

# Submission on Buy Now Pay Later: Draft Credit Contracts and Consumer Finance Amendment Regulations 2022

## Your name and organisation

<b>Name</b>	Brent Hollows
<b>Organisation (if applicable)</b>	

## Responses

1	Do you have any comments on the definition of BNPL? Are there contracts that should be caught, but are not? Are there contracts that shouldn't be caught, but are?
	No comments.
2	Do you have any comment on the proposed threshold of \$600? Should the threshold be higher than \$600? Lower? Why?
	Lower, the threshold should be \$zero. It should be a level playing field with other credit providers. Moreover, BNPL can be used for food purchases which implies financial hardship.
3	What do you consider the financial impact of a \$600 threshold would be?
	It depends on if the threshold is \$600 per BNPL provider or \$600 in total between all BNPL providers and if so why shouldn't the same threshold apply to Credit Card lending? If you structure it right you can pay off your credit card within 55 days and not be charged interest. A borrower, for example, could apply with four BNPL providers and end up with limits totalling \$2,400. This is another reason why the threshold should be \$zero. For some consumers \$2,400 would not be a problem however for some consumers \$600 would be a problem and therefore it defies logic to carte blanche set an amount because each consumer's financial situation is different.
4	Aside from the dollar amount, do you have any comments on how the threshold is drafted in regulations 18l(1) and 18l(2), or the exemption condition requiring comprehensive credit reporting is drafted in regulations 18l(3)(a) and 18l(3)(b)?
	18l (3) Obtaining a comprehensive credit report by itself which could show an appalling credit history would comply with the proposed Regulations by itself and therefore the BNPL provider could approve a \$600 limit without impunity and comply with the regulations without any further enquiries being made. This loop hole allows for a possibility that irresponsible lending could occur resulting in financial hardship. Another reason why the threshold should be \$zero.

5	Should regulations 4AC–4AN apply to BNPL? Why, or why not?
	Yes, in the interests of a level playing field and more so to protect consumers. A consumer getting just a \$600 limit is probably a higher risk than a consumer getting a \$2,000 limit. The mooted threshold protection is therefore aimed at the higher level limits where the default risk is likely to be less or the higher limit would not have been approved. Regulations 4A-4AN are an integral part of the responsible lending framework and are a steadfast mechanism for minimising a borrower getting into financial hardship. Not using 4AC-4AN would be akin to throwing out the baby with the bath water. Basically, BNPL is pay day lending without interest but really there is a quasi-interest (called a discount/commission payable by the retailer to the BNPL provider) loaded into the retailers selling price for goods to cover the discount/commission that the retailers pay to the BNPL providers meaning cash purchasers are subsidising consumers that purchase through a BNPL product. This doesn't seem ethical or fair. Without BNPL lending, prices for goods would be cheaper for consumers. The short term nature of BNPL products is more likely to cause financial hardship than longer term credit products. Escalation can occur in traditional lending products and 4AC-4AN takes account of this. BNPL products do not have interest but the default fees can lead to escalation. These are my reasons demonstrating that 4AC-4AN should apply to all BNPL lending.
6	What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?
	The impact would be the same as for other traditional lenders when they had to comply with 4AC-4AN, viz; less people getting BNPL less often.
7	If regulations 4AC–4AN do not apply to BNPL, what guidance (if any) should be given to BNPL lenders through the Responsible Lending Code about compliance with section 9C(3)(a)(ii) of the CCCFA?
	4AC-4AN should apply. There is no valid reason given as to why 4AC-4AN should not apply. A \$600 BNPL limit given to the wrong person can cause financial hardship.
8	Do you have any comments on the drafting of regulations 18(3)(c)?
	What about including Continuing Disclosure and how often this should be made? There should also be a requirement to send Financial Mentoring Disclosure as per Section 26 B of the CCCFA and as per Regulation 5A.
9	Are there other CCCFA requirements that should be adjusted or exempted for BNPL? If so, what would the impact be of applying current CCCFA requirements? What would the benefits be of adjusting or exempting from them?
	No exemptions. The impacts would be no more than those faced by other lenders.
10	Do you have any other comments or suggestions for the drafting of the regulations?
	No comments.
11	Do you have any comments on when the regulations should commence? Please provide reasons for your answer.
	No comments.

## Other comments

Year by year I see a trend of the same borrowers paying a larger amount on BNPL products and these clients weekly budget surplus is decreasing year by year. They usually have multiple BNPL providers. They tell me that BNPL are very easy to get and were surprised they were approved. They tell me nothing was done to check if they could afford to make the payments. BNPL seems to be a sales driven culture by the retailers. It would be unfair if BNPL providers can lend without having to meet the same requirements as other lenders. This raises the point will all lenders be given an exemption to lend \$600? I have had numerous clients describe BNPL as a mouse on a wheel very hard to get off and a substitute for pay day lenders which are no longer abundant. Clients are usually quite horrified and unaware of the weekly amount when I tell them how much of their weekly income is being used for BNPL. All 9C should apply not just 9C (3) (a) (ii) otherwise it seems that BNPL lending is only partially responsible lending or why are other lenders having to comply with all of 9C?

How often should assessment of affordability be performed? Every purchase or reviewed annually? It seems the proposed Regulations are only wrapped around the initial limit approval.

Internet articles report that BNPL providers are experiencing horrendous losses due to consumers not paying their BNPL lending. This could suggest irresponsible lending or it could be because the product purchased cannot be repossessed or because they are not in a financial position to pay without financial hardship.

Why take off the guard rails at a lower amount which by the way is an amount vulnerable borrowers would be more likely to have approved by BNPL providers. Probably after having been turned down for a loan with another lender. I have turned down loans only to find out that this has happened.

The whole BNPL business model philosophy has 2 prongs to it and BNPL only makes decent money based on: 1) huge sales volumes therefore creating a sales culture and thus profit is motivated by sales volume which is not in synch with a responsible lending risk assessment culture and 2) default fees which is also not in synch with a responsible lending culture. This is another reason to set the threshold limit at \$zero.

BNPL requires a regular payment commitment and that regular payment commitment could be the same as a traditional loan product therefore the risk of financial hardship would be the same whatever the product. Another reason why the threshold limit should be \$zero.