

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

## Your name and organisation

<b>Name</b>	Andrew Harkness
<b>Organisation (if applicable)</b>	Simpson Grierson

## Responses

Economic regulation	
1	<p>Do you agree with our assessment of what the benefits are from BNPL? Yes / No / Not sure Are there others? Please provide details.</p>
	No, not really. The potential stated benefits are no different to those provided under any other consumer credit product.
2	As a consumer (or consumer representative), please outline what are the benefits of BNPL?
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?
	The main benefit for a business in receiving BNPL or a provider of BNPL is that it is not regulated and therefore the compliance and acceptance costs will be lower.
4	Do you agree with our assessment of how BNPL will evolve in New Zealand? If not, please provide details.
	It is likely to grow the same way that similar products have overseas as the markets and investors funding BNPL providers will adopt similar models for New Zealand.
5	How do you think emerging BNPL business models eg partnerships with credit cards, banks etc. will impact consumers? Please provide details
6	Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL? Please provide details
	A BNPL product is a debt that has to be repaid over time. By its very nature such a product absorbs spending or financial capacity of a consumer and therefore may in and of itself have the ability to cause financial hardship if repayment is not made.

7	<p>As a consumer (or consumer representative), have you faced financial hardship from BNPL? Yes / No / Prefer not to answer</p> <p>If yes, under what circumstances have you faced financial hardship from BNPL? Please select all that apply and provide details, if possible:</p> <ul style="list-style-type: none"> <li>• You had multiple BNPL accounts</li> <li>• Your credit limits were increased beyond what you could afford</li> <li>• Because of the timing of your BNPL instalments and other expenses</li> <li>• Because as a household, you were unable to afford the BNPL instalments</li> <li>• You focused on the first payment rather than the total cost of the product or service</li> <li>• You responded to BNPL marketing and as a result purchased more than you could afford</li> <li>• You missed an instalment and faced missed fees (default fees)</li> <li>• Your circumstances changed (e.g. change in employment) and you were no longer able to afford the instalments</li> <li>• Other</li> </ul>
8	<p>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</p>
9	<p>As a BNPL consumer (or consumer representative) (select one only)</p> <p>A) Do you value having a hard credit check being conducted <b>OR</b></p> <p>B) Would you prefer a soft credit check that doesn't leave a 'footprint' on your credit score?</p> <p>C) Please explain the reasons for your answer</p>
10	<p>What are the advantages and disadvantages (including costs) from credit checks being used to determine approval for BNPL?</p>
	<p>An advantage is that a credit check would indicate whether the consumer may be able to afford the BNPL product including with regard to multiple BNPL products obtained from different BNPL providers.</p>
11	<p>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?</p>
	<p>BNPL could undertake the same affordability testing and assessments as is required under</p>

	responsible lending under the CCCFA.
12	How might affordability assessments be conducted when BNPL credit limits are increased?
	The same affordability tests that are undertaken by consumer credit providers should be undertaken for BNPL products.
13	What are the costs and benefits of conducting affordability assessments when BNPL credit limits are increased?
14	Are there any other ways to ensure BNPL credit limits are increased responsibly?
15	Are there any other issues with consumers having multiple BNPL accounts that we have not identified?
	As there is no requirement to assess affordability there is little (if any) barrier to obtaining BNPL products other than the BNPL providers own underwriting standard.
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.
	It is not clear why BNPL providers should not be in a position to share information.
17	How could information about consumers having multiple BNPL accounts be appropriately shared across the BNPL sector?
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?
19	What tools and processes could be introduced for the timing of BNPL instalments to be better aligned to income and other expenses?
20	What are the costs (including disadvantages) of such tools and processes? What are the benefits of such tools and processes?

21	<p>When making BNPL transactions, how could consumers be made more aware of the total costs of their purchases?</p> <p>What are the costs of these tools?</p> <p>What are the benefits of these tools?</p>
22	<p>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?</p>
23	<p>How could BNPL providers be more responsive to consumers relying on BNPL to pay for essential goods and services?</p> <p>What are the costs of these tools?</p> <p>What are the benefits of these tools?</p>
24	<p>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?</p>
25	<p>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?</p>
	<p>This seems a sound conclusion given that BNPL providers do not have to regard to affordability albeit that some BNPL providers do consider affordability.</p>
26	<p>Do you have views on the overall objective of the BNPL sector?</p>
27	<p>Do you have any views on how the interests of consumers could be protected?</p>
	<p>The existing protections of the interests of consumers with merit are found in the CCCFA framework, primarily consisting of:</p> <ul style="list-style-type: none"> <li>a. Restrictions on fees <i>vis a vis</i> reasonability and cost-basis;</li> <li>b. lender disclosure requirements;</li> <li>c. responsible lending obligations on lenders; and</li> <li>d. requirement to assess a consumer’s financial position, and ability to repay .</li> </ul>
28	<p>Do you have any views on the criteria used to assess how to achieve an effective BNPL sector?</p>
	<p>One view, which we think has been missed in assessments so far, is that a significant part of the “growth” and “innovation” as presented by the BNPL products is due to the regulatory hole and benefits of this received by BNPL as relative to regulated consumer credit providers. The extent to which this amounts to true growth and innovation, for which the Ministry</p>

	should encourage and facilitate, is questionable.
29	Do you have any comments on the discussion of Option One: status quo? Please provide evidence if available.
	BNPL is not exempt from the CCCFA. The CCCFA does not apply to it which is why BNPL has grown at the pace it has as there is no regulatory compliance required. A voluntary code may be a 'nice to have' but is unlikely to mitigate significantly consumer harm caused by financial hardship. Providers or initiators of debt to consumers should be on a level playing field.
30	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 incurring of further debt obligations by a consumer that would not otherwise receive or qualify for other consumer credit because of a lack of affordability may over commit through increased levels of spending and BNPL debt and could therefore suffer financial difficulty/hardship.
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.
32	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.
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.
	<p>We suggest two key points to the design:</p> <ul style="list-style-type: none"> <li>- There is no obvious reason to delay, as regulation will be a work in progress/ require feedback from initial results;</li> <li>- capture BNPL under the definition of "consumer credit contract" and work forwards from there. Let the BNPL industry suggest exemptions as required; onus on industry to create exemptions from the standpoint of BNPL being a "consumer credit contract" under the CCCFA regime. Requested repeals, e.g. on onerous requirements of affordability assessments, may be granted upon sufficient petition by industry bodies. May be opportunity for other exemptions to be provided to other consumer credit sources.</li> </ul>
34	What are the costs and benefits of Option Three and how it is designed to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.
	<p>Benefits:</p> <ul style="list-style-type: none"> <li>- existing consumer protections under CCCFA provide a better consumer outcome given BNPL consumer harm.</li> </ul>

	<ul style="list-style-type: none"> <li>- A more level playing field between consumer credit providers with BNPL being consumer debt. From a principled point of view, the commercial advantage BNPL consumer credit providers receive in being effectively unregulated relative to other consumer credit providers has been material if not determinative in their rapid growth and commercial success.</li> <li>- Measures discussed in paragraphs 100 – 106 of the MBIE report are supported.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>- BNPL will face significant regulatory costs which will impact business growth.</li> <li>- Regulatory effort may be required to create adequate exemptions for BNPL products, and any other consumer credit products that subsequently request exemptions.</li> </ul>
35	<p>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</p>

## Other comments

	<ul style="list-style-type: none"> <li>- The necessity for this consultation is that CCCFA does not apply to BNPL. The main reason for this is that the CCCFA is out of date and requires replacing with legislation that is more relevant and modern to address how consumer credit is offered and how it will be offered in the future.</li> <li>- The deficiencies of the CCCFA are numerous. They include: <ul style="list-style-type: none"> <li>- Confusing and overly detailed disclosure information to consumers;</li> <li>- A clumsy and antiquated requirement for consumer credit providers to continually calculate and justify the cost of credit fees;</li> <li>- Significant financial consequences for consumer credit providers where a technical non-compliance with the CCCFA occurs that has a disproportionate effect on the credit provider, even when the borrower suffers no or little harm;</li> <li>- Inadequacies in addressing innovative fintech based online credit solutions such a peer-to-peer lending and BNPL;</li> <li>- No exemption for social or charitable organisations looking to provide low value credit to consumers who otherwise would not meet affordability assessments thereby depriving that sector of the community to access because the cost and consequences of compliance are too significant;</li> <li>- A regulator that appears to have a default approach of addressing all issues through court proceedings rather than constructively engaging with the credit providers.</li> </ul> </li> <li>- The CCCFA needs a comprehensive overhaul in order to be relevant on how credit products are offered.</li> <li>- It is somewhat ironic that directors of consumer credit providers are being asked to attest to a fit and proper test when the CCCFA itself is substandard in many respects.</li> </ul>
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