should be entitled to receive.

34. 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?

The costs of this option must be considered alongside not only the benefits of adopting it, but also the costs of not doing so. In the current environment we are seeing people who struggle with their BNPL commitments, and the knock on effects for our clients can be significant; the distress at their predicament and the effect on their physical and mental wellbeing, and the implications for their credit rating and longer term financial health. Following are some comments from CAB clients and volunteers from enquiries involving BNPL which point to the human costs of a lack of adequate consumer protection in this sector in Aotearoa:

I really, really need help as obviously \$400 is a lot of money and this ongoing case is putting severe financial strain on me.

This young lad was so down when he came in, he looked depressed and said the stress has really gotten to him. At times, while explaining his situation, he cried.

This fraud has caused me extreme financial distress, and also my credit ratings and character must have been severely impacted.

The client came in very distressed as she is a beneficiary and has not been in overdraft before and she is not sure how she is going to get out of the situation.

The client was very upset because he disputes the debt, saying he has never had an outstanding debt.

The client is stressed because she knows a payment is due to be deducted from her bank account and she can't remember who is deducting the payment and how much it is.

We believe that regulation of the BNPL sector is warranted and is the only option that will give adequate consumer protection. We therefore recommend that the BNPL sector be brought under the auspices of the Credit Contracts and Consumer Finance Act.

35. Do you have any suggestions on how we could measure and track progress against whether BNPL is delivering long-term benefits to consumers?

We recommend periodic reviews which include consumers, financial mentors and consumer advocates, and a requirement for providers to disclose statistics on repayment defaults and customer hardship.

Thank you for the opportunity to contribute to this consultation. Please don't hesitate to get in touch with any questions you may have in relation to our submission.

We welcome opportunities to make further input into the work of developing better consumer protection in the Buy Now, Pay Later sector in Aotearoa.

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