

Submission

to the

Ministry of Business, Innovation and
Employment

on the

Buy-Now, Pay-Later Discussion
Document

16 December 2021

About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Introduction

NZBA welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the Buy-Now, Pay-Later Discussion Document (**Discussion Document**). NZBA commends the work that has gone into developing the Discussion Document.

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Summary

NZBA supports Buy-Now, Pay-Later (**BNPL**) products as an offering for consumers, provided consumers use BNPL appropriately. BNPL offers an alternative to traditional credit products which is beneficial to customers who use it appropriately. It has also introduced more competition into the market.

Problems arise when consumers take on high levels of BNPL debt with numerous BNPL providers. There is currently no requirement on BNPL providers to assess consumers' ability to repay this debt, leading to some consumers finding themselves with unaffordable and unsustainable repayment obligations. In some instances, consumers will forgo essentials to make BNPL repayments, or will use other credit products to repay BNPL debt. In our view, many of these consumer harms could be avoided if BNPL providers were required to carry out affordability and suitability assessments before offering consumers BNPL products.

NZBA support's MBIE's work to understand the consumer harms and triggers of financial hardship associated with BNPL. As noted in the Discussion Document, BNPL offerings have grown significantly in recent times, and we agree that growth will only continue.¹ It is therefore an appropriate time for MBIE to consult on how financial hardship can be triggered by BNPL use, and assess potential options to address these harms.

Of the options provided, NZBA supports MBIE's proposed Option 3, applying the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) to regulate BNPL products.

¹ We note that in Australia, for example, BNPL products have expanded into the hospitality sector.

Consumer harm caused by BNPL

We understand that financial mentors, budgeting agencies and other consumer groups have direct visibility of the consumer harm caused by unsustainable BNPL debt and will be well-placed to make informed submissions on this point. We note the following comments made publicly by these groups, and provide further detail in the Appendix to this submission:²

- FinCap’s financial mentors report clients have up to 13 separate BNPL payments owing at any one time.
- Insights from Ngā Tāngata Microfinance revealed 35% of the people they are helping use BNPL, with 26% saying they have missed a payment.
- Te Ara Ahunga Ora’s consumer research has seen BNPL usage increase for under 65s, from 18% in February 2021 to 24% in September 2021. This growth is greater for Māori under 65, with an increase from 24% in February to 34% in September.

We agree with MBIE’s assessment of the types of financial hardship BNPL may cause, and note that our members’ data suggests that there is a higher rate of default on BNPL payments compared to normal debit transactions, with some banks seeing one in five BNPL transactions declined due to insufficient funds. Members report that a significant portion of their customers who are in default also have BNPL commitments. We support MBIE’s view that financial hardship can occur even when customers are not missing BNPL payments, and agree with the assessment that this type of hardship may not be visible to BNPL providers.

In our view, the lack of BNPL regulation may have unintended consequences in terms of undermining the work that has been done on the CCCFA. By not regulating BNPL, our members are seeing, in some instances, a move of vulnerable borrowers from bank facilities (subject to responsible lending obligations) to an “easier” path to debt, such as BNPL, which does not have a same protection in place to ensure responsible lending.

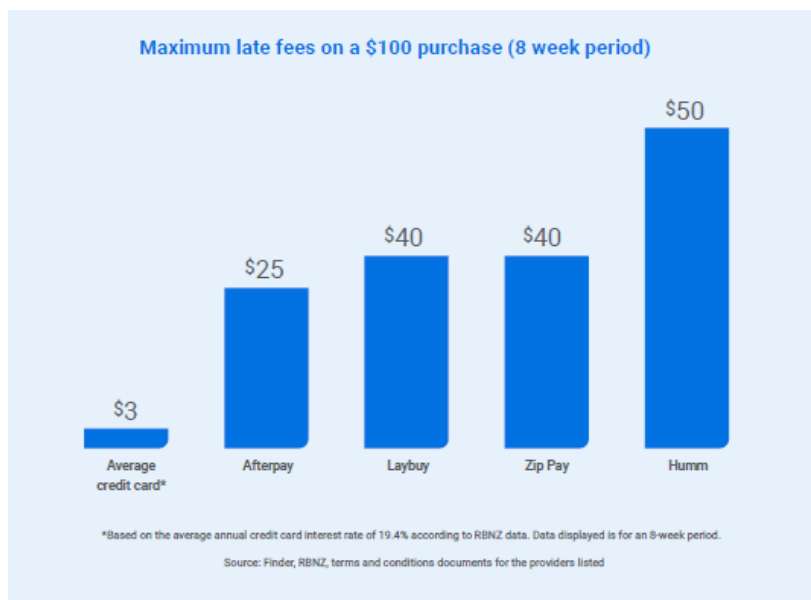
The risk of consumer harm may also increase as a result of:

- consumers being able to accumulate multiple BNPL debts within a short space of time. Rapid accumulation of BNPL debt may be an indicator of financial stress.
- BNPL debt being approved without conducting credit checks;
- the limited affordability assessments undertaken by BNPL providers are based on credit risk factors (i.e. the harm to the organisation in the event of default), rather than the harm to the consumer;
- increases in credit limits unsolicited by the borrower, again largely based on internal credit risk assessments by BNPL providers;
- lack of visibility of BNPL debt by other creditors due to limited or non-participation in credit reporting practices, increases the risk that BNPL debt which is not declared and not visible in credit checks or bank statements is underestimated or not taken into account in the assessment of affordability of other debt products and may result in debt being approved which may not be affordable. For example, a borrower has not actively used BNPL for a few months to improve likelihood of finance approval

² Te Ara Ahunga Ora Retirement Commission, *Financial support agencies join forces to encourage safer spending this Christmas*, November 2021.

from mainstream lender, but intends to use BNPL facilities immediately after other finance is approved).

We also consider that the late fees for a BNPL payment could increase financial hardship, as demonstrated in the chart below.³



Options for intervention in the BNPL sector

NZBA supports Option 3

Of the options provided, NZBA strongly supports Option 3, applying the CCCFA to regulate BNPL products.

The purpose of the CCCFA is to protect consumer interests in connection with credit contracts. Despite BNPL products not meeting the legislative definition of 'consumer credit contract', they are in essence a credit product. Regulating BNPL products would be consistent with the purposes of the CCCFA as set out in section 3 because:

- It would promote the confident and informed participation in markets for credit by consumers. BNPL are generally marketed as encouraging “responsible spending”, so it’s important that consumers understand that they are in fact incurring debt, and the nature of the agreement they are entering into.
- It would promote and facilitate fair, efficient and transparent markets for credit, for the same reason set out above.

Bringing BNPL within the scope of the CCCFA would improve transparency for consumers, many of whom may not understand the nature of the credit product that they have signed up for and the impact it may have on their ability to take out other loans with other CCCFA-regulated lenders. For example, if someone used a BNPL service to purchase a pair of

³ Finder.com, [Buy Now Pay Later Report 2021](#). We note that some credit cards may have additional late fees not shown on this graph, in addition to the interest charged.

\$200 shoes they may not realise that they have a \$1000 credit limit available under the BNPL product, which other lenders will ask for and take into account in any affordability assessment).

We are also of the view that applying the CCCFA to BNPL would result in the following benefits, including:

- It would ensure fees charged are cost justified.
- Consumers in financial difficulty would have the benefit of the hardship provisions of the CCCFA.
- BNPL providers are made compliant with the responsible advertising provisions of the CCCFA.
- Appropriate disclosures of contracts take place.
- Consumers have access to complaints schemes.

Other considerations when assessing intervention options

We suggest that MBIE take the following factors into account when assessing intervention options:

- BNPL should be subjected to the same regulatory oversight as all other consumer credit products to protect consumers, and ensure there is a level playing field to avoid creating market distortion.
- Where it is considered there are aspects of the CCCFA that may impact competition and innovation, we think there are opportunities to introduce scalability and increased flexibility into the CCCFA regime through regulations, and these points have been submitted on in the past. These should address these perceived issues for all credit products, while ensuring amendments are not made that lessen protections for consumers.
- Unregulated BNPL can also be problematic for banks/lenders who are required to undertake prescriptive affordability assessments. They need to be able ascertain the nature of a product (and therefore how it should be treated under the CCCFA regulations). A bank may be required to take the total credit limit (e.g. \$1000) into account for affordability purposes, rather than the amount of the transaction (e.g. \$200), which could materially influence the outcome of the affordability assessment.
- Where a credit card is linked to BNPL, there needs to be additional consideration of the Scheme Rules. For example, Visa prohibits the use of a credit card to pay off debt payment transactions.
- If there is likely to be any significant delay in applying the CCCFA to regulate BNPL products, we would support MBIE facilitating a voluntary industry code as suggested in Option 2 for a defined period incorporating an independent review of how BNPL providers are addressing the triggers of financial hardship and protecting the interests of consumers.

Appendix: Further research on consumer impacts of BNPL

- A 2019 Australian Senate Economics References Committee report which recommended that ASIC investigate a regulatory framework for the BNPL sector that ensures, before credit is extended, BNPL providers appropriately consider consumers' personal financial situations:
(https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report/b02)
 - Referring to ASIC research: “The ASIC study of buy now pay later products reported that users found that the products allowed them to spend more than they otherwise would and to buy things they otherwise might not have. It expressed concern that these products may pose a risk of overcommitment to some consumers and sometimes cause inflated prices for consumer goods. It noted that one in six consumers reported difficulty in meeting payments. It pointed out that there was a particular danger in the 23 per cent of cases where consumers used credit cards to pay these debts, thus incurring substantial interest charges. It noted that over 40 per cent of users had incomes of under \$40,000, and of this group, almost 40 per cent were either students or in part-time work.”
(https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report/c05)
- A November 2020 ASIC industry update on BNPL:
(<https://download.asic.gov.au/media/5852803/rep672-published-16-november-2020-2.pdf>)
 - The number of missed payment fees incurred continues to grow.
 - 21% of buy now pay later users who were surveyed missed a payment in the last 12 months. Nearly half of those were aged 18-29.
 - In order to make their BNPL payments on time, 20% of consumers surveyed cut back on or went without essentials (e.g. meals) and 15% took out an additional loan. These consequences were more prevalent among consumers who used multiple buy now pay later arrangements.
 - A consistently higher proportion of buy now pay later credit card users incurred interest charges on their credit card.
- Insights gathered from Ngā Tāngata Microfinance:
 - 36% of current clients use BNPL
 - 26% have missed an instalment payment
 - 24% use it for groceries
 - 27% use it for household items
 - 31% use it for clothing.