

Memo

13 December 2021

To: The Ministry of Business, Innovation & Employment (MBIE)
(buynowpaylater@mbie.govt.nz)

From: Apulu Reece Autagavaia, Chair; Dawn Trenberth, Deputy Chair,
Ōtara-Papatoetoe Local Board

Subject: Feedback from Ōtara-Papatoetoe Local Board on the discussion paper, Buy-Now, Pay-Later – Understanding the triggers of financial hardship and possible options to address them, Ministry of Business, Innovation & Employment (MBIE).

The Ōtara-Papatoetoe Local Board note the following points of feedback to the Ministry of Business, Innovation & Employment discussion paper on its discussion document under decision making (OP/2019/1):

1. The Ōtara-Papatoetoe Local Board of Auckland Council provides this submission on behalf of the Local Board, and not on behalf of, Auckland Council as a whole, the Governing Body of Auckland Council, nor any other Local Board of Auckland Council.
2. The Ōtara-Papatoetoe Local Board acknowledges that the Ministry of Business Innovation and Employment (MBIE) is seeking feedback on the policy options in a discussion paper, to regulate the new and emerging Buy-Now, Pay-Later (BNPL) sector, with the interest of people experiencing financial hardship in mind.
3. As such, the Ōtara-Papatoetoe Local Board takes this opportunity to provide feedback because we represent communities who experience financial hardship for an array of reasons, but also because of certain features of consumer credit contracts. The Government is well aware of the harm done to South Auckland communities by loan sharks and mobile traders offering crippling high-interest rate loans. Hence, why the Government brought in changes to the Credit Contracts and Consumer Finance Act (CCCFA), which came into effect on 1 June 2020. The Ōtara-Papatoetoe Local Board supported the changes and thanks the Government for its leadership.
4. However, we understand at the time of the changes to the CCCFA, the Government did not include BNPL services, even though they have features of consumer credit contracts. Prior to the introduction of the new regulatory powers under the CCCFA, the then Minister of Commerce and Consumer Affairs, Hon. Kris Faafoi, noted of BNPL products:

“Consumer advocates and some lenders have raised concerns about these products, although there is very limited evidence of harm from them to date. We have not considered bringing them within scope of the CCCFA at this time, however this could be reconsidered if variants of these products emerged that were shown to cause consumer harm.”ⁱ

5. This discussion paper is the opportunity for the Government to consider BNPL service under the CCCFA. As the current Commerce and Consumer Affairs Minister David Clark stated:

"The success of any regulatory solution, including the powers under the CCCFA, depend upon a clear understanding of the root causes of consumer harm and identifying how best to address that harm." ⁱⁱ

6. The Ōtara-Papatoetoe Local Board agrees with the Minister. Despite MBIE stating there was little evidence of harm, in 2018 when the introduction of the CCCFA, the focus needs to be on the root causes of harm that could cause harm. The root causes are those features of consumer credit contracts that have been regulated under the CCCFA, which cause consumers to accumulate crippling debt. The new protections include but are not limited to:

- a. Reasonable and cost-based fee;
- b. Lenders provide adequate disclosure;
- c. Lenders comply with the responsible lending obligations; and most importantly
- d. Lenders must assess a consumers' financial position or assess whether the consumer is likely to be able to repay the credit without substantial hardship.

7. While the initial focus of the CCCFA was on offerings of high-interest rates, fees such as for default payments also cause consumers to increase debt. Manukau Urban Māori Authority general manager of whānau services Veronica Henare said in an article last year, that for areas like South Auckland:

"When people are living on low incomes, or on benefits, if they want to buy something on credit, they don't check the interest rates." ⁱⁱⁱ

The same can be said for default fees in BNPL services. In fact, the Ōtara-Papatoetoe Local Board argues the increased accessibility of BNPL services compared to other traditional forms of consumer credit contracts, means consumers are at even more at risk of not checking default fees. Once debt accumulates, whether by interest rates or default fees, consumers struggle to manage financially.

8. Whilst there are some potential benefits of BNPL providing a low-cost, no interest/fee payment alternative to credit cards payments, we support the views of the financial mentoring sector that the BNPL service could create financial hardship for consumers, especially in an unregulated environment. The discussion document proposes three options, summarised as:

- a. Option 1: Retaining the status quo;
- b. Option 2: Incentivising BNPL providers to develop an industry code; or
- c. Option 3: Extending the CCCFA to capture BNPL products

The Ōtara-Papatoetoe Local Board supports Option 3 for the reasons set out below.

9. Firstly, Option 1 of retaining the status quo will not address the issues identified with BNPL, and the harm associated. We do not support Option 2 of allowing BNPL providers to develop an industry code. We believe that there are many weaknesses of industry self-regulatory codes, including their voluntary nature, limited scope, inability to enforce penalties or meaningful consequences, and fundamental conflicts of interest inherent to their purpose.

10. Secondly, the Ōtara-Papatoetoe Local Board is concerned the accessibility of BNPL services amongst our young people, means harm could be concentrated in that age group, setting many up for possible debt early on in life. NZ Post has reported “[BNPL is] the ‘credit’ of choice for the young”. 40% of BNPL customers are under 30; 77% under 45 and many BNPL providers are reporting 100% plus year-on-year growth.^{iv}
11. The Ōtara-Papatoetoe Local Board has also had the opportunity to peruse the draft feedback of Alcohol Healthwatch. The Local Board supports the feedback and agrees that any regulation needs to treat alcohol sold via BNPL services differently. As a psychoactive substance with dependence-producing properties, restrictions to accessibility and availability of alcohol are among the most effective of all measures to reduce harm. The Ōtara-Papatoetoe Local Board agrees with the Alcohol Healthwatch’s draft recommendations that:
- a. Alcohol products should be excluded from any BNPL services or other unregulated credit-like services;
 - b. Alcohol products should not be advertised or sold with fractional costing;
 - c. Apply the Credit Contracts and Consumer Finance Act 2003 to regulate the BNPL sector (i.e. option 3); and
 - d. Conduct a public inquiry into the online promotion, sale and delivery of alcohol.
12. Lastly, South Auckland has borne the brunt of the Delta outbreak in New Zealand, whether it be health impact (including mental health), rise in unemployment, or educational disengagement. The financial pressures before COVID-19 have been amplified during pandemic restrictions. As Minister Fa’afoi stated:
- "The economic impacts of Covid-19 have only exacerbated the need to take a harder line to protect vulnerable whānau from problem debt."*^v
- We urge the Government to take the required regulatory measures to protect consumers, especially those in our community who have carried the burden of the COVID-19 response on behalf of the country, and who face the biggest financial pressures than any other community in Aotearoa New Zealand.
13. To be clear, and in conclusion, the Ōtara-Papatoetoe Local Board supports Option 3, for the reasons set out above. Regulation of BNPL services should include those listed in sub para 6 a-d, and para 11 above.

Apulu Reece Autagavaia
Chair, Ōtara-Papatoetoe Local Board



ⁱ <https://www.interest.co.nz/personal-finance/97786/minister-%C2%A0commerce-and-consumer-affairs-kris-fafoi%C2%A0establishing-new>

ⁱⁱ <https://www.interest.co.nz/personal-finance/110754/buy-now-pay-later>

ⁱⁱⁱ <https://www.rnz.co.nz/news/ldr/418394/people-are-drowning-in-debt-crackdown-on-loan-sharks-welcomed>

^{iv} <https://www.simpsongrierson.com/articles/2021/paying-it-forward-buy-now-pay-later-products-and-the-cccfa>

^v <https://www.rnz.co.nz/news/ldr/418394/people-are-drowning-in-debt-crackdown-on-loan-sharks-welcomed>