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## INTRODUCTION

This submission on the draft Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022 (the **BNPL Regulations**) is made by Laybuy, Zip, and Afterpay. Together we make up approximately 90% of the Buy Now Pay Later (**BNPL**) industry in New Zealand. We have each actively participated, individually and as a group, in the consultations leading up to the publication of the BNPL Regulations. As a sector, we have always supported regulation that will ensure good consumer outcomes.

The best consumer outcomes will result from regulation that:

- a) is fit-for-purpose and reflects how BNPL products actually work compared to traditional credit;
- b) addresses specific consumer harms through strong consumer safeguards and protections;
- c) is supported by evidence and robust data;
- d) enables innovation and competition in the market for the benefit of consumers and businesses;
- e) promotes financial inclusion and access to low-cost and low-risk credit;
- f) enables new technology and digital-only businesses and processes; and
- g) ensures that any compliance burden is proportionate to the associated risks so that it does not unnecessarily hamper innovation and competition.

The intention of our submission is to achieve these objectives through the design and implementation of a BNPL regulatory framework that is adaptable and sustainable in the long-term. Taking the time to get this right will ultimately better support nearly one million consumers (with a strong focus on those who are vulnerable or facing financial hardship) and the tens of thousands of businesses we support each day.

Our submission provides New Zealand-specific as well as global insights from our experiences working with governments, regulators, consumer advocates and other policy makers on regulatory design. We want to continue working with the Government and the Ministry of Business, Innovation and Employment (**MBIE**) to achieve the best long-term outcomes for our customers – giving them choice, confidence, and the capacity to support their financial wellbeing and achieve their financial goals.

It was acknowledged in the Cabinet Paper from the Minister of Commerce and Consumer Affairs proposing the BNPL Regulations (**BNPL Cabinet Paper**) that BNPL benefits consumers, businesses, and the broader economy. It follows that a proportionate approach needs to be taken to ensure New Zealand



does not sacrifice these meaningful benefits. Based on the current proposal, we are concerned that the right balance has not been struck.

In order to advance an approach that will benefit consumers, there is value in forming a working group with members of MBIE, the industry, and financial mentors to progress this. The aim of the working group would be to ensure the regulation is targeted at customer harm without having a negative impact on financial inclusion and the wider economic benefits BNPL provides, particularly to smaller retailers.

While it is our preference that a working group be established to work through these issues, we provide the following submission to provide some detail around why we consider this to be necessary.

We would also like to assure MBIE that we have taken the risk of customer detriment very seriously. The industry has moved quickly to address these challenges, including the issue of consumers obtaining multiple BNPL accounts when they may be in financial hardship. As an industry, we have begun rolling out PayWatch, a solution that provides individual BNPL providers oversight of a customer's BNPL arrears profile. This is a world-first initiative and one that directly addresses the risk of multiple BNPL accounts for those in financial difficulty, without undermining the positive features of BNPL products.

As an industry, we strongly support regulation that focuses on generating strong consumer outcomes and that enables innovation and initiatives like PayWatch, which represents significant strides for an emerging and nascent sector. It is important to ensure that the time is taken to design the right regulatory framework. Moving ahead with a compromised approach will ultimately harm consumers, negatively impact innovation and competition, and damage the economy.

We also recommend that MBIE takes steps to align its regulatory consultation with the Australian Treasury's review of BNPL regulation. The Australian Government is seeking to introduce tailored legislation into Parliament by the end of 2023, which we believe is a reasonable timeframe. We also believe that there are significant benefits from collaborating and aligning our approach with Australia.

## **OVERVIEW**

As a first principle, we are concerned with the Government's approach to introduce regulation to the BNPL sector. The Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) is designed to protect consumers from risks relating to the cost of borrowing and the enforcement of security over consumer goods. Its provisions were drafted in contemplation of credit contracts of large sums that would be repaid over years and accrue interest and fees, rather than low value loans which are designed to be fee and interest free for the consumer over a period of weeks. As a result, we have identified numerous provisions that we believe do not work when applied to BNPL contracts, and there is a high risk of unintended consequences (which we will address later in this paper).

We believe further consideration needs to be given to adapting the CCCFA so that it is both effective in protecting BNPL consumers and proportionate to the risks to those consumers.

## KEY POINTS

The key points made in this submission are:

### *Proposed BNPL Regulations*

1. **No other party covered by the CCCFA is required to participate in comprehensive credit reporting.** Instead of forcing innovative BNPL companies to participate in a credit reporting system that was designed before BNPL products existed, our view is that mechanisms such as open banking and industry-specific initiatives like PayWatch can provide a more holistic picture of a customer, and ensure that consumers are not unfairly excluded from safe forms of unsecured credit.
2. A principles-based obligation to make **reasonable inquiries into affordability** should be implemented, along with guidance for BNPL contracts to ensure a proportionate approach to these inquiries, rather than requiring credit checks, reporting and additional disclosure as a substitute for those inquiries.
3. **The proposed threshold** of \$600 should be raised to \$1,000. This is because hardship is generally easy to address at this level, and this level is easier for consumers to understand. Below this threshold, inquiries should be targeted at the key indicators of repayment difficulties – loan stacking and arrears on other BNPL contracts.
4. **Suitability assessments** should not apply to BNPL contracts, especially if the contract is not a revolving credit contract, as this would require an assessment to be undertaken with each purchase. In practice it will achieve nothing – even if it is only done at the outset when the facility is established. Instead, a principles-based obligation to make reasonable inquiries into affordability would be sufficient.
5. **Responsible lending principles** under the CCCFA are too prescriptive and need significant modification to address the low-value, low-risk, and largely automated processes used by BNPL providers.
6. **The disclosure requirements** under the CCCFA do not work for short-term non-interest bearing contracts like BNPL – nor do the remedies for failure to disclose.
7. **The hardship provisions** in the CCCFA are not fit for purpose for BNPL, in particular given that in most cases the contract with the customer would be complete before the BNPL provider is required under the hardship provision in the CCCFA to respond. We have existing hardship measures in place that provide flexibility depending on the customer's specific circumstances. Therefore, hardship is better dealt with via regulatory guidance or voluntary codes of conduct.

### *The proposed use of regulations*

1. The CCCFA should be amended through an amendment Act rather than regulations, as it was not designed, nor is it suitable in its current form, to regulate BNPL products.
2. Coordination should be conducted with the Australian Treasury's review of BNPL in relation to its consumer credit regime. The Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on the Coordination of Business Law sets out principles to guide coordination efforts in relation to the advancement of a trans-Tasman single economic market.



3. There is a significant disconnect between the content of the BNPL Cabinet Paper and the proposed draft BNPL Regulations.
4. The BNPL Regulations in substance introduce new obligations into the CCCFA. This is outside of the scope of matters that should rightly be introduced in secondary legislation.

In Appendix 1, we set out in detail the provisions of the CCCFA that need to be modified when applied to BNPL contracts to ensure they are proportionate and effective at addressing risks to consumers.

*Next steps*

A working group with members of MBIE, the industry, and financial mentors should be established to work through a solution.



## SPECIFIC CONCERNS WITH BNPL PROPOSED REGULATIONS

### CONCERN 1 – AMOUNT OF PRESCRIBED THRESHOLD

We believe that the proposed \$600 per customer threshold for reduced obligations is too low. Our products are low risk – they are simple and easily understood, and costs of borrowing are limited to default fees that are capped, so there is no risk of escalating debt.

Any scalable threshold must balance the need for consumers to access safe, low-value and low-risk credit products against the risks to consumers that BNPL products present. There is limited evidence of consumer detriment caused by BNPL and the potential for consumer harm is limited. We are of the opinion that any consumer detriment experienced is mitigated by the consumer protections that each credit provider has instilled into its products. These include pausing accounts at the first sign of non-repayment and requiring the first instalment is paid upfront in most instances. We also provide generous and accessible hardship policies to mitigate the consumer harm that affordability assessments are designed to address. Consumers can reschedule their payment dates to a more suitable date, and we refer customers to the relevant financial mentors and budgeting agencies that can provide guidance to customers with debt problems.

We believe a \$1,000 threshold is more appropriate both in terms of promoting financial inclusion and ensuring that consumers are not exposed to a high risk of potential harm. Financial inclusion is achieved when consumers have access to safe and low-cost forms of credit. In addition to balancing financial access with the low risks of BNPL, determining a threshold must also acknowledge the substantial consumer and business benefits our products provide. These are significant, including helping close to a million New Zealand consumers save interest and fee costs (relative to credit cards), and benefits from delaying payment and allowing for more effective budgeting.

We also support tens of thousands of businesses to generate new revenue, reduce fraud risk, and decrease operating costs. The *Economic Impact of BNPL in Australia* report published by the Australian Finance Industry Association shows that small businesses gain the greatest benefit from BNPL, which is important in the current economic climate. We believe that the New Zealand market is likely to be very similar to Australia's and setting the threshold too low will adversely impact struggling small businesses.

### CONCERN 2 – DEFINITION OF BNPL CONTRACT

The definition of "BNPL contract" in the BNPL Regulations accurately describes BNPL arrangements, but will result in the CCCFA requirements applying to BNPL providers in a broader range of circumstances than other consumer credit contracts. The BNPL contract definition is not limited to contracts where the credit is to be used wholly or predominantly for personal, domestic or household purposes. We believe the BNPL contracts should be limited in scope in the same way as other consumer credit contracts.

MBIE will also need to consider the different ways our products could be structured to ensure that regulation is applied consistently to all BNPL contracts. The BNPL Regulations and the accompanying consultation paper seem to have assumed that all BNPL contracts are structured as revolving credit facilities, but this is not always the case.

Examples of ways that structuring could affect the application of the CCCFA include:

- a) if the customer account is not structured as a revolving credit facility (which is the case for some BNPL products), the requirements to make reasonable inquiries and disclosures before entering the contract will be very challenging, but there will be minimal ongoing disclosure requirements; and
- b) if the product is structured as a credit sale it would be designated as a consumer credit contract, only to be exempted from the regime under section 15(1)(a), as pointed out in the Commerce Commission Submission.

MBIE will need to work through exactly how it wants obligations in the CCCFA to apply to BNPL products and then ensure they are applied consistently regardless of product structure. This will likely require legislative change as this will not be possible by simply designating a BNPL contract to be a consumer credit contract.

### **CONCERN 3 – AFFORDABILITY ASSESSMENT**

The BNPL Regulations propose an alternative to affordability assessments for BNPL contracts. We understand that it is intended to be a proportionate alternative to the current requirements, in recognition that the full affordability assessment would be unworkable for our sector. The proposal is split into separate approaches for BNPL contracts above and below the prescribed threshold.

#### *BNPL contracts under the prescribed threshold*

For BNPL contracts of less than the prescribed threshold the BNPL regulations propose to "exempt" providers from the obligation to make "reasonable inquiries", on the condition that the provider:

- undertakes a comprehensive credit check on the customer;
- participates in comprehensive credit reporting; and
- complies with additional disclosure requirements.

We understand that this is intended to be a proportionate alternative to the current requirements, in recognition that the full affordability assessment would be unworkable for our sector. In our view the conditions of this exemption mean that this is not a proportionate approach, and it introduces new requirements (rather than reduced requirements), which is inconsistent with the Legislation Guidelines on what can be addressed in secondary legislation.

#### *BNPL contracts above the prescribed threshold*

The BNPL Regulations propose that any BNPL contracts of more than the prescribed threshold are subject to the principle-based obligation to make reasonable inquiries about affordability but not the prescriptive affordability assessment process set out in the Credit Contract and Consumer Finance Regulations 2004 (**CCCF Regulations**). Our preference would be to adopt the principle-based approach for all affordability assessments for BNPL contracts, and for guidance on how this applies *proportionately* to contracts above and below the threshold to be included in the Responsible Lending Code (**RLC**).

### **CONCERN 4 – MANDATORY CREDIT CHECKS AND REPORTING**

Whilst some BNPL providers voluntarily participate in credit reporting, we do not agree that this should be made mandatory. We do not believe it is appropriate to mandate the use of a private credit business when



this market is evolving and there are, or soon will be, better tools for BNPL to assess likelihood of repayment difficulties, such as PayWatch and open banking. PayWatch has been developed by the New Zealand BNPL industry and credit bureau Centrix to provide meaningful, real-time and targeted credit information.

Mandatory credit reporting can also have adverse effects on financial inclusion and would be a significant burden on our sector (and no other sectors). Ultimately, we do not think it is appropriate to introduce these requirements.

We recommend you apply the obligation to make reasonable inquiries and provide guidance in the RLC on what a proportionate approach could be for BNPL contracts below a \$1,000 threshold. This would create a more flexible approach that could be better targeted to risks of customer harm and adapt with the new and evolving market. We also believe this approach would create better regulatory certainty. The proposed BNPL Regulations exempt our sector from the obligation to make reasonable inquiries into affordability of a loan if we obtain a credit check (and meet other conditions). However, BNPL providers would still be subject to the obligation to exercise care, diligence and skill. This would likely require a BNPL provider to go beyond simply obtaining the credit check. For example, it might need to consider the results and whether there are any circumstances that require further action before providing credit. This is another example of where greater clarity is needed on how the responsible lending principles would relate to BNPL products.

## THE PROPOSED USE OF SECONDARY LEGISLATION

Following our specific feedback on the proposed BNPL Regulations, we would like to also provide some feedback on our more general concerns relating to:

- a) using secondary legislation to deal with matters of significant policy that should properly go through the Parliamentary process; and
- b) how many provisions in the CCCFA are unsuitable to regulate short-term credit with no interest or credit fees and will therefore be dead-weight regulation with no benefit to consumers.

### CONCERN 1 – THE USE OF SECONDARY LEGISLATION

The Legislation Guidelines (2021 Edition) published by the Legislation Design and Advisory Committee state that the following matters should be addressed in primary legislation that is subject to the Parliamentary process:

- a) "matters of significant policy" (such as applying a very onerous regime to an entirely new industry and introducing new requirements that could impact whole industries and financial inclusion); and
- b) "the creation of serious criminal offences and significant penalties" (of which there are many in the CCCFA that will now be applied to the BNPL sector).

When reviewing the detail of the CCCFA, it is clear that the provisions were not drafted to apply to credit contracts with characteristics of BNPL products. While it may be determined that it is the appropriate legislation to regulate BNPL, this is a matter of policy that should be determined by Parliament. Both the United Kingdom and Australian governments intend to introduce regulation to the BNPL sector through Acts of Parliament after careful consideration of how their respective credit laws need to be tailored.

We understand that there was an indication from Parliament that the application of the CCCFA to BNPL might be considered when the designation power was introduced. However, this was not based on any meaningful consideration of whether the CCCFA was fit-for-purpose. There is a significant level of tailoring that will be required to make sure it effectively addresses the risk of consumer harm and required amendments cannot be made through secondary legislation.

The Legislation Guidelines also state that procedural matters (such as conditions to an exemption) should be addressed in primary legislation if they, in effect, set fundamental policy. Mandatory credit checks and credit reporting are significant matters of policy, and are not an appropriate use of the delegated exemption making authority under the CCCFA.

While we do not oppose regulation of our sector, we suggest it is more appropriate that regulation is introduced through primary legislation. If the CCCFA is to be used to regulate BNPL then significant amendments are required to the CCCFA, which can only be done through an amendment Act. This is beyond the scope of delegated authority to make secondary legislation under the CCCFA.

### CONCERN 2 – NON-ALIGNMENT WITH BNPL CABINET PAPER

We are of the view that this approach to develop separate legislation was alluded to in the BNPL Cabinet Paper and expressly suggested by the Commerce Commission (as the regulator of the CCCFA) in its



submission on the discussion document *Buy-Now, Pay-Later – Understanding the triggers of financial hardship and possible options to address them* (**Commerce Commission Submission**).

The BNPL Regulations do not provide a sufficiently targeted or proportionate approach and have not dealt with some of the issues with applying the CCCFA to BNPL that have already been raised with MBIE, such as those raised in the Commerce Commission Submission. The proposal goes well beyond what was contemplated in the BNPL Cabinet Paper, which acknowledged that there were a number of areas in the CCCFA that would likely need modification. There appears to be a significant disconnect between the content of the BNPL Cabinet Paper and the approach that was ultimately put to Cabinet for approval.

### **CONCERN 3 – INTRODUCTION OF NEW OBLIGATIONS IN CCCFA**

We have concerns regarding the mandatory requirement to undertake comprehensive credit reporting, which is not imposed on any other lenders in New Zealand. We do not believe it is appropriate to prescribe a requirement to use and pay private credit reporting agencies through regulations. This is not required of any other party covered by the CCCFA (nor are any other entities in New Zealand required by law to participate in credit reporting).

### **CONCERN 4 – AN ASSESSMENT IS REQUIRED OF EACH OBLIGATION UNDER THE CCCFA**

By designating BNPL contracts as consumer credit contracts, all provisions of the CCCFA and CCCF Regulations that regulate consumer credit contracts will apply. There is a significant amount of work that needs to be done to assess each obligation under the CCCFA regime and ensure that it is applied to the BNPL sector in a way that:

- a) is effective in protecting consumers from harm;
- b) would not cause detriment to consumers; and
- c) does not impose a significant compliance burden without any corresponding benefit.

Some of the examples of matters where the CCCFA will need to be tailored specifically to BNPL contracts include:

- a) **structuring**: the fact that the way our products are structured could significantly alter the way the regime applies to us or whether it applies at all. The BNPL Regulations seem to have assumed that our products are always structured as a revolving credit facility, which is not the case for all of our various products; and
- b) **hardship**: while creating obligations around supporting customers facing hardship is important, the specifics of the hardship application process will be of little use to BNPL customers and certainly much less customer friendly than our current processes.

These are addressed in much more detail in the next section of our submission.

### **CONCERN 5 – THE NEED TO CONSIDER CLOSER ECONOMIC RELATIONS**

Afterpay, Zip, and Laybuy operate in both Australia and New Zealand. As MBIE will be aware, Australia is also undertaking a review of its BNPL regulation. The Memorandum of Understanding Between the



Government of New Zealand and the Government of Australia on the Coordination of Business Law (the **MoU**) sets out principles to guide co-ordination efforts in relation to the advancement of a trans-Tasman single economic market. In particular:

- a) One of the principles outlined in the MoU is that measures should deliver substantively the same regulatory outcomes in both countries in the most efficient manner. We do not believe that there are any differing or enhanced risks faced by New Zealand BNPL consumers, and weight should be given to the Australian regulatory approach to ensure that regulation is efficient. We believe there is value in a more comprehensive review of the CCCFA for BNPL being done alongside the Australian review.
- b) By way of example, more onerous obligations on BNPL providers in relation to mandatory credit reporting will likely result in New Zealand regulation falling out of step with Australia, as none of the three options proposed by the Australian Treasury in their Options Paper released in November 2022 introduce mandatory credit reporting. The Options Paper does, however, contemplate that the review into Australia's credit reporting framework due to be completed by 1 October 2024 could consider how BNPL providers can better report the credit information of BNPL consumers. We think this is the right approach, considering the costs and benefits of a credit reporting framework as a whole.

#### **OUR RECOMMENDATION**

Given the concerns we have raised above, we recommend a working group be formed with MBIE and other stakeholders like retailers and financial mentors to make sure the CCCFA is appropriately tailored for BNPL and ideally aligned with Australia to the extent appropriate. This will take time and will also require a reasonable transition period to enable compliance.



## CCCFA PROVISIONS THAT REQUIRE MODIFICATIONS

Whilst our strong view is for separate legislation, Appendix 1 of our submission sets out our views and concerns relating to the existing CCCFA obligations that would be applied to us if we were designated consumer credit contracts, and highlights the work required to make the Act fit for purpose.



## CONCLUSION AND NEXT STEPS

There remains a significant amount of work to be done if New Zealand is to introduce regulation of BNPL products in a manner that best serves consumers and the New Zealand economy. We strongly encourage MBIE to review each of the provisions in the CCCFA, and consider whether they need to be adapted when applied to BNPL providers, to ensure the regulation does not leave New Zealanders worse-off. This should be done in consultation with key stakeholders, and we would be willing to invest our time in setting up a working group to achieve this in a timely and efficient manner.

We also strongly encourage MBIE to align a review of the CCCFA with the review currently taking place in Australia on applying its consumer credit legislation to BNPL. All submitters operate in the Australian market and are actively involved in the Australian review. As part of a working group, we could provide valuable insights from developments in Australia.

Finally, the regulation of the BNPL sector should be introduced through primary legislation. This will be necessary in order to achieve a targeted and proportionate approach which require significant modifications to the CCCFA. We believe that there are significant matters of policy involved in the proposed regulation that should rightly be subject to the scrutiny of the Parliamentary process. If aligned with the Australian review, new legislation could be introduced into Parliament by the end of the year.



## APPENDIX 1 – CCCFA PROVISIONS THAT REQUIRE MODIFICATIONS

As indicated in our submission, this Appendix sets out our views and concerns relating to the existing CCCFA obligations that would be applied to us if we were designated consumer credit contracts, and highlights the work required to make the Act fit for purpose.

### RESPONSIBLE LENDING PRINCIPLES GENERALLY

With the exception of suitability assessments, and the principles relating to guarantors (which are not relevant to our product), we believe the current lender responsibility principles in the CCCFA could largely be fit for purpose.

Our major concern with applying the principles is that the CCCF Regulations and RLC which expand on these principles were not designed for BNPL contracts. As a result, the related CCCF Regulations will not be fit for purpose and the RLC sets a very high standard for any consumer credit contract, let alone a simple, low value contract with no cost of borrowing.

CCCFA	CCCFA approach	Issue
<b>Lender Responsibility</b> s 9A to 9L	The RLC provides a safe harbour in respect of the responsible lending principles, which will be important given the significant consequences of non-compliance with the CCCFA. The current RLC was drafted to apply to long-term credit contracts with interest and significant credit fees. These standards in the RLC are very high, with even the large banks finding it difficult to comply with them. They are clearly not standards that are proportionate to the risks posed by simple, low value contracts with no interest or credit fees.	<p>BNPL providers should have the same benefit of an appropriate safe harbour as other lenders regulated by the CCCFA. This means drafting standards with BNPL contracts in mind and consulting with affected parties before implementation. This could be drafted in an addendum to the RLC (as suggested by the Commerce Commission in its submission).</p> <p>Examples of where the current RLC will conflict with our models include the application of the principles of exercising care, skill and diligence, and to support borrowers to make informed decisions. These principles in their expanded form in the RLC require lenders to take a customer's specific circumstances into account in considerable detail. This makes the provision of online services and, more specifically, automation very challenging particularly when providing small amounts of credit. A proportionate approach could include, for example, complying with fit-for-purpose disclosure requirements and providing easy access to customer support</p>



CCCFA	CCCFA approach	Issue
		<p>if it is required (rather than a requirement to actively identify vulnerable customers and consider individual circumstances).</p> <p>Provisions relating to advertising (which must comply with standards in the CCCF Regulations) set out prescriptive requirements around interest rates and credit fees which simply do not apply to BNPL products. The standards also prohibit phrases like "instant approval" and regulates any reference to speed of approval, which may cause difficulties for BNPL products that operate as a means of payment that are often approved at the point of purchase.</p>

We suggest that the regulations relating to the responsible lending principles should be disapplied. This would include the regulations relating to affordability assessments, suitability assessments, and advertising.

BNPL lenders have previously developed a voluntary code of practice. We attach this as Appendix 3 as we believe it provides a good working draft of what an addendum to the RLC for BNPL contracts could provide.

**SUITABILITY ASSESSMENT**

The obligations to undertake suitability assessments should not apply to BNPL contracts. If the BNPL contract is not a revolving credit contract, then the assessment must be undertaken with each purchase. This would simply be unworkable, especially given the Commerce Commission's view that suitability assessment should not be automated. If a suitability assessment only needs to be made when the customer opens an account with a BNPL provider, then it may be workable, but largely symbolic. We would need to make inquiries into what the customer intends to use the BNPL facility for, but they are unlikely to **have seriously considered this when opening an account (which is usually at the point of purchase) and could use it with any merchant that accepts BNPL.**

CCCFA	CCCFA approach	Issue
<p><b>Suitability</b> s 9C(3)(a)</p>	<p>Currently under section 9C(3)(a)(ii) of the CCCFA lenders must make reasonable inquiries before increasing a credit limit, so as to be satisfied that</p>	<p>Robust processes are already in place to only offer customers credit limit increases based on prior positive repayment behaviour. Given this, we suggest that</p>



s 9C(3)(b)(i)	the credit provided under the agreement will meet the borrower's requirements and objectives.	prescriptive suitability assessments for credit limit increases of existing customers is not required.  BNPL is only used as a deferred payment mechanism for goods and services. There have been no concerns raised relating to the suitability of BNPL products (eg relating to add-ons or excessively long terms increasing the cost of borrowing).
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## DISCLOSURE

The existing disclosure regime in the CCCFA is not fit for purpose for BNPL contracts. The fact that declaration of BNPL contracts as consumer credit contracts would impose that regime on BNPL contracts is another indication that the CCCFA is not an appropriate regime to manage the risks of customer harm from BNPL contracts.

As noted above, we do not support new disclosure obligations being introduced through secondary legislation as a condition of an exemption. We consider that this approach is procedurally inappropriate as it is inconsistent with the Legislation Guidelines. Any new disclosure requirements must be introduced through legislation.

While our products will seem very similar to consumers, the application of the existing disclosure requirements will be highly dependent on how the BNPL contract is structured. In the table below we set out a comparison of the key disclosure requirements where:

- a) each purchase gives rise to a new contract; and
- b) a customer account is structured as a revolving credit facility.

CCCFA	New contract for each purchase	Revolving credit facility	Issues
<b>Initial disclosure</b>  s 3(3)(b)  s 17	Must be made prior to each purchase.	Only needs to be made when opening an account with the BNPL provider, at which point information about repayment amounts and dates is not known (other than maybe the initial purchase).	Clarification is needed where BNPL is and is not a revolving credit contract. A definition is needed.  None of the purposes set out in the CCCFA (s 3(3)(b)) are relevant to BNPL and so would need updating.



CCCFA	New contract for each purchase	Revolving credit facility	Issues
s 99(1A) Schedule 1			<p>The remedy for non-disclosure (no ability to recover costs of borrowing) doesn't apply to BNPL.</p> <p>The disclosure requirements are not suited to BNPL and a separate set of BNPL disclosure requirements need to be developed. Much of the prescribed content (Schedule 1), which is information about interest, minimum payments, costs of borrowing and security interests, is not relevant or applicable to BNPL and using either model form disclosure statement (with significant elements left blank or not applicable) will only confuse customers.</p>
<b>Variation disclosure</b> s 3(3)(b) s 22 s 23 s 99(1A)	<p>Would likely not apply other than for variations to provide repayment relief.</p> <p>Provides no value for short term contracts of 6/8 weeks duration where everything is agreed and there are no borrowing costs.</p>	<p>Must be made when credit limits are increased or decreased (as well as any other changes over the life of the account).</p>	<p>All of the issues for initial disclosure apply – even more acutely given how short the contracts are and that no interest or fees (other than late fees) are charged.</p>
<b>Continuing disclosure</b> s 3(3)(b) ss 18-21	<p>Would generally not apply as contracts do not last 6 months.</p>	<p>Must be made every 45 working days until the account is terminated. We note that this period is longer than the duration of</p>	<p>Clarification needed that it doesn't apply to a series of individual contracts.</p>





CCCFA	New contract for each purchase	Revolving credit facility	Issues
s 99(1A)		repayments for a purchase made using BNPL.	Likely of no value to consumers for revolving facilities. To the extent it is to be required it needs to be tailored to BNPL.

The existing disclosure regime is not suited to the information needs of BNPL customers in any of the scenarios above. This and other mismatches described in the submission below suggest to us that stand alone legislation or at least legislative change to the CCCFA is required to make the regulation both targeted at, and proportionate to, the risk of customer harm for BNPL products.

In addition to the content and timing of disclosures, the method of disclosures, particularly initial disclosure, needs to be considered in the context of an online product where credit is advanced at the point of purchase. In this context, a customer would be much better served by tailored disclosures made immediately following purchase. BNPL is not like a loan where disclosure before first drawdown is an effective option.

The current CCCFA disclosure regime will impose a significant burden on BNPL providers, with likely no benefit to consumers. In fact, we suspect these disclosures will confuse and frustrate our customers rather than be something that helps with decision-making. These requirements should be disapplied and replaced with new fit-for-purpose disclosure requirements, which will require legislative change.

We suggest that the responsible lending principles could be relied upon, specifically the obligation to support customers to make informed decisions. This could be supplemented with guidance in the RLC about how disclosures can be made to mitigate risks identified with BNPL products.

**HARDSHIP**

Customers encountering repayment difficulties is one of the potential risks identified for customers using BNPL products. This is a risk that we strongly agree should be addressed, and have in fact taken steps to better understand this risk and to support our customers. We support regulation that provides protection to consumers who are experiencing financial difficulties.

However, we believe that applying the hardship provision in the CCCFA would actually be detrimental to our customers and would never be used. Therefore, it would create a compliance burden on us with no corresponding benefits. Below we set out a comparison of the CCCFA hardship process and our approach to supporting customers experiencing hardship.



CCCFA	CCCFA process	Our process	Issues
<p><b>Eligibility</b></p> <p>s 3(3)(d)</p> <p>s 55(i)</p> <p>s 55(1B)</p> <p>s 57</p>	<p>Customer is having repayment difficulties that result from a specified form of hardship that could not have been foreseen when entering into the contract.</p> <p>The customer cannot already be in default when making an application for relief.</p>	<p>Customer is having repayment difficulties.</p> <p>However, given the very short-term nature of BNPL arrangements, it will be rare if this arises from a change in circumstances and we do not require our customers to prove this.</p>	<p>The purpose section of the CCCFA refers to <i>unforeseen</i> hardship only, which is much less likely in a six-week contract. It probably needs review.</p> <p>The current eligibility requirements for hardship relief under s 55 will, if relied upon, reduce BNPL customers' access to relief. BNPL providers will generally always consider adjusting repayments to help customers.</p> <p>If a BNPL contract is a revolving credit facility the restriction on not making a second application within 4 months may be too restrictive.</p> <p>The exclusion of the right to make a hardship application in s 57 needs modification to deal with 6–8-week contracts with 4-6 payments only, if it is to be useful for BNPL customers.</p>
<p><b>Process</b></p> <p>s 3(3)(d)</p> <p>s 55(1A)</p> <p>s 57A</p>	<p>Customer must make a written application.</p> <p>Lender must acknowledge receipt of written application within 5 business days.</p> <p>Lender must inform the customer of the outcome within 20 working days of the application or of</p>	<p>The customer contacts us and we promptly discuss their circumstances and how we can support them.</p> <p><i>For example, one provider commits to resolving a customer's financial hardship request within 5 days.</i></p>	<p>Requiring applications to be in writing may be too cumbersome for customers and, in general, BNPL providers do not need to know the cause of hardship. The timeframes in s 57A are too long to be useful for our customers (in 20 working days our contracts or repayment schedules will mostly have expired).</p>



CCCFA	CCCFA process	Our process	Issues
	receiving additional information if requested.		
<b>Outcome</b> s 3(3)(d) s 56	There is no obligation to provide repayment relief, but the lender must act ethically.  Only specific variations to the contract can be made (eg deferring payments, reducing the amount of each payment).	We have flexibility to agree any type of repayment schedule that works for the customer (and there is no potential for a variation to the repayment schedule to be detrimental to the customer because we do not charge interest or credit fees).  Arrangements can be made informally to minimise the burden on customers.	The reference in s 56 to changes in interest do not apply to BNPL. A less prescriptive approach would be of greater benefit to BNPL customers.
<b>Consequences</b>	Hardship application shows up on a customer's credit reports, making it difficult for them to access credit in the future.	We may reduce the customer's credit limit and/or suspend further lending.	It is unfair for consumers to be unduly punished by registering hardship applications with credit agencies for often small BNPL purchases. In practice it would be easier and better to simply disapply the hardship provisions.

As demonstrated above, the statutory hardship process is simply not fit-for-purpose for BNPL contracts. The time frames mean that in most cases the contract (or repayments for a specific purchase) would be completed before we are required to respond, and the process may have the consequence of restricting consumer's access to credit in the future.

As noted by the Commerce Commission in their submission, for BNPL contracts, a more appropriate approach would be to apply the responsible lending principles (in particular, the obligations to treat borrowers ethically) to BNPL providers and provide fit-for-purpose guidance in the RLC on how to manage customers experiencing hardship. In essence, BNPL could be required to respond to any hardship issues raised by a customer promptly, ethically, and in good faith.



## RIGHT TO CANCEL

The 'right to cancel' provisions (or at least disclosure of the right to cancel) should be disapplied for BNPL contracts.

CCCFA	CCCFA process	Issues
ss 27-31	The right to cancel allows consumers to cancel a consumer credit contract by repaying any advances, and only allows the lender to charge interest or fees that accrued during that period.	<p>This right to cancel is irrelevant in the context of a BNPL contract where customers can end their contracts at any time by repaying money owed without incurring any prepayment fees. By definition, we charge no interest or credit fees, so the limitations on what we can claim are irrelevant. We have no incentives in preventing a customer repaying the credit in full at any time.</p> <p>While we will be able to comply with the provisions relating to the right to cancel, we think this is confusing and potentially misleading for our customers, especially as we would be required to disclose the statutory right to cancel in our initial disclosure statements (if initial disclosure statements end up being required).</p>

## FEES

BNPL providers only charge fees on default. We agree in principle that these fees should be reasonable, but believe there are much more practical ways of achieving this. The prescriptive approach in the CCCFA does not work for BNPL.

CCCFA	CCCFA process	Issues
s 41 s 41A s 44A s 44B s 45	The CCCFA requires that fees are a reasonable estimate of the creditor's costs or losses actually incurred in connection with the contract, and that this requirement creates significant compliance costs. Lenders must undertake detailed cost analyses (usually by engaging an accounting firm) to create	Given the limited circumstances in which we charge fees, and the fact that our business models are not based on generating income from borrowers, we believe there are more proportionate approaches to protecting consumer interests. This could include, for example, capping default fees (which is the approach adopted in Australia). We note that Afterpay, Laybuy, and Zip already cap default fees under each of our respective terms and conditions. This



CCCFA	CCCFA process	Issues
	accurate records of how fees relate to a specific contract.	alternative approach to regulating fees for BNPL products will require legislative change.

**PROPORTIONALITY GENERALLY**

In addition to the matters above, we believe that if MBIE is going to take a genuinely proportionate approach, it needs to review each provision of the CCCFA and determine whether, based on the nature and level of risk posed by BNPL products, it is proportionate to impose the obligation on the BNPL sector.

CCCFA	CCCFA Approach	Issues
<b>Duties of Directors and Senior Managers</b> s 59B	Requires directors and senior managers to undertake due diligence on procedures that are tailored to interest bearing loans, and comply with all of the provisions CCCFA and CCCF Regulations.	While generally workable it needs to be clear that it is only the relevant parts of the CCCFA that are covered, and that in assessing the standard of care that the nature of the product and its features should be a consideration – not just the nature of the credit.
<b>Fit and Proper Certification</b> s 131A to 131Q	Currently this prohibits being a creditor under a consumer credit contract without certification.	Currently, a BNPL contract is not a consumer credit contract so does not need certification. As the definition in the BNPL Regulations will capture the BNPL contracts as consumer credit contracts, transition provisions or temporary certification will be required given the time we understand certification can take.
<b>Annual Returns</b> s116AAA	Every creditor under a credit contract must provide an annual return to the Commerce Commission.	MBIE should consider whether the information that must be reported is proportionate in the context of BNPL providers.

The cumulative compliance cost of the obligations in the CCCFA are significant. The recognition that we need to take a proportionate approach to affordability assessments is a good start. However, we do not think that the proposed declaration and draft BNPL Regulations amount to taking a proportionate approach, especially when the proportionate approach is conditional on complying with new obligations.



## **TRANSITION**

As noted in the consultation paper, the introduction of the new regime will require an appropriate transitional period. The time we will require to implement the changes depends to a large extent on the scope of the changes.

If MBIE determined that it would only apply the responsible lending principles to the sector with proportionate guidance in the RLC, we may be able to implement the necessary internal processes and procedures within 12 months. A more extensive regime may require a longer transition period of up to 18 months.

MBIE will also need to consider certain obligations that require involvement from other parties, such as the certification process. If applied to BNPL providers, it may be appropriate to grant all BNPL providers who have applied for certification a transitional certification while the Commerce Commission processes applications.



## APPENDIX 2 – RESPONSE TO CONSULTATION QUESTIONS

### **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?**

The definition accurately describes BNPL activities and will capture the submitters as consumer credit contracts. However, we have concerns about designating BNPL to be a consumer credit contract without tailoring the CCCFA. This will result in BNPL products being treated differently depending on how they are structured (eg term vs revolving credit facilities). We believe legislative change will be required to ensure BNPL contracts are regulated consistently (see Appendix 1).

### **Do you have any comment on the proposed threshold of \$600? Should the threshold be higher than \$600? Lower? Why?**

In our view the threshold for reduced affordability assessment requirements should be set higher, at \$1,000. We propose that the principles-based approach is retained with guidance provided in the RLC about what constitutes reasonable inquiries above and below this level. Our products are low risk – they are easy to understand and do not give rise to the risk of escalating costs of borrowing. Taking steps to identify loan stacking (via PayWatch) will go a long way towards addressing risks that have been identified and, in our view, this should be sufficient for loans of \$1,000 or less.

From a commercial perspective, we will be better able to absorb the costs of any increased requirements with loans of more than \$1,000.

### **What do you consider the financial impact of a \$600 threshold would be?**

For consumers, we believe that raising the threshold from \$600 to \$1,000 will have a meaningful impact by increasing access to the economy through low-risk and low-value BNPL products and ensuring consumers are not pushed to high-cost credit products that are predicated on high interest rates and cycles of revolving debt.

### **Aside from the dollar amount, do you have any comments on how the threshold is drafted in regulations 18I(1) and 18I(2), or the exemption condition requiring comprehensive credit reporting is drafted in regulations 18I(3)(a) and 18I(3)(b)?**

Carrying out a full affordability assessment in accordance with regulations 4AC-4AN would be onerous for BNPL providers and disproportionate to the risks posed by our products. As noted in our submission, our preference would be to adopt the principle-based approach for all affordability assessments for BNPL contracts and for guidance on how this applies proportionately to contracts above and below the threshold to be included in the RLC.

We do not consider the conditions of the exemption, and particularly the condition requiring comprehensive credit reporting, to be appropriate as they essentially introduce new obligations that no entity is currently subject to under the CCCFA. It is our strong view that they should be removed, and any conditions should be directly relevant to the exemption (eg complying with reduced obligations).

### **Should regulations 4AC-4AN apply to BNPL? Why, or why not?**

No. It has been established that BNPL is a low-risk and low-cost form of credit, with the main harm identified being loan stacking, affecting a small number of consumers who may be vulnerable or facing



financial hardship. Regulations 4AC-4AN are unduly onerous and not targeted at the risks identified. We are in favour of a principle-based approach that will allow us to be agile in the way we respond to risks in a new and evolving market and in a way that is proportionate to those risks.

**What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?**

This requirement would introduce substantial costs of compliance and reshape our products, which have been embraced by New Zealand customers, while producing no positive outcomes for consumers. We believe this would have a significant impact on the value we offer to customers and would cause serious detriment to our businesses.

We do not think there would be any meaningful corresponding benefit to vulnerable consumers. We strongly support and recommend the regulatory recognition of PayWatch – a BNPL-specific solution developed by the industry to specifically address risks to vulnerable customers.

**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?**

In principle we agree that responsible lending principles should apply to BNPL products. However, if the responsible lending principles are applied to the BNPL sector, a new addendum will need to be added to the RLC providing an appropriate safe harbour for BNPL. This will be an essential element of a proportionate approach, particularly given the severe consequences of the CCCFA, which necessarily result in entities (and directors) taking a conservative approach to compliance. (See Appendix 3 for more details on what we think should be included in an addendum to the RLC).

As with other parts of this regulation, we believe there would be value in forming a working group of various stakeholders to develop appropriate regulation and guidance.

**Do you have any comments on the drafting of regulation 18I(3)(c)?**

This should be removed. As noted above, it is not appropriate to introduce substantial new obligations not required of any other regulated entity as a condition of an exemption. This goes beyond matters that should rightly be addressed through secondary legislation.

**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?**

Yes. The CCCFA is designed to protect borrowers from risks relating to the cost of borrowing and security over consumer goods. It contemplates regulating contracts that last years rather than weeks. We have identified many examples of provisions that need to be adjusted either because they will provide no meaningful protection to consumers (or in some cases make consumers worse off) or because they are obviously disproportionate to the risk we pose to consumers, and will cause our business significant detriment. The primary examples of such provisions are:

- the requirement to undertake suitability assessments for each contract;
- the disclosure regime;
- the approach to determining the reasonableness of fees;





- the unforeseen hardship application process; and
- the right to cancel.

See Appendix 1 for more detail on why these provisions need to be adjusted.

**Do you have any other comments or suggestions for the drafting of any other provisions in the Draft Regulations?**

There is a significant amount of work that still needs to be done to tailor the CCCFA for BNPL contracts to ensure that it is:

- a) effective in protecting consumers from risks of harm; and
- b) proportionate to and targeted at the risks identified, so that it does not have a significant negative impact on the BNPL sector and the benefits we provide to consumers and the New Zealand economy.

We strongly suggest a working group be established to review the provisions of the CCCFA in detail and ensure regulation of the BNPL sector is fit-for-purpose.

**Do you have any comments on when the Draft Regulations should commence? Please provide reasons for your answer.**

The time we will require to implement the changes depends to a large extent on the scope of the changes. We estimate that the sector will require between 12 -18 months from the date that new obligations are confirmed to ensure compliance, with 6 months being the minimum (which assumes that a targeted and proportionate regime is developed).

MBIE will also need to consider the extent to which other parties need to act, for example the Commerce Commission if the certification requirement is applied, and how the transitional provisions need to deal with potential delays from third parties.



## APPENDIX 3 – DRAFT BNPL INDUSTRY CODE

**CODE OF PRACTICE**

**FOR MEMBERS OF THE  
NEW ZEALAND BUY NOW PAY LATER (BNPL) INDUSTRY**

**[DATE] 2020**

**DRAFT**

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## **GOAL AND SCOPE OF THIS CODE**

This is the Code of Practice ("**the Code**") for the Buy Now Pay Later ("**BNPL**") industry in New Zealand. Products and Services. The Members of the BNPL Industry are referred to as "Code Subscribers" throughout the Code, and include, but are not limited to, Laybuy, Afterpay, Genoapay, Openpay, Oxipay and Zip as at [DATE].

### **1 Purpose of this Code**

- 1.1 This Code has been voluntarily developed by BNPL industry to assist the Code Subscribers to:
- (a) Promote a customer-centric approach to the design, marketing and distribution of a Buy Now Pay Later Product or Service;
  - (b) Promote high industry standards of service for customers and build best practices across the BNPL Industry; and
  - (c) Support compliance with legal and industry obligations.

### **2 About the Code Subscribers**

- 2.1 This Code is binding on the Code Subscribers when they provide BNPL Products or Services (the particular circumstances in which the Code will apply are set out in clause 7).

### **3 About the Code**

- 3.1 Commitments in this Code reflect the broad nature of the BNPL products or services offered by the Code Subscribers and their merchants and retail partners. The commitments represent the proposed minimum standards that all Code Subscribers will meet in the provision of BNPL Products or Services.
- 3.2 This Code is drafted to be a set of standards, reflecting the nature of the BNPL Industry and the expectations of our customers.
- 3.3 To the extent practicable, this Code is aligned with the commitments made in the Australian Buy Now Pay Later Code of Practice, reflecting the common approaches of the buy now pay later companies in both jurisdictions.

### **4 Interpretation**

- 4.1 In this and the following parts of this Code, the words "You" and "Your" – refer to an individual who is our customer.
- 4.2 In this and the following Parts of this Code, the words "we", "us" and "our" are to be read as referring to a relevant Code Subscriber that is bound by this Code and that has agreed with you that it will comply with this Code.

- 4.3 Some words or phrases used in this Code have special meaning and are identified by the use of capital letters, such as in the case of 'BNPL'. These words and phrases are defined in clause 5 of this Code.
- 4.4 This Code is applicable to BNPL Products or Services provided by us when we are or were a Code Subscriber at the time that the relevant product or service was provided.
- 4.5 For BNPL Products or Services, provided by us prior to the date we became a Code Subscriber, this Code will apply in our future dealings with you in the manner set out in clause xx below.

## 5 Definitions

**Approved Dispute Resolution Scheme** has the same meaning as set out at section 50 the Financial Service Providers (Registration and Resolution) Act 2008.

**Assessment Process** means the reasonable inquiries we make before entering into a BNPL agreement

**BNPL Industry** means that section of the New Zealand financial services industry in which Code Subscribers are participants to consumer customers under any Buy Now Pay Later Products or Services.

**BNPL Product or Service** means either:

- a shorter-term product or service for the purchase of goods or services where the purchase price is repaid in equal instalments. Consumers pay no extra charges if they pay within a specified period;
- a product or service that is a continuing credit contract for up to \$30,000 for the purchase of goods or services. Some contracts require a minimum periodic repayment; others involve a fixed repayment plan for each purchase; or
- a product or service where multiple spending transactions may be approved;

and

- there is a contract between the customer and the Code Subscriber, a contract between the consumer and the merchant or retailer, and a contract between the Code Subscriber and the merchant or retailer; and
- the customer buys and receives goods or services from a merchant; the Code Subscriber pays the merchant or retailer for the purchase (minus merchant fees); and the customer repays the Code Subscriber for their purchase.

**Complaint** means any expression of dissatisfaction made to us related to our products or services, or to our complaints handling process, where a response or resolution is explicitly or implicitly expected.

**Days** means business days.

**Financial Hardship** means a situation which occurs when you are unable to meet your existing Transaction Amount obligations for a period of time. It may be caused by a number of factors, such as a major change in your circumstances, illness or injury, or a change in employment.

**Merchant and retail partners** mean third parties who partner with us and can include vendors, such as sellers of solar panels and services. Minimum standards for merchant and retail partners are set out in at clause 17 of this document.

**Responsible Lending Code** has the same definition as 'Responsible Lending Code' under section 5 of the Credit Contracts and Consumer Finance Act 2003.

**Term** means a defined period of time.

**Transaction Amount** means either (a) the dollar amount of a single or of cumulative transactions within a Term; or (b) the dollar amount of a continuing credit contract (excluding any upfront payment made by you).

## **6 Date of Commencement**

6.1 This Code is effective from [DATE].

## **7 Relationship of this Code with Legal Obligations**

7.1 This Code describes contractually enforceable commitments made by Code Subscribers.

7.2 This Code operates alongside, and is subject to, existing laws and regulations and does not limit your rights under such laws and regulations.

7.3 This Code endeavours to impose standards on the Code Subscribers that are above those required by the law or regulation and, where it does so, the commitment of Code Subscribers is to the higher standards of the Code.

## **8 Review**

8.1 This Code will be fully reviewed on a regular basis, but no later than one year after the commencement of the Code, to ensure that it continues to promote high industry standards of service for customers and build best practices across the BNPL Industry (Full Review).

8.2 The commitments in this Code have originally been set as best practice and the BNPL industry will monitor domestic and international developments to ensure they remain best practice.

8.3 A Full Review of the Code will include open and wide public consultation, and the BNPL industry may appoint an independent person to conduct the review.

8.4 The BNPL industry may make minor or non-significant changes to the Code outside of a Full Review process, after consultation with, and seeking comments and suggestions from

key stakeholders (including but not limited to the Commerce Commission, Ministry of Business, Innovation & Employment (MBIE) and consumer advocates).

- 8.5 For significant changes to the Code outside of a Full Review process, the BNPL industry may also undertake a public consultation process where it considers it appropriate.

## **GENERAL PRINCIPLES OF THE CODE**

### **9 Our Approach**

- 9.1 We will always act fairly and honestly, be ethical and treat you reasonably in all our dealings.

### **10 Customer Service**

- 10.1 We will provide a high quality and responsive service. We will make sure our staff, agents or representatives are well trained and deliver on our commitments to you.

- 10.2 To ensure we are providing a service that meets your needs, we will:

- (a) Ensure our BNPL Products or Services are suitable for you and we have appropriate safeguards in place while you continue to be our customer;
- (b) Review the reasons for customers contacting us and look for ways to improve our BNPL Products and Services;
- (c) Only provide our BNPL Products or Services to customers aged 18 and over;
- (d) Proactively engage with you to obtain feedback, both positive and negative; and
- (e) Respond to your queries promptly and acknowledge all queries within 3 Days of your enquiry.

### **11 Customer Information**

#### ***Advertising***

- 11.1 We will make sure our advertising and promotional material is clear and not likely to be misleading, deceptive, or confusing to you.
- 11.2 We will comply with the Responsible Lending Code's guidance on advertising.
- 11.3 We will ensure our terms and conditions are distinguishable from our marketing material.
- 11.4 We will automatically opt you out of receiving promotional material if you are behind on repayments or we become aware that you are experiencing Financial Hardship.
- 11.5 To the extent permitted by law, we may provide any notice or other information required by this Code to you in writing, electronically or by telephone or by telling you that the information is available on our website or another electronic forum.



### ***Terms and conditions***

- 11.6 We will ensure our terms and conditions are fair, clear and understandable and written in plain language.
- 11.7 We will ensure that any information provided to you is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing to you.
- 11.8 We will ensure we highlight important information and explain complex information.
- 11.9 Where we make any other material changes to our terms and conditions, we will provide you with notice as soon as reasonably possible.

### ***Repayment Information***

11.10 To help you stay in control and make informed financial decisions about your BNPL Products and Services, and repayments:

- (a) We will provide clear and prominent information upfront about the fees we charge.
- (b) Prior to you becoming a customer, we will provide clear and prominent information about your scheduled repayment obligations.
- (c) We will send you relevant and useful reminders about your repayment obligations

11.11 If you miss a payment:

- (a) We will immediately contact you to notify you of your missed payment and whether you will incur any late fees; or
- (b) If we charge a late fee it will be fair and reasonable.
- (c) We will give you at least 40 Days' notice before introducing new fees or increasing existing fees.

### ***Debt Recovery***

- 11.12 We and our agents will comply with the Responsible Lending Code when recovering a debt.
- 11.13 We will maintain a debt recovery policy and procedures that clearly explain how we can recover debt and enforce our credit agreements.
- 11.14 If you are in Financial Hardship, we will consider waiving our fees and charges (including those already applied) and take steps to work out a mutually acceptable repayment arrangement with you, as set out in clause 15.
- 11.15 We will not seek recovery of, and will not sell, statute-barred debts.
- 11.16 We will never initiate bankruptcy proceedings against you, and we will never allow our agents to do so.

11.17 We will inform you of the risk of escalating your debt as a result of continuous missed payments, including any additional charges or the referral of your outstanding debt to a third-party debt collection agency.

## **12 Product and Service Suitability**

### ***Assessment Process***

12.1 We will make reasonable inquiries before entering into a BNPL agreement to be satisfied that is likely that the BNPL Products and Services meet your requirements and objectives.

12.2 As part of clause 12.1, we will have processes in place to identify customers who may have a higher likelihood of vulnerability.

12.3 We will verify your identity when you first become a customer and undertake appropriate upfront and ongoing checks in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

12.4 We will only provide our BNPL Products or Services to customers who we assess as having the ability to pay for the product or service over time.

12.5 We will not provide any additional BNPL Products or Services if you are in arrears with us at the time of the request for additional products or services.

12.6 To promote good customer outcomes and set high industry standards, our Assessment Process will include and consider factors, such as:

- (a) The Transaction Amount;
- (b) The repayment Term of the product or service;
- (c) The amount and frequency of repayments;
- (d) Your repayment history with us;
- (e) Your method of payment, for example, use of direct funds transfer, or use of a debit or credit card;
- (f) Where and how you are using our BNPL Product or Service;
- (g) The information you supply to us; and/or
- (h) External data sources, for example, we may perform a credit check.

12.7 The outcome of our Assessment Process may be that we:

- (a) Approve you for the full amount;
- (b) Approve you for a lower amount;
- (c) Require an initial payment to be made upfront;

- (d) Require an initial payment within 25 Days from approval of the first Transaction Amount or installation of goods or services;
- (e) Collect and consider more information to ensure you have the ability to pay for the product or service over time; and / or
- (f) Decline to provide our product or service to you if we do not believe it will be suitable for you.

12.8 The types of information that we will consider and collect in clause 12.7(e) will include one (1) or more of the following:

- (a) External data sources, for example, undertaking a credit check;
- (b) Your repayment history with us;
- (c) Information about your income; and/or
- (d) Information about your existing expenses, which may also include existing debts.

12.9 We will always apply clause xx if we are providing a Transaction Amount of more than \$3,000 or for BNPL Products or Services with a fixed term of more than 2 years.

12.10 Once approved for our products or services, we will ensure there are safeguards so our product or service remains suitable for you. We will:

- (a) Cap our fees and keep them fair;
- (b) Prevent you spending more through our BNPL Products or Services if your payments are not up to date with us;
- (c) Adjust your future spending limit with us based on your repayment history; and
- (d) Proactively provide Financial Hardship assistance – see clause 15.

12.11 If we have prevented you from spending more due to missed payments, we will ensure that you can still access your account for a reasonable period of time, so that you can monitor your debt, repayments and any fees.

### **13 Ongoing Review**

13.1 To make sure our services and products are meeting the needs and expectations of our customers, we will review our services, policies, and training on an ongoing basis to determine the suitability of our products and services.

13.2 We will monitor the suitability of our products and service and customer usage to identify whether our products or services are meeting their needs and whether they remain suitable. For example, if some of our customers are incurring late fees on a repeated basis, we may decide that our products or services are not suitable for these types of customers.

13.3 To ensure we are meeting this commitment, we will consider the following types of information:

- (a) Complaints data;
- (b) Consumer feedback (including on the performance of the products or services);
- (c) Requests for information from consumers;
- (d) Samples of recorded sales calls;
- (e) Conversion rates;
- (f) Volume of sales;
- (g) Web analytics (e.g. click data and website paths);
- (h) Feedback from our merchants or retailers;
- (i) Hardship data; and
- (j) Internal data and benchmarks.

#### **14 Complaints Process**

14.1 We will handle complaints promptly and fairly and, if we cannot reach agreement, give you information on ways to resolve disputes. As part of this commitment:

- (a) We will have a complaints policy that is visible and easily accessible from our website and / or the digital platforms that we participate in.
- (b) We will ensure our complaints policy is straightforward to follow and use and describes how complaints will be made, how they will be dealt with, by whom and our timeframes for dealing with complaints.
- (c) We will refer you to our internal complaints policy if you indicate concerns about our services or products.
- (d) We will acknowledge all complaints within 3 Days and provide an initial response within 10 Days from the date of the complaint.
- (e) Where relevant, we will draw your attention to clause xx – Hardship Assistance.
- (f) Where you have exhausted the internal complaints policy process without full resolution, we will inform you of your right to refer the complaint to our Approved Dispute Resolution Scheme.

#### **15 Financial Hardship Assistance**

15.1 We will treat you fairly and respectfully if you are experiencing Financial Hardship.

15.2 We will have a hardship policy that is accessible to you, that provides you information about the availability of relief for unforeseen hardship and clearly explains how we can assist you.

15.3 We will train our staff to treat our diverse and vulnerable customers with sensitivity, respect and compassion. This includes specific training to identify signs of vulnerability, such as

where there may be mental health or domestic and family violence concerns, and training for staff who regularly assist customers from diverse cultural backgrounds.

- 15.4 We will ensure we include information about our Financial Hardship assistance on our websites and /or the digital platforms that we participate in.
- 15.5 If we become aware you are having trouble meeting your financial obligations with us, we will discuss your situation and the options available to help you, which may include negotiating a new repayment arrangement.
- 15.6 If you prefer, we will work with your representative (such as, a family member or friend, a financial or legal representative or a financial counsellor).
- 15.7 We will not continue normal collection activity while we are considering how to help you. Our late fees will also be frozen during this time.
- 15.8 We will not list your default on your credit reference file while we are considering your request for Financial Hardship assistance, unless legally required to do so.
- 15.9 If we agree and enter into a Financial Hardship arrangement with you, we will retain you as our customer and not refer you to a third-party debt collection agency.
- 15.10 If we reach agreement about assistance to help you with your financial difficulty, we will:
  - (a) Provide confirmation in writing of what we have agreed with you, including what your obligations will be when our period of financial assistance ends;
  - (b) Not charge you late fees while you are meeting any conditions of the financial assistance;
  - (c) Make reasonable efforts to contact you if you breach any conditions of assistance agreed with you and not re-activate enforcement action until we have given you at least 5 Days' notice.
- 15.11 If we cannot agree a new repayment arrangement, we will give you information on how to contact an Approved Dispute Resolution Scheme.

## **16 Compliance with our obligations**

- 16.1 We will comply with our obligations under the law and this Code. We will act fairly and, in a way consistent with good practice.
- 16.2 As part of this, we will:
  - (a) Respect your privacy and comply with our privacy obligations and Privacy Act 1993;
  - (b) Treat your personal and financial information with respect and in accordance with our Privacy Policy;
  - (c) Not disclose that information to any other organisation unless:
    - (i) We are required to by law.

- (ii) There is a duty to the public to disclose the information,
- (iii) You ask us to disclose the information;
- (iv) You have consented to us doing so; or
- (v) We are otherwise not restricted from doing so under applicable laws.

16.3 We will take reasonable steps to protect your personal and financial information from misuse or loss, and from unauthorised access, modification or disclosure. We will regularly review the security and reliability of our services.

16.4 When providing disclosure documents, account statements, notices and other prescribed information to you electronically, we will ensure that we adopt practices that take appropriate account of online security risks.

16.5 We will not permit your personal and financial information to be shared with other lenders or credit providers, or anyone who sells such information to lenders or credit providers unless we receive your express consent.

16.6 We will comply with all other relevant legislation.

16.7 We will also take reasonable steps to ensure that our merchants or retailers adhere to the minimum standards outlined in this Code.

## **17 Minimum Standards for our Merchant and Retail Partners**

17.1 Each Code Subscriber will require its merchant and retail partners to meet minimum standards. These standards are to:

- (a) Act lawfully, fairly and ethically in their dealings with consumers;
- (b) Communicate clearly when dealing with consumers and in marketing and advertising material that relates to BNPL Products or Services;
- (c) Safeguard customer confidentiality;
- (d) Respond to customer complaints on a timely basis;
- (e) Require that their employees or agents understand the standards and are trained to meet them; and

17.2 Each Code Subscriber will continue to monitor their merchant and retail partners to ensure they meet these minimum standards.