



16 December 2021

Competition and Consumer Policy Team
Ministry of Business, Innovation and Employment (MBIE)
Wellington
NEW ZEALAND

Via email: buynowpaylater@mbie.govt.nz

Dear MBIE

REVIEW INTO BUY NOW, PAY LATER IN NEW ZEALAND

Thank you for the opportunity to make some brief comments on the review being conducted by the Ministry of Business, Innovation and Employment (MBIE) into issues arising from Buy Now, Pay Later (BNPL) payments in New Zealand Aotearoa.

Xero is one of the fastest-growing software as a service companies globally, providing online software to help change the way small business is done. Our platform connects more than three million subscribers across 180 countries with over 1,000 third-party apps and 300 plus connections to banks and financial service providers. Whilst we ourselves are not a merchant/retailer offering consumer-facing BNPL payment options, our wide global footprint has given us scope into BNPL policy issues and related regulatory reviews in several jurisdictions. It is within this context we offer the below high-level observations.

In-principle support

BNPL is a rapidly developing consumer payment innovation that we expect will grow quickly in New Zealand, as it has in many countries, disrupting traditional, often more expensive forms of credit and introducing new competitive forces in the retail payments and lending sectors. BNPL may drive greater efficiency in credit screening and processing through partnerships between BNPL companies and financial institutions and potentially result in significant cost reductions in other bank lending products beyond BNPL itself, by way of competitive pressure. Most importantly BNPL stands to deliver these positive effects as a result of it providing an additional choice for both New Zealand retailers and consumers. This is a valuable outcome for the New Zealand economy, in and of itself, as we face the current challenging times.

As such, on behalf of our small business retail customers – and their consumers – Xero offers in-principle support for the presence of BNPL as a payment option in New Zealand.

A note of caution

Whilst, as outlined above, we support the ability for New Zealand consumers and small businesses to benefit from BNPL, a strong note of caution must be made around ensuring BNPL is not a means for entrapping New Zealanders in debt arrangements that they cannot service. We note that a recent study found that more than a third of Americans have used BNPL and one third say they used it to buy an item they would not necessarily have been able to afford¹. If that means *not being able to afford paying it all today but can manageably afford it if I can pay over a different time horizon*, then the product is working. If however ‘cannot afford’ amounts to *could never afford*, we face a negative outcome for our community.

If an intervention is deemed to be an appropriate step by MBIE, the policy settings must aim to avoid negative outcomes by striking a sustainable balance between BNPL that delivers the maximum economic benefits for consumers and merchants whilst avoiding settings that enable consumers to acquire products that they simply cannot ever afford. An innovative form of low-cost or ‘free’ consumer credit brings no benefit if it is in effect a means to trap consumers in a debt spiral. The seeming popularity of BNPL among younger consumers is also worth noting as a further rationale for some kind of balanced action, as would be the possibility of BNPL leading to other vulnerable parts of the community being exposed to financial overextension. These would be negative outcomes for New Zealand and no BNPL lender of good standing would wish to be involved in them.

Principles to inform any intervention

Xero notes that MBIE is assessing two options that include a market intervention of some sort, namely Option Two in the consultation paper which is to incentivise the BNPL sector to establish, maintain and comply with an industry code, and Option Three, which extends the scope of consumer protections under the *Credit Contracts and Consumer Finance Act 2003* (CCCFA) to include BNPL transactions, deeming them to be “consumer credit contracts”. We note Option One is the preservation of the status quo.

Whilst we do not necessarily offer a firm or final view on a preferred option, it does appear to us that there may be sound policy grounds for some action to take place. If an intervention is to occur (Options 2 or 3), in addition to our above overarching point that consumer welfare protection must be its primary purpose, we offer two more principles we feel relevant, based on our international experience in this area.

First, whilst the regulatory regime needs to be consumer protective it must be *proportionate* to meet that need and not go unnecessarily beyond that need. An over-intervention could undermine BNPL as a viable payment option thereby removing the potential benefits of an appropriately available BNPL payment choice for New Zealand retailers, consumers and the economy at large.

Secondly, it is critical in our view that any regulatory obligations determined to be necessary fall on the most appropriate party in the chain of activity, usually the party whose actions or business is responsible for the introduction of the risk an intervention is seeking to manage or minimise. In the case of BNPL, we advise that the regulated party should be the underlying BNPL provider alone. This approach is reflected in

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<https://www.nerdwallet.com/article/loans/personal-loans/use-of-buy-now-pay-later-outpaces-personal-loans-in-past-year>

the regulatory thinking we see elsewhere. For example, in the current assessment of BNPL underway in the United Kingdom, HM Treasury has progressed the need for an exemption for small businesses offering BNPL as a payment option when offered as one of several through a third party payment services provider. We strongly support this approach.

Translated to the current proposals, if MBIE determined Option Three in the consultation paper was to be implemented in New Zealand, and BNPL was to be treated as a consumer credit contract, we advise that a clear exemption for small businesses from the newly applied financial adviser licensing regime under the *Financial Markets Conduct Act 2013* would be necessary. Anything less would see the burden of regulation fall on a party not primarily responsible for the introduction of the risk that the intervention is seeking to minimise. Again, any regulatory or oversight cost of the BNPL industry must be borne by the BNPL providers, *not* our retail merchants.

Finally, we make the related observation that the soon-to-be-introduced Consumer Data Right (CDR) should greatly streamline the sharing of digital credit data, bringing increased protections to consumers without placing additional costs on the the parties involved in BNPL activities, up to and including BNPL providers themselves.

Balanced outcome

We support a healthy BNPL market in New Zealand, that sees BNPL continue to be available to Kiwi consumers and retailers in a balanced, safe and efficient way. Clear benefits stand to be gained by both consumers and retailers if we can achieve this balanced outcome. Regardless of which set of measures MBIE seeks to progress, we advise that the net effect should be a simple and light-handed regulatory approach in the first instance, which when coupled with the forthcoming introduction of a CDR regime and careful monitoring to ensure BNPL is being used as intended and not working to further disadvantage our most vulnerable people, should see a balanced and sustainable outcome achieved.

We hope that this short submission is helpful as MBIE assesses the way forward on BNPL for New Zealand and we are more than happy to further any of its contents further, if helpful. We are also comfortable for this submission to be published as is proposed and congratulate MBIE and the New Zealand Government on their commitment to transparency in public policy formation.

Yours sincerely



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