



15 December 2021

Buy Now Pay Later Project Team
Consumer and Competition Policy Team
Building Resources and Markets
Ministry of Business Innovation and Employment
Wellington

RE: Buy-Now Pay-Later – Understanding the triggers of financial hardship and possible options to address them Discussion Document

Clear rights to responsible conduct from lenders are important as lending can cause significant and disproportionate harm to whānau. Buy-Now Pay-Later (**BNPL**) services are loans that can trigger or compound substantial hardship. Aotearoa is fortunate in that Section 137A of the Credit Contract and Consumer Finance Act 2003 (**CCCFA**) provides a clear mechanism to apply robust CCCFA protections to BNPL loans. Doing so will prevent or provide a clear path to resolve any harm that arises from such hardship.

FinCap welcomes the opportunity to comment on the Ministry of Business, Innovation and Employment (**MBIE**) *Buy-Now Pay-Later – Understanding the triggers of financial hardship and possible options to address them Discussion Document* (**Discussion Document**). After issues caused by Covid 19 disruption, serious concerns about the harm caused by BNPL Loans is the most frequent issue raised with FinCap by financial mentors in 2021. Figures in the Discussion Document indicating a quarter of revenue is derived from default payments demonstrates a systemic issue and ‘poverty premium’¹ with this lending.

Many whānau have taken up this way of borrowing but serious problems are arising where they are not marketed as, nor understood, as loans. We also note concerns that the product design around these loans from some businesses includes the marketing of extensions to credit using behavioral insights. These lack adequate safeguards when inducing quick decisions by borrowers who are then less likely consider if repayment is unaffordable.

Whānau should not be missing meals as a consequence of there being no requirements for robust affordability assessments for BNPL lending. MBIE and the Minister of Commerce and Consumer Affairs must not overlook the significant harm occurring in our communities and in other jurisdictions and accordingly apply the CCCFA to these loans with urgency.

Also, FinCap is aware of several other forms of deferred payment models causing substantial hardship including unregulated lending for access to essential phone services. MBIE and the Minister should address these issues by also bringing such arrangements into the requirements of the CCCFA.

We expand on these comments in the submission below.

¹ Examples of this concept and the harm it reveals can be seen here: <https://fairbydesign.com/whats-the-poverty-premium/>

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 200+ local, free financial mentoring services across Aotearoa. These services support more than 70,000 people in financial hardship annually. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

Apply protections to ensure responsible lending wherever lending can cause or compound substantial hardship.

We are concerned about the provision of essential phone services in deferred payment arrangements from telecommunication providers where an expensive phone is provided upfront then repaid over years. These include bundling of phone and data connections 'plans' that are unaffordable and not fit for purpose for some whānau but the arrangement includes prohibitive break fees which see them go without other essentials.²

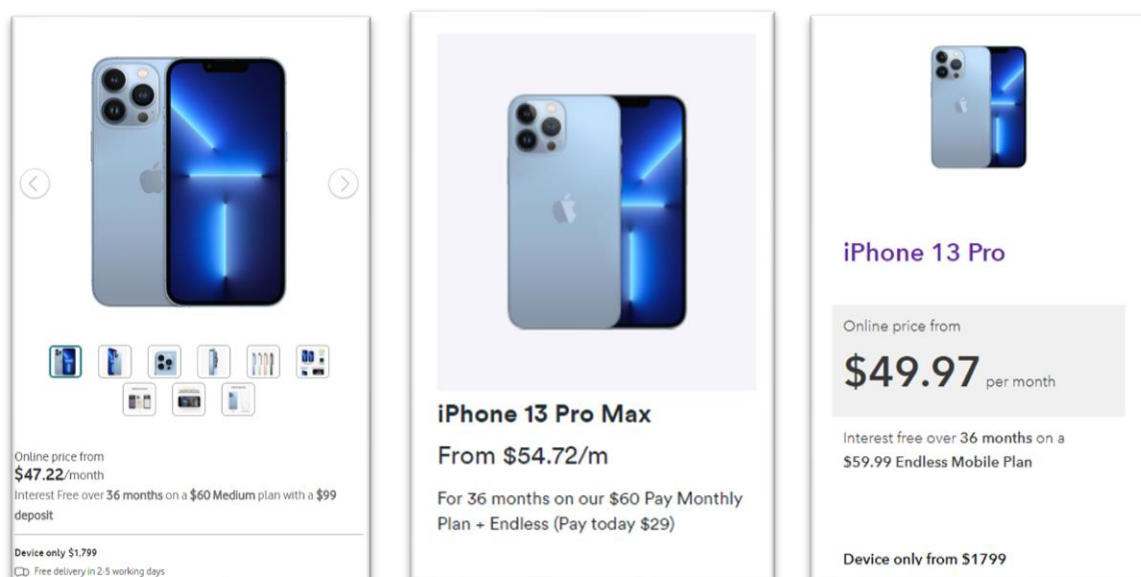


Figure 1- Three screenshots in order from left to right from <https://www.vodafone.co.nz/iphone/iphone-13-pro/> & <https://www.2degrees.nz/shop/browse?filterKey2=itemCategory&filterValue2=Mobile%20Phones> & <https://www.spark.co.nz/shop/mobile/phones> all from desktop research on 9 December 2021

FinCap suspects that the screenshots in *figure 1* are current examples of the marketing of such arrangements reported as concerning to us. They are often marketed as 'interest free' like BNPL loans. The lowest option for monthly repayment from the screenshot to the left of *figure 1* is an upfront payment of \$99 and weekly payments of \$21.28 for three years. This is a commitment of \$3,418.92 without the requirement for an affordability assessment. We hear of whānau members who have multiple arrangements like this consecutively after ending up signing up for a new phone and arrangement when taking in a yet to be paid off phone and asking for options for repair.

One contract from 2018 that we have recently seen a copy of also made a whānau liable for paying a 'default interest rate [which] is the Bank of New Zealand's base commercial rate on the Due Date, as determined by us, plus 1.5% per month or any other rate notified to you by us' until payment is

² See case study here: <https://www.fincap.org.nz/wp-content/uploads/2021/10/211014-SUB-RSQ-draft-baseline.pdf>

received in full. This appears to give complete discretion to the telecommunication provider to charge significant late fees where payments that are unaffordable end up missed and was obscure to find in a web linked term and conditions referenced on a direct debit form quickly completed at the point of sale. The whānau involved was not pointed to this specific risk by a sales assistant when signing up to direct debit payments of over \$100 a month.

We hear from financial mentors of these deferred payment arrangements continuing to be paid before kai is purchased even when the phone is long broken and a whānau has been signed up for an additional 'plan.' In a recent report on what financial mentors see from debt collection, researchers indicated their surprise that the *"most common type of problem debt cited was debts associated with unpaid power bills, and to a lesser extent phone and internet services."*³ These arrangements cause significant harm experienced as substantial hardship.

We also hear of these arrangements being sold in high pressure sales situations where they are clearly not fit for purpose for a person unfamiliar and unable to make use of the technology. An example is a person walking into a store to request a simple, low cost and easy to use phone or just a sim card - an essential service allowing them to socially participate. That person is then bamboozled through the sales process into feeling they have no option but purchase one of the most expensive pieces of technology available with a loan. Protections from the CCCFA for robust affordability assessments, suitability checks and hardship assistance can prevent or provide clear pathways to unwind such harm.

Recommendation: MBIE and the Minister work to urgently utilise section 137A and apply CCCFA protections to 'interest free' payment arrangements for mobile phones that currently cannot be practically exited by a whānau when unaffordable and causing harm.

We are also aware of deferred payment plans where goods are marked up well over recommended retail price (likely reflecting but not disclosing the cost of credit) and goods are provided before full payment.⁴ Financial mentors report that these traders often pocket all previously paid funds where a payment is missed on an arrangement that was unaffordable in the first place. Applying the CCCFA and bringing in its protections, especially requirements for robust affordability and suitability assessments, will prevent this concealed lending causing substantial hardship in our communities.

Recommendation: MBIE and the Minister work to urgently utilise section 137A and apply CCCFA protections to 'interest free' provision of goods and services provided with deferred payment where the cost of credit is concealed in prices well in excess of usual market prices.

Create more opportunities for front line financial mentors and other community workers to give direct feedback in 2022

The consultation around this Discussion Document is occurring at a particularly busy time for financial mentors. The lead up to the end of the year is usually busy and this is coupled with the impacts of Covid 19 disruption on a sector that still often must rely on volunteers to meet demand. 75 per cent of financial mentors recently surveyed were working unpaid hours to assist whānau and more than half said that Covid 19 has meant the time it takes to conduct their casework has significantly increased. Issues with unaffordable BNPL lending are adding to the strain on financial mentors supporting whānau to avoid or halt a debt spiral.

³ Stace, V. & Gordon, L. (September 2021) [Debt collection in Aotearoa from the perspective of financial mentors](#). P.8.

⁴ FinCap is happy to give examples as to traders of concern directly to MBIE or other relevant decision makers rather than publicly single out traders in a submission.

Almost every financial mentor we talk to has an example of an impossible financial situation they are helping a whānau overcome that is caused by or made worse by unregulated BNPL loans. Due to current time constraints on financial mentors these endless examples of harm may be best gathered at a later date before the traditional spike in demand in February for financial mentors' support after summer bills and Christmas spending. We recommend MBIE look into further ways of consulting and gathering this feedback from community organisations in late January and if so, we will make resource at FinCap available to disseminate any relevant opportunity.

Recommendation: If MBIE does not hear much direct feedback from front line services in communities in the current consultation methods surrounding this discussion document then an online forum for community workers to give feedback be arranged for late January.

Specific responses to Discussion Document questions

Q1: Do you agree with our assessment of what the benefits are from BNPL?

Some whānau may find this lending model easier to understand and manage than other lending models. Regulation to bring robust protection for borrowers may change the sign-up process but would not prohibit the provision of a loan with deferred repayment without fees or interest accruing which is a major point of difference to other loan services. Given the popularity of these loans they would still compete with other regulated loans if brought into the CCCFA.

Some financial mentors are wary of any form of debt due to the harm they regularly see arising. However, others have pragmatically commented to FinCap that they anticipate these loans with CCCFA protections applied would be less harmful for the whānau they support and simpler to halt ongoing harm in comparison to some currently regulated 'second tier' lenders.

We challenge some commentary that unregulated lending competing with traditional lending is competition for the benefit of the community as opposed to just competition for competition's sake. Specific consumer protections for lending have been developed over many iterations of robust consultation so that requirements on lenders actually lead to less harm from lending in the community.

We also challenge the commentary in the Discussion Document in paragraph 20 that BNPL loans are effective for consumers if they are 'used appropriately.' The onus should be on lenders to lend responsibly and be fair as is at the core of current government work on the Conduct of Financial Institutions.

We do not disagree that some BNPL loans may offer the benefits described in paragraph 21 of the Discussion Document. However other loans may also offer similar benefits but are appropriately regulated under the CCCFA to balance the risks of substantial hardship.

The 'benefit' cited in terms of BNPL loans allowing "some consumers to purchase goods and services in bulk, or in one payment to the business, allowing consumers to take advantage of any discounts" may actually be a reflection of a cost to the community. Such discounting methods may not reflect a substantial saving to whānau if simply part of a marketing ploy where prices are inflated above fair rates and the level of discount doesn't outweigh the risk of any costs associated with missing payments on an unaffordable BNPL loan.

Q2. As a consumer (or consumer representative), please outline what are the benefits of BNPL?
Any form of credit or deferred payment might mean a whānau can enjoy a better quality of life. However, debt poses risks and the robust protections developed within the CCCFA should always apply.

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?

“The way buy now pay later is presented encourages people to spend more than they can afford”⁵

The above quote from research from Citizens Advice Bureau in the United Kingdom and the discussion document itself both note that these products have been designed in a way that increases sales. This may benefit businesses who increase revenue, but this is at the expense of the community because of the harm caused when unaffordable lending creates or compounds substantial hardship. As already discussed, tough decisions are being made between putting kai on the table or making BNPL repayments across Aotearoa.

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

We agree it is unclear how exactly BNPL lending will develop but all new models pose a risk of causing significant hardship, particularly those that many in the community are not familiar with the risks of borrowing from.

However, development does continue. We urge MBIE and the Minister to prioritise ensuring that merchants, agents or intermediaries offering BNPL loans at the point of sale are not doing so in high pressure sales situations without appropriate affordability assessments. The power imbalance for whānau experiencing vulnerability and high-pressure sales techniques (particularly in unsolicited sales approaches) without affordability assessments are a recipe for disaster. This is demonstrated in Australia where those supported by community lawyers were facing serious hardship after a door-to-door sale of solar panels with a substantial BNPL loan.⁶

We are also concerned that banks starting to invest in this lending may open up a parallel universe where not much has changed in terms of how a whānau makes a payment at a shop except that if it is BNPL lending the lender avoids providing protections from robust lending regulation.

We have also had shared with us a new provider offering BNPL loans for healthcare.⁷ Healthcare is an essential service and borrowing for this purpose may be helpful, but robust CCCFA protections are needed to prevent this being offered by a health provider where it will cause substantial hardship and a debt spiral that is a barrier to accessing future healthcare.

We also caution decision makers on viewing the Consumer Data Right as an emerging system for quicker affordability assessments. Whānau having clear access to their financial data and the ability

⁵[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)

⁶ See commentary on *Certegy Ezi Pay* on page 35 and 37 here: https://consumeraction.org.au/wp-content/uploads/2019/06/1904_Sunny-Side-Up-Report_FINAL_WEB_NEW-1.pdf and page 58 here: <https://consumeraction.org.au/wp-content/uploads/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>

⁷ See: <https://healthnow.co.nz/terms-conditions/>

to share it with prospective lenders may be a tool that improves the lending process. However, financial mentors have reported that current bank account data scraping tools designed to help with affordability assessments cannot be relied on for assessing affordability as mentors have seen the algorithms built in miss some key essential expenses when estimating costs. Also, the responsible lending code rightly encourages lenders to make iterative inquiries to determine borrower's requirements and objectives and more extensive inquiries for a borrower who is experiencing vulnerability.⁸

We also caution that any benevolent hardship assistance by current BNPL lenders is voluntary. Therefore, such initiatives may be discontinued in the provision of current BNPL lending models in the market and not be part of the provision of any emerging businesses. Options one or two in the Discussion Document will not stop this from happening; only applying the protections in the CCCFA to BNPL Lending will bring about a clearly enforceable minimum standard of hardship assistance for all BNPL lending.

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

FinCap would welcome if these developments see affordability assessments at CCCFA standards used for these products. Some banks representatives have assured FinCap in meetings that the CCCFA requirements will be followed with their business in the Buy Now Pay Later space, but we have not seen details of this.

Also, the emerging BNPL lending models that utilise current credit card payment networks might see many whānau finding the protections they expect when undergoing an identical process of swiping or tapping at the point of sale not replicated if the CCCFA protections aren't applied. As in our answer to question 5, we are concerned that without regulation lenders otherwise appropriately regulated will restructure and use BNPL lending to avoid compliance obligations.

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

Financial mentors are reporting harm in the community from BNPL lending which replicates the issues with other lending that the development of the CCCFA protections has aimed to address. Primarily this is that robust affordability assessment not happening before lending means it can immediately create a budget deficit for a whānau. Also, that where circumstances change and repayment at the set rate is not affordable there are not clear expectations of how lenders will approach hardship support. We have included a few examples of the experiences of whānau and their financial mentors in our responses to other questions below.

We agree with the Discussion Document and have seen reports from financial mentors of harm where BNPL lending leads to:

- Debt spirals triggered or intensified where a whānau is unable to pay and ends up with:
 - o missed payment fees
 - o overdraft fees where a BNPL loan repayment pushes through or
 - o BNPL repayments being made with another loan with interest and
 - o credit card limits not reached at the first payment, but subsequent deferred BNPL repayments are in excess of the credit card limit that was applied after an affordability assessment.
- Whānau juggling to make BNPL payments which mean they cannot access other essentials and end up in debt spiral which risks entrenching persistent poverty in the long term.

⁸ MBIE, 2021. *Responsible Lending Code*. P.21-22

The freezing of accounts by BNPL lenders where payments are missed may be intended to prevent hardship but financial mentors report this often causing a panic where whānau rush to pay and maintain access without considering what essential expenses they will not meet or have to subsequently borrow for instead.

It should be noted that experiences of financial hardship often have a profound impact on whānau wellbeing. Financial mentors report that such experiences are intertwined with significant detriment to mental health through the stress of facing poverty and stress of declining financial stability making access to housing increasingly precarious. Many may dismiss initial small amounts lent as irrelevant in the scheme of things but for those on low incomes or not, a compounding debt that is unaffordable can trigger a debt spiral that has an impact on a whānau for generations.

Q7. 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*

Financial mentors have reported examples of each of the above to FinCap. Three concerning situations for people working with just one of the 200 financial mentoring services in Aotearoa that were sent to FinCap in a single day are above. The timing of BNPL instalments with other whānau expenses that triggers a cashflow deficit is the most common concern cited, especially where multiple BNPL loans are active at once.

Three separate BNPL lending case studies from one financial mentoring service:

A client with a baby receives a sole parent support benefit as their source of income. They currently have six BNPL payments going out to six different companies. The repayments for these are deducted at both weekly and fortnightly rates and are for various amounts. The client's BNPL purchases were for items they said they felt they couldn't wait for.

Their rent accounts for 60% of their income and the BNPL payments account for another 30% of their income. Because of this, the client does not have enough money to pay for basic essential needs, such as food, power and phone costs.

Client receives a sole parent support benefit and has 12 BNPL loans over three different providers. Because of these she is in a \$120.00 a week deficit with no food money available in her budget. Most of these loans were for non-essential items like perfume.

Client has been supported by our service for almost a decade while working through many challenges, particularly with mental health. She was recently unable to get CCCFA credit for an amount under \$300 after the December changes. She has also recently received a food support grant as ends would not meet.

However, she has just received loans totalling almost \$900 with one BNPL provider for Christmas presents and I am unsure if she is fully prepared for the direct debits when they come out – mostly due to bank holidays throughout this period.

The dates they come out of her bank account are likely to change although I've reminded her that direct debits may come out 24-48 hrs after the due date. Technically she should have enough to pay this way – but only if she keeps an eye on those payments. What this shows is that BNPL lenders do not have to follow the same rigors of finance companies to approve lending.

We also have heard regular concerns that retail assistants offer these loans as a way to make a sale and minimise or do not disclose that it is a lending product, instead focusing on the first payment. Whānau already face a number of challenges when subject to sales techniques as shown by well researched observations from behavioural economists. Optimism bias⁹ as to the ability to repay in the future is one example. Cultural values in Aotearoa and the power dynamic present where a salesperson may pick up that a potential customer may be vulnerable also mean that gratuitous compliance is exploited for commission based remuneration. The incentive on salespeople to offer loans without considering the best interests of a potential customer is best addressed by requiring robust CCCFA affordability assessment requirement that will intervene where such sales representations would otherwise lead to substantial hardship.

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? Yes / No / Not sure

Financial mentors report issues where multiple BNPL loans with a single provider or across multiple providers are seeing people borrowing to buy food or going without food among other essential expenses.

They also report difficulty in contacting BNPL lenders when these issues arise as these lenders seem often to be based overseas, often unfamiliar with financial mentors and who do not have systems in place for a financial mentor or other authorised support worker to interact with their BNPL lending business.

FinCap is approaching BNPL lenders to improve this but applying CCCFA protections to BNPL will bring familiarity and expectations around constructive co-operation with financial mentors and other community support workers as is discussed in the *Responsible Lending Code*. Without such requirement it is on an individual basis that we work to set up arrangements and there is no clear requirement on BNPL lenders to work in a constructive and timely way with financial mentors to help whānau find a holistic pathway away from financial hardship.

Q9. 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 doesn't leave a 'footprint' on your credit score?*

Please explain the reasons for your answer.

Financial mentors take a strengths-based approach where the whānau they support makes decisions on the pathway forward to achieving their own goals. There is a risk that what appears on a credit check will lead to undesirable price discrimination where a 'poverty premium' emerges. Those whānau may have varying views on the above depending on how they want to approach their pathway away from hardship.

⁹ Explanation here: <https://thedecisionlab.com/biases/optimism-bias/>

FinCap is of the firm view that a robust affordability assessment is needed before a BNPL loan is provided and so therefore supports whatever credit checking is sufficient within a robust affordability assessment. It should be noted that the reality of whānau having applied for loans that were not provided as they would be unaffordable then subsequently not showing up on credit reporting could risk less informed decisions on lending from other creditors. BNPL being unregulated could therefore be risking undermining protections elsewhere, although CCCFA regulated contract processes should still involve a thorough check as to a borrower's living costs and ability to repay.

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

Credit checks alone don't protect whānau from irresponsible lending, robust affordability assessments are the solution. Credit checks are one helpful tool in helping a lender determine whether a loan is likely to be repaid. However, relying on a credit check is like buying a house after only looking at the letter box. Lending should be a more iterative process to protect against hardship.

In a recent discussion between community groups and BNPL lenders, FinCap heard that a parallel reporting system that is sharing information between BNPL providers as to whether a customer has defaulted on a loan is either operating or being worked on. We do not have a great amount of detail but are concerned about such asymmetry of information and that community members, like FinCap, not realising this is occurring. We recommend that MBIE and the Minister not accept that this lending should exist in a parallel system to other lending when it is causing substantial hardship.

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? Requiring a robust affordability assessment by bringing BNPL loans into the CCCFA is the way forward. While there will be some costs associated with implementing this compared to the current model, such innovation to better align these popular products with relevant consumer protections is of overall benefit to the community.

The building of such affordability assessments into the process allows for lending to be an iterative process where whānau have time to assess other options for acquiring goods or avoid ending up in an unaffordable arrangement. This is of great benefit to whānau. Any whānau can face financial hardship with a change of circumstances and the protections are necessary to avoid compounding harm.

Q12. How might affordability assessments be conducted when BNPL credit limits are increased? We strongly agree that repayment behaviour is not sufficient to determine the suitability of future lending. Financial mentors have raised concerns about the way some BNPL lenders encourage further spending through unsolicited, customised prompting for their customers to take up an extended credit limit on phone applications. Where a material change increasing the credit limit occurs, the same protections should apply as set out in guidance within chapter 5 of the *Responsible Lending Code*.¹⁰ Such protections have been developed for a reason and this lending should not have a parallel system.

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

There are significant benefits to preventing avoidable hardship in communities arising through adequate consumer protections. Hardship is greatly detrimental to the health and wellbeing of whānau meaning they are at further risk of social issues, and they face barriers to contributing and

¹⁰ <https://www.mbie.govt.nz/dmsdocument/13325-responsible-lending-code>

participating in their communities. Such benefits are difficult to quantify and must not be ignored where lenders point out the cost of implementing new processes that protect community interest.

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

No, a parallel system to current protections in the CCCFA will fall short.

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

Reason to call [the BNPL lender]: *This client has THIRTEEN [BNPL loans] running at present, totalling \$556.58. The repayments are putting him under extreme hardship (\$[over 200] deficit each week).*¹¹

Financial mentors have regularly pointed out their concern that they are supporting someone experiencing a debt spiral where consecutive BNPL loans are running at once. When we had a look at the data of 128 of the 200 financial mentoring services in February, 13 per cent of people working with a financial mentor who had some form of BNPL debt noted three or more consecutive BNPL debts recorded. In that snapshot we could see that one person working with a financial mentor had 11 consecutive BNPL loans at once while in arrears on several other forms of credit covered by the CCCFA protections, this should not arise. We are also regularly told of people seeking support who have more than dozen BNPL loans at once, some examples emailed from financial mentors in 2021 that have been deidentified are shared above and below FinCap's response to this question and above in our response to question 7.

In addition to MBIE analysis in the Discussion Document, a recurring theme is that whānau in these situations with multiple BNPL loan situations are stressed and are constantly seeking more loans before being supported by a financial mentor as they could see no other way to 'keep their heads above water' for another day. Many small loans at once create a hefty administrative burden for whānau who couldn't afford some or all of the loans in the first place.

Case Study: 'trapped in a cycle'

A young mum with four young children presented with 11 debts, 9 of which were various BNPL arrangements. The purchases ranged from clothes, shoes, electronic games to meat.

Some were four-week arrangements, others fortnightly. In the course of one month she had to make sure that there were sufficient funds in her bank for 43 separate payments to go out on time.

When there wasn't enough money she went back to the Finance company where she has a personal loan to borrow more at 29% pa interest [FinCap comments that this is also likely a breach of CCCFA rules and could be pursued on face value]. The previous month she also had 9 concurrent BNPL arrangements but they were not all the same - as soon as one was paid off she felt that she could take on another.

The result is she has entered a cycle of increasing debt and is highly stressed. If it had not been for the ease with which she could borrow from multiple lenders I am sure she would not now be in this pickle - she would have made different decisions.

¹¹ Context provided in a recent email to FinCap from a financial mentor requesting assistance to get effective contact with a BNPL provider. Trader's name has been redacted.

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.

As discussed in our previous response to question 9, we have been told that some BNPL lenders are working with a credit reporting business to develop a parallel reporting system for default information. Such a parallel system may be somewhat effective at preventing further hardship but would regularly risk information not being with all providers, information not being checked properly or borrowers going without food to pay feeling more incentivised to do so. A parallel credit checking system is a leaky solution to hardship issues from this lending. The robust CCCFA affordability assessment protections should be applied instead.

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

As in previous responses we challenge a parallel system being developed for assessing affordability for a loan with less analysis than is required of loans covered by robust CCCFA affordability assessments.

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?

Changing the BNPL lending model to have equivalent requirements for affordability assessments to the CCCFA will significantly benefit the community through avoided hardship. There may be a cost for increasing work done by lenders to protect borrowers, but this is in the interest of the whole community. Any whānau can face circumstances that see them fall into hardship. An example could be an accident occurring that sees a significant loss of income and resources for a whānau who are not covered as they expect by an insurer.

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

We encourage lenders who have not already done so to provide financial mentors a 'quick contact' so that they can call and arrange a pause or change to payment arrangements for a whānau they support where this will stop a debt spiral. Such co-operation with financial mentors as expert representatives can save significant costs where whānau avoid hardship and creditors receive payment they would not have otherwise due to the financial situation of a whānau improving.

Financial mentors have specifically raised concerns that contacting and working with BNPL lenders is messy and, at times, automated systems inappropriately assign communications to a financial mentor that is not within the realm of their privacy waiver for the person they support. Some BNPL lenders we spoke to have committed to looking to improve this issue currently. However, financial mentors would better be able to progress their support where a complaint to the relevant dispute resolution scheme could be based on expectations in the *Responsible Lending Code* to work constructively with representatives like financial mentors. Getting timely resolution to barriers for assistance can be the difference between a whānau going through an insolvency or withdrawing retirement savings early or not.

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

There can be major benefits from the timeliness of solutions where financial mentors can get more instant co-operation with creditors in relation to someone they are supporting while they are present with them in the room at a financial mentoring session. Where instead they would be waiting on hold or for a long period for an email reply, their time through such initiatives is used more efficiently to avoid other challenges causing hardship with their resources. This efficiency is

important given a recent survey indicated a significant cost in that 75% of financial mentors surveyed are working unpaid hours to help whānau.

Recommendation: BNPL lenders and other creditors provide 'quick contacts' for, and work constructively with, financial mentors.

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?

Applying the CCCFA protections in relation to disclosure will resolve these issues. Disclosure of important information in a way that is understandable to a potential borrower is the first line of consumer protection. Not doing so being a breach with serious penalties attached will ensure non-disclosure is generally deterred.

FinCap is also strongly concerned as to the suggestion of requiring the use of a 'personal finance management tool' which is given as an example in the Discussion Document. This is drafted to put the onus on whānau as opposed to lender responsibility. Lender responsibility principles are a cornerstone of the protections in the CCCFA, why would a different approach be taken for these loans that cause harm?

As mentioned in our response to question 7, we are weary of sales representatives acting as agents for these lenders coercing people into loans that cause hardship. Where such situations arise, and the sales representative is incentivised to 'coach' a person on how to pay with an unfamiliar app, or in situations where more digitally included relatives help in an initial set up, then digital exclusion issues might also cause hardship. This is because most communications with BNPL lenders appear to be digital first or only and app or internet based.

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?

Please see our comments in response to questions 8 and 19, especially around the CCCFA providing a clear mechanism for addressing any issues that arise through free and independent financial dispute resolution. Also, that any hardship assistance benevolently offered currently does not stop development that sees it disappear or not feature in future BNPL lending. Minimum standards from the CCCFA are the best way forward for consistency and financial mentors being able to rely on what process will be in place for the whānau they support who cannot afford repayments.

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?

BNPL lenders should be required to complete robust affordability assessments under the CCCFA and make referrals to financial mentors where they suspect a whānau is at risk of, or facing, hardship. BNPL providers may have better visibility than other lenders that this is the case given some are providing loans at businesses who mainly sell essentials. However, in comparison to other lenders, FinCap has not seen anywhere near the effort to set up systems to proactively identify a customer or potential customer that could benefit from a financial mentor's support and then offer that referral.

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?

As mentioned in our responses to questions 7, 12 and 21 - sales representatives or the marketing process otherwise can be the first pain point on the customer journey with BNPL lending that compounds or causes hardship.

The diagrams across the Discussion Document and in this section could also be expanded in places to reflect the default fees incurred where a payment from a credit card, overdraft or other credit facility is incurred, as well as a BNPL loan missed payment fee. These increased fees creating additional debt with multiple institutions is overwhelming for whānau and poses greater risk of compounding a debt spiral due to loan product design that overlooks this possibility.

As discussed in our response to question 19 and 20, not responding in a timely way or adequately to a customer or their representative financial mentor's request for assistance to resolve hardship is also a potential trigger point.

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?

As outlined throughout our all our responses, FinCap strongly agrees with the view in the Discussion Document.

The indication that over a quarter of BNPL lender's revenue is generated by default fees even where these are capped by some providers shows that the design of these products outside of CCCFA requirements for robust affordability assessments is unacceptable for community wellbeing.

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

FinCap strongly agrees with paragraphs 82 and 83 in the discussion document, these requirements are best brought about by bringing BNPL loans into the CCCFA.

As noted in our response to question 21, we are uncomfortable that the discussion paper in places provides commentary that the onus should be on whānau where there is an incentive on lenders to increase revenue regardless of repayments will mean a borrower goes without other essentials. FinCap supports community education that helps financial capability. However, across entire markets this is a long-term project. The most effective way to protect many whānau from unfair lending that causes hardship is intervening to prevent product design and delivery causing hardship by applying robust CCCFA consumer protections.

We also caution too much weight being applied to compliance costs for current providers for them to improve practices to CCCFA standards. Such action brings these lenders on a level playing field with regulated competitors and BNPL lending is popular and innovative so adapting to meet well established consumer protection standards is a desirable cost of innovation that will benefit the community.

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

FinCap alongside other community organisations who are supporting whānau facing hardship here and overseas strongly support applying general protections for loans to BNPL loans. In Aotearoa this would be by bringing this BNPL lending into the CCCFA.

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

As in our response to question 26, we stress that the BNPL sector will have room to continue innovating where interventions ensure they are living up to established minimum standards for consumer protection through robust affordability assessments.

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

BNPL providers in discussion with FinCap and other advocates indicated that their draft voluntary sector code is very similar to the AFIA Buy Now Pay Later Code of practice. We have not been

provided with a copy of the drafted code like other interested stakeholders. The Australian voluntary initiative has been firmly rejected by our equivalent organisation as insufficient. Financial Counselling Australia recently released their report titled; *It's Credit, It's Causing Harm and It Needs Better Safeguards: What Financial Counsellors Say About Buy Now Pay Later*.¹² The insights gathered over August and September 2021 while the Australian code was in place in Australia drew the following conclusion:

*“BNPL is credit and like any other credit products should be regulated under the National Credit Code [Australia]”*¹³

Voluntary industry codes are not working overseas. Similar to Financial Counselling Australia in that jurisdiction, FinCap strongly supports the application of the CCCFA to BNPL loans in Aotearoa.

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.

The inconsistency and lack of accountability from a voluntary code could see financial mentors having to allocate even more time to helping whānau who are facing hardship navigate unaffordable BNPL loans. This is a direct cost to the whānau and communities who may not have as much financial mentor resource available and may incur more costs from hardship. It is also a cost to government, other funders and financial mentors who volunteer unpaid time to provide expert support.

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.

Replicating the approach taken in Australia would be just ‘kicking the can down the road.’ This approach is unlikely to see equivalent affordability assessments at CCCFA requirements. Even if this was achieved, the mechanisms for enforcing any rights that a whānau negatively impacted may have, will be uncertain and less straight forward compared to similar situations with loans covered by the CCCFA.

As we note above, BNPL lenders operating in Aotearoa have indicated that their draft code is similar to the AFIA Buy Now Pay Later Code of Practice. Our reading of that code is that it only requires a credit check, if anything at all, and not an affordability assessment for lending up to \$15,000.¹⁴ If BNPL lenders in Aotearoa are starting with this as the approach we are a long way from addressing ongoing hardship and associated harm from this lending in our communities.

Also requiring any new competing BNPL lender to enter the market and meet an industry code designed by their incumbent competitors as opposed to Government set standards is messy. Additionally, the negotiation and renegotiation of the settings in an industry code, then review of the compromises that inevitably will be made would be less timely for stopping the harm seen from BNPL lending by financial mentors than a clear implementation date for CCCFA regulation.

¹²December 2021 report <https://www.financialcounsellingaustralia.org.au/docs/its-credit-its-causing-harm-and-it-needs-better-safeguards-what-financial-counsellors-say-about-buy-now-pay-later/>

¹³ Ibid, pg.3

¹⁴ Tables on pages 7 and 9 of:

https://afia.asn.au/files/galleries/AFIA_Code_of_Practice_for_Buy_Now_Pay_Later_Providers.pdf

Lenders in this space already have significant revenue from the increasing rates of use for their loans. Deterrents for conduct from BNPL lenders that harms whānau need to be equivalent to the penalties and systems surrounding in the CCCFA and enforced by the Commerce Commission instead of an industry code and independent review team.

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.

An industry code is nowhere as a robust protection for whānau to avoid harm or address harm that arises through hardship caused or contributed to by BNPL lending. The most significant cost of this approach is it risks being ineffective and meaning harm continues to occur as this lending increases in the community.

We also reiterate the costs described in our response to question 30. This approach would take up more of resources for whānau facing financial hardship and their financial mentors in comparison to regulating BNPL lending under the CCCFA.

This approach also places further burden on community organisations like FinCap to try and address systemic issues that still continue through stakeholder work with an independent review panel. This is unlikely to be timely and is inefficient for community organisations compared to our already established relations with Commerce Commission, an organisation that dedicates resource to community engagement on credit issues.

The unpredictability of potential sudden changes to an industry code that may not be subject to appropriate requirements for consultation will also be a cost to the community. Having to keep up with any changes or variance from the rules for some loans will complicate community education about consumer protections.

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.

To ensure that BNPL lending delivers long-term benefits to consumers MBIE and the Minister should urgently use Section 137A of the CCCFA to regulate BNPL lending. Every day that loans are made without these protections increases the amount of significant harm in communities. Reporting from credit agencies also indicates that these loans can have profound spikes in demand that might be attributed to disruption in our communities due to Covid 19. Urgent intervention can prevent debt spirals or reduce the chances that the whānau that financial mentors support will be left with no option but insolvency or early release of KiwiSaver to move forward.

It is important that the description of BNPL lending utilised when using the CCCFA 137A powers is broad enough to capture all services that exist in the space currently or almost identical products that emerge in the future.

We support exemptions from CCCFA provisions only where completely irrelevant to harm caused by BNPL loans, not exemptions that compromise for BNPL lender's preference at the expense of protections. We suggest that an exemption approach could involve a BNPL lender applying for an exemption as opposed to automatically having an exemption and making the case to a regulator as to what parts of the CCCFA are irrelevant where it is clear that they will never be exempt from 9(c) and other protections specifically mentioned in the Discussion Document.

We reiterate our comments in response to question 4 - open banking is not likely to deliver robust affordability assessments. In general, we strongly oppose introducing aspects of the CCCFA

sequentially while waiting for BNPL lending to 'mature.' This exposes the community to significant harm where key protections in the CCCFA are 'left in the lurch.'

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.

There are significant benefits in the efficiency of bringing these loans into the systems developed to effectively regulate other loans that have caused the same harm. Whānau will be able to avoid harm in the first place or financial mentors will be able to efficiently replicate approaches to resolve harm through the use of complaints and dispute resolution relating to the clear protections of the CCCFA. The Commerce Commission will be a legitimate regulator available to address breaches of standards in place to prevent hardship.

Another benefit is that this regulation will still allow flexibility for BNPL lending businesses to innovate in the interest of the community. Thousands of lenders are already able to operate while having compliance obligations under the CCCFA. BNPL lenders may point to situations where they have helped whānau access goods and services in a timelier way. As opposed to there being a risk of this becoming 'unworkable' through regulation as suggested in paragraph 108 of the discussion document, the reality is that an unaffordable loan that includes revenue for the lender places risk on that whānau. Also if it is not unaffordable lending then it is simply the choice of that businesses to cease participating in the market because they are unwilling to innovate to meet community standards.

The cost for establishing regulation will also be far less as there is already a well-developed regulatory regime, significant guidance for lenders to comply and the Commerce Commission having further jurisdiction over similar products will not be a strain given its established processes already function at scale.

The discussion document suggests that regulation poses some negatives in cost pass through for compliance costs, but we put forward that the other two options floated in the Discussion Document also are likely to produce costs to BNPL lenders that are passed through. Industry codes are not developed without cost and independent review panels and their supporting workers are generally remunerated for their time or pose costs to others where they are ineffective and community organisations have to pursue other ways of resolving harm from systemic issues.

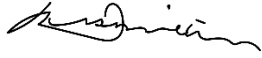
Recommendation: To ensure that BNPL lending delivers long-term benefits to consumers MBIE and the Minister should urgently use Section 137A of the CCCFA to regulate BNPL lending. The definition of BNPL lending should be broad and capture all current or future models. Any exemptions from CCCFA provisions should be by application by lenders who must prove those provisions are irrelevant.

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.

We encourage the use of focus groups with financial mentors before and after any changes that are designed to understand trends of how BNPL loans and other loans are contributing or not to any harm in the complex issues faced by whānau experiencing hardship.

Please contact Jake Lilley, senior policy advisor at FinCap on [REDACTED]
to discuss any aspect of this submission.

Ngā mihi,



Ruth Smithers
Chief Executive
FinCap