

16 December 2021

Buy Now Pay Later Project Team
Consumer and Competition Policy Team
Building, Resources and Markets
Ministry of Business, Innovation and Employment
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By email: buynowpaylater@mbie.govt.nz

Buy-Now, Pay-Later Discussion Document

1. Introduction

Thank you for the opportunity to make a submission on the Buy-Now, Pay-Later (BNPL) Discussion Document. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. General comments

Consumer NZ supports regulation of BNPL services. Unlike other lenders, BNPL providers have no obligation to ensure their lending is responsible. This is causing harm to consumers and needs to be addressed.

We do not consider maintaining the status quo or introducing an industry code will provide adequate protection for consumers. Other countries are taking steps to regulate the BNPL sector and we recommend the New Zealand government does the same.

Without regulation, the risk remains that consumers will be harmed by using BNPL services.

We also consider other forms of deferred payment should be brought under the credit regime. For example, consumers are often persuaded to purchase expensive mobile phones on contracts that they pay off over several years. In our view, this is a form of credit and should fall under the Credit Contracts and Consumer Finance Act (CCCFA).

3. Answers to questions

Our answers to specific questions are set out below.

Thank you for the opportunity to provide comment. If you require any further information on the points raised, please do not hesitate to contact me.

Yours sincerely

Jon Duffy
Chief Executive

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

Your name and organisation

Name	Aneleise Gawn
Organisation (if applicable)	Consumer NZ

Responses

Question 1: Do you agree with our assessment of what the benefits are from BNPL? Yes / No / Not sure? Are there others? Please provide details.

Yes, we agree with the benefits set out in the discussion document.

Question 2: As a consumer (or consumer representative), please outline what are the benefits of BNPL?

Feedback we have received indicates BNPL is a popular choice with consumers. When instalments are repaid on time, it can offer a lower cost alternative to credit cards and other forms of short-term credit. It also allows consumers to spread the costs of their purchase over a longer period and take advantage of sales when they occur. BNPL also provides instant access to goods and services that the consumer may not otherwise be able to afford.

Question 3: 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?

No comment.

Question 4: Do you agree with our assessment of how BNPL will evolve in New Zealand? If not, please provide details.

We agree BNPL will continue to grow and evolve in New Zealand and this is likely to disrupt the credit and payment industries, although more extreme disruption may be countered by mainstream banks becoming more active with BNPL offerings. However, irrespective of the degree of disruption, without regulation, we are concerned the evolution of BNPL in New Zealand will result in an increase in financial hardship for consumers.

Question 5: How do you think emerging BNPL business models e.g. partnerships with credit cards, banks etc. will impact consumers? Please provide details

Although emerging BNPL business models may have some positive impacts on consumers, we are concerned the unrestrained growth in the sector and emerging business models will also have negative impacts on consumers.

For example, the new service Bundll can be used anywhere that accepts a Mastercard. It **doesn't rely on a retailer signing up to the scheme** and no payment is required up front. This means a consumer could purchase almost anything, without parting with any money at the time of purchase. So, a consumer could potentially use Bundll to pay for a night at the pub, alcohol, Lotto, betting at the TAB, online casinos etc. In our view, this is likely to encourage impulsive and socially irresponsible spending. And although personal responsibility plays a role and a consumer could do the same using a credit card, they would be covered by the protections in the CCCFA when doing so.

Consumers can “snooze” or delay their BNPL repayments as often as they like by paying a \$5 fee. Although this may seem like a useful option for consumers it could also mean the purchaser ends up paying significantly more for their purchase than the original cost.

We consider these sorts of developments pose a serious risk of harm to some consumers and ought to be regulated.

Question 6: Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL? Please provide details

We agree with the summary of the types of financial hardship that can occur from BNPL. In particular, we agree financial hardship can occur both when instalment payments are missed, and when they are not missed.

Question 7: As a consumer (or consumer representative), have you faced financial hardship from BNPL? Yes / No / Prefer not to answer? 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*

We have heard anecdotal evidence of financial hardship arising from BNPL from financial mentors and other consumer organisations. For example, we have heard of consumers in financial hardship with up to eleven BNPL debts and debts totalling more than \$3000. Others are paying off their BNPL debts before putting petrol in their cars or paying their electricity bills. Increasingly, BNPL is being used by vulnerable consumers to plug the gaps when they are struggling to make ends meet.

As a result of our concerns about BNPL and the fact it falls outside of the CCCFA, we conducted a nationally representative survey in April and May 2021 of 2001 people. A total of 752 of the 2001 respondents had used BNPL.

Our survey found close to four out of 10 consumers use BNPL services. Almost one in five consumers are using BNPL for essentials, such as groceries and car repairs. Fifty-five percent of BNPL customers said the payment option had encouraged them to make purchases they would not otherwise have made. And 14% of consumers have been charged late fees. We estimate this could be costing consumers over \$10 million per year.

Our most recent Consumer NZ Sentiment Tracker data (from October 2021) showed that of those with personal debt, 21% have BNPL debt. Our data also showed **55% pay for their debt on debit card and 39% on credit card.**

Question 8: Do you live in a household with multiple BNPL accounts? Yes / No / Prefer not to answer

No comment.

Question 9: 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?**

Please explain the reasons for your answer

Although some consumers may prefer a soft credit check, in our view, these types of checks are not adequate. Where BNPL providers only do soft credit checks, they are unable to see whether the consumer currently has debt obligations to other BNPL providers or has previously defaulted on debt obligations. This information is important in assessing whether a consumer can take on future debt obligations.

Question 10: What are the advantages and disadvantages (including costs) from credit checks being used to determine approval for BNPL?

Hard credit checks do have some advantages over soft credit checks. For example, they provide a more **detailed picture of a consumer's credit** status. Also, the extra step and the fact that a credit check is required may help consumers understand they are applying for a type of credit, and not just buying now and paying later with no consequences.

However, we do not support credit checks being used as the sole determinant for approval of BNPL because they do not assess affordability. Also **they leave a 'credit footprint' on** a credit score, which potential lenders can see. Future lenders may see this as a sign that a consumer is struggling with debt obligations and be less inclined to provide credit in future.

Question 11: 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?

We consider BNPL providers should be required to take similar steps to other credit providers to assess affordability.

The disadvantages of requiring affordability assessments are that the process could take longer, consumers would be required to provide more information and there would be some additional costs to providers.

Providers' revenue is also likely to be impacted (given the amount they currently earn from late fees), but we do not consider this to be a disadvantage.

We agree open banking has the potential to reduce operating costs by allowing providers to make more accurate lending decisions.

Benefits of assessing affordability include **ensuring consumers don't take on unaffordable** debt and that BNPL debt is treated the same as other debt. It would also remove the onus from individual consumers to assess affordability (which young, vulnerable or consumers with low financial literacy may not be equipped to do) and help ensure a consistent approach amongst BNPL providers. Affordability assessments also gives the consumer more time to consider whether they need to make the purchase and whether there may be an alternative to fund the purchase.

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

A consumer's financial situation can change overnight so we consider that BNPL credit providers should conduct further affordability assessments before credit limits are raised.

Even if **a consumer has never missed a payment, this doesn't mean they are immune to** financial hardship, especially as credit limits increase.

As noted in the Discussion Document, consumers may meet their repayments, but miss other regular payments e.g., utilities or essential goods and services. This type of financial hardship is not easily visible to BNPL providers, as the provider is not directly affected.

If a **consumer's** credit limit is increased when they are experiencing this kind of financial hardship, it is possible the consumer may be incentivised to make more purchases through BNPL, worsening the cycle.

However, if an affordability assessment was conducted, it would highlight if a consumer was experiencing financial hardship, and if they were, the credit limits would not be increased.

Steps could also be taken to help the consumer experiencing hardship.

Question 13: What are the costs and benefits of conducting affordability assessments when BNPL credit limits are increased?

We think the costs and benefits of conducting affordability assessments when BNPL credit limits are increased are similar to those set out under question 11 above.

Question 14: Are there any other ways to ensure BNPL credit limits are increased responsibly?

We do not think limits should be raised automatically. Rather, credit limits should only be raised on request by the consumer, and after an affordability assessment has been done to determine whether an increase is appropriate.

Consumers overseas have reported the continual increase in BNPL spending limits (as a reward for making repayments on time) can be like a debt trap encouraging the consumer to continue to spend up to the limit offered until they can no longer manage the debt.

In Australia, the Government has banned unsolicited credit increases to help prevent problematic credit card debt. We would like to see similar rules in New Zealand in relation to BNPL and other forms of credit.

Question 15: Are there any other issues with consumers having multiple BNPL accounts that we have not identified?

No comment.

Question 16: 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.

We consider it would be somewhat effective if BNPL providers were required to share information with other BNPL providers of accounts that had been frozen. Consumers with frozen accounts are likely to be at risk of experiencing financial hardship. Sharing with other providers when a consumer has missed a payment and their account has been frozen could lead to other providers preventing the same consumer from using their service. This would limit the ability of the consumer to incur more debt than they can afford to repay.

Any personal information would obviously need to be shared in a manner consistent with the Privacy Act 2020. Also, we do not endorse data brokerage practices where

consumers deemed at higher risk of credit default are sold as leads by higher tier lenders to lower tier lenders.

Question 17: How could information about consumers having multiple BNPL accounts be appropriately shared across the BNPL sector?

There could be a central registry that contained this information. We consider close consultation with the Office of the Privacy Commissioner in the set up and potential administration of a registry would be essential to ensure commercial interests do not override the interests of consumers.

Question 18: 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?

Given there are many transactions going through BNPL services, it could be time consuming to set up such a registry.

The benefits would be that consumers would be less likely to suffer financial hardship from having multiple BNPL accounts.

Question 19: What tools and processes could be introduced for the timing of BNPL instalments to be better aligned to income and other expenses?

Consumers should have the ability to choose the dates they want payments to come out (within a set timeframe) and to amend these dates (within limits) at a later stage if necessary. Having the ability to amend payment dates could have a substantial impact **on a consumer's ability to make repayments.**

Question 20: What are the costs (including disadvantages) of such tools and processes?

There may be some set-up costs in configuring apps to allow consumers this functionality but once completed, we do not consider there would be any major costs. Alternatively, BNPL providers could provide a contact number and email address for consumers to use if they need to amend payment dates.

Question 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?

We think any provider should be required to emphasise the total cost, and late payment fees, rather than just the instalment costs. We also think providers should have to make it clear that they are providing a form of credit, and the consequences for not making payments on time. This would help consumers focus on the overall cost, rather than the initial instalment. It would also help them understand the nature of the arrangement they are entering.

The use of personal financial management tools may also be useful for some consumers, but we do not consider it would be appropriate to make them mandatory. We support better disclosure and affordability assessments at the outset, rather than giving the consumers tools to manage debt they shouldn't have taken on in the first place.

Question 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?

We are concerned there are a variety of hardship policies and procedures in place with BNPL providers. In our view, these should be consistent between providers to ensure consumers are protected in the case of financial hardship. Bringing BNPL under the CCCFA would help ensure a consistent approach.

Question 23: 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?

If a consumer is using BNPL to purchase essential goods and services we think it is more likely the consumer may be suffering financial hardship. If a consumer regularly uses BNPL services in this way, BNPL providers could be required to recommend the consumer consults a financial mentor and/or social welfare for assistance.

Question 24: 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?

No comment.

Question 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?

The lack of affordability assessments is a major contributor to why consumers using BNPL services face financial hardship.

We also consider the advertising of these products is likely to be contributing to financial hardship. Advertising is often targeted at young people via social media, normalises debt, makes the process seem very easy and can encourage irresponsible spending. Some providers encourage using BNPL to buy essential products such as food. Some also encourage spending by offering prizes. Advertisements also downplay the risks involved with using a BNPL service.

Some examples of recent advertising are set out below:

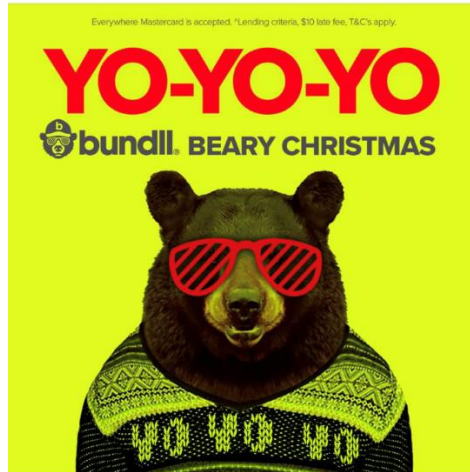




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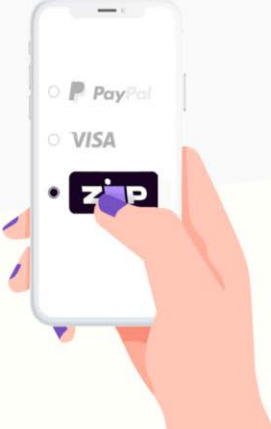
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Ads also frequently use influencers and celebrities to endorse their products. When people see their favourite celebrities or influencers use a BNPL service, this is likely to motivate them to consider doing the same.

In Australia in 2020, an advert starring Rebel Wilson was pulled from Australian television due to complaints the advert minimised the risk and harm of BNPL schemes.

In the UK, the Advertising Standards Authority (ASA) banned four Instagram posts from **'influencers', who were paid by Klarna** to advertise their payment service in December 2020. All the ads were linked to lifting or boosting mood during the UK lockdown. The ASA concluded the ads irresponsibly encouraged inappropriate use of credit, particularly **in the context of a lockdown and the impact it could have on people's** financial situations and mental health. The ads were found to be inappropriate because they were effectively linking a credit system with improved mood.

We recommend further consideration be given to the way in which BNPL services are advertised.

Question 26: Do you have views on the overall objective of the BNPL sector?

We support the overall objective set out in the Discussion Document.

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

In our view, the best way to ensure consumers' interests are protected is to regulate the BNPL sector under the CCCFA.

Question 28: Do you have any views on the criteria used to assess how to achieve an effective BNPL sector?

No comment.

Question 29: Do you have any comments on the discussion of Option One: status quo? Please provide evidence if available.

In our view, maintaining the status quo is not an option as it will continue to result in consumer harm. Consumers will continue to incur late payment fees, get into debt, and risk having their credit ratings negatively affected. Consumers will also be encouraged to spend, rather than save. We do not consider this will benefit New Zealand in the long term.

Question 30: What are the costs and benefits of Option One for any relevant parties e.g. consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL? Please provide evidence if available.

In our view, the benefits of Option One apply only to consumers who have the knowledge and capacity to manage BNPL products well. This leaves those consumers who do not have those skills vulnerable to predatory practices by providers.

BNPL providers benefit from Option One as they can continue to earn substantial revenue in a regulatory environment which turns a blind eye to irresponsible lending.

Question 31: 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.

We do not support Option Two. In our view, the level of harm justifies greater intervention than a voluntary code.

A voluntary industry code has been implemented in Australia, but the requirements under the code fall well short of responsible lending requirements. Under the code, Australians can still get up to \$2000 of credit from BNPL providers without having their ability to repay the money genuinely assessed. In addition, there is insufficient monitoring and enforcement, and no real consequences for breaching the code. As such, we do not consider the code has been effective at preventing hardship caused by BNPL services.

The recent Royal Commission into misconduct in banking in Australia was critical of industry self-regulation codes, noting their limitations and difficulties. The final Royal Commission report stated standards set in a voluntary code may not be adequate, not all participants will be bound by the code, monitoring and enforcement of compliance may be inadequate and the limited consequences for breach may not be enough to make participants prevent and correct failures. They also noted there was some doubt about the extent to which obligations in a code could be relied on and enforced by individuals.

We do not consider an industry code to be an adequate substitute for regulation. We also do not see any reason why BNPL products should be treated differently to any other form of credit.

Question 32: What are the costs and benefits of Option Two to any relevant parties e.g. consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.

For the reasons stated above, we do not consider this option would provide a satisfactory level of protection for many consumers as it will not result in substantial changes in the market.

Question 33: 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.

In our view, the regulations need to be designed to ensure they allow BNPL service providers to continue to offer the product but incorporating consumer protections that are offered to consumers of other credit products.

Question 34: What are the costs and benefits of Option Three and how it is designed to any relevant parties e.g. consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.

Although this is likely to be the most expensive option, it is also the option that will best protect consumers and meet the objectives stated in the Discussion Document.

Regulation will force providers to provide adequate disclosure, lend responsibly, offer cooling off periods, enable hardship applications, ensure fees are reasonable, and provide dispute resolution for consumers. It will also ensure fewer consumers get into financial hardship.

Question 35: 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.

We consider there needs to be a review within 12 months to 2 years of any option being adopted to ensure it is providing the benefits anticipated and not resulting in any unexpected issues. We also recommend the Government engages with financial mentors, consumer representatives and consumers to measure and track progress against whether BNPL is delivering long-term benefits to consumers.