

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

Your name and organisation

Name	Aneleise Gawn
Organisation (if applicable)	Consumer NZ

Responses

1	<p>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?</p> <p>We consider the definition of BNPL should be expanded to include other forms of deferred payment, as well as BNPL. This would align with the United Kingdom's (UK) proposed approach which will include both BNPL and other short-term interest-free credit (STIFC).</p> <p>The UK HM Treasury decided to regulate STIFC for the following reasons:</p> <ul style="list-style-type: none"> • the increasing similarities in key features and usage of BNPL and STIFC. • the potential future development of STIFC and BNPL markets blurs the boundaries between these products. Regulation needs to pre-empt developments and ensure it isn't possible for BNPL providers to alter their models to avoid regulation. • the diminishing distinction between BNPL and STIFC increases the need for clarity about the rights and protections consumers can expect.¹ <p>We consider New Zealand should adopt a similar approach to the UK. This would ensure consumers are protected from a wider range of potentially harmful credit.</p> <p>In previous submissions we have expressed concern about the fact consumers are often persuaded to purchase expensive mobile phones on contracts they pay off over several years. Like BNPL, these phones are sold without conducting affordability assessments and if repayments aren't made on time the credit provider can charge late payment fees. In our view, these types of arrangements should be treated the same as BNPL.</p> <p>However, we recognise it may not be appropriate to include all types of STIFC under the regulations. For example, it may not be appropriate to include interest-free credit provided by community-based and social service providers that is provided for social good.</p> <p>Finally, we think further consideration should be given to whether the current definition is broad enough to cover future developments in the BNPL market. For example, the current wording only envisages an arrangement where a third party provides credit to a debtor. However, it is possible that some merchants may, in the future, offer BNPL services to</p>
----------	--

¹ HM Treasury, Regulation of Buy Now Pay Later, Response to Consultation. June 2022. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083547/BNPL_consultation_response__Formatted_.pdf

	customers themselves. This is already happening in other jurisdictions and if it happens here, these arrangements won't be captured by the current definition.
2	<p>Do you have any comment on the proposed threshold of \$600? Should the threshold be higher than \$600? Lower? Why?</p> <p>We do not support a threshold of \$600, or the use of any threshold at all. We consider thresholds are arbitrary and do not take an individual's circumstances into account. Also, some consumers will still suffer significant harm – even if a credit check is required for BNPL loans below the proposed threshold. In our view, credit checks are not, in themselves, sufficient to prevent harm to consumers taking out BNPL loans below the proposed threshold.</p> <p>We have heard anecdotal evidence from financial mentors that a \$600 threshold would not capture many of their clients who are suffering financial hardship. Clients of financial mentors often have BNPL debts that are well below the proposed threshold. These debts are usually in addition to other debts, such as bank overdrafts, credit card debt and other finance arrangements.</p> <p>We are also concerned about the wording of clause 18I(2). In our view, it is possible this clause may be interpreted to mean the 'total credit limit' only relates to credit provided by one lender. If that is the case, consumers could make multiple purchases below a \$600 threshold, using different BNPL providers to obtain total credit well above \$600 and potentially suffer significant financial harm. This needs to be addressed.</p> <p>Imposing a threshold can create the impression that smaller purchases are easy to pay-off. However, this is not true for all consumers and some may find they have spent well beyond their means, even before reaching their credit limit.</p> <p>While we recognise the risks associated with regulating all BNPL loans, regardless of amount, we consider some form of affordability assessment should be required for all loans. As far as we are aware, no value-based distinctions are made for other forms of credit (for example, credit cards and personal loans) and we don't think there is any justification for using thresholds for BNPL.</p> <p>We also think greater emphasis could be placed on supporting and creating safer avenues of accessing credit, such as community-based finance providers.</p>
3	<p>What do you consider the financial impact of a \$600 threshold would be?</p> <p>See our answer to question 2 above.</p>
4	<p>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)?</p> <p>Yes. As noted above, we do not support a threshold approach. However, if a threshold is used, under the current drafting of the regulations, consumers could potentially make multiple purchases using different BNPL providers and may not be captured by the regulations. In practice, this means consumers can take on high levels of debt, without the affordability of that debt having been assessed.</p> <p>As already mentioned, we support requiring affordability assessments for all levels of BNPL lending. If this approach is adopted, there would be no need to rely solely on credit checks for amounts below the threshold. Instead, an affordability assessment would be required for all levels of BNPL lending. This may require a credit check in some instances, depending on</p>

	<p>the depth of history a provider may have with the borrower. Requiring affordability assessments for all levels of BNPL lending would also solve the multiple loans issue identified above.</p> <p>We are also concerned about the wording requiring a lender to undertake a credit check in regulation 18I(3). This regulation requires lenders to first obtain information from a credit report but there is no requirement to actually take this into account when making a decision about whether to extend the loan. This needs to be addressed.</p>
5	Should regulations 4AC–4AN apply to BNPL? Why, or why not?
	<p>Although we see some merit in requiring full affordability assessments in accordance with regulations 4AC- 4AN, we understand this is likely to be onerous for both consumers and providers and it may also impact the ongoing viability and accessibility of BNPL.</p> <p>We therefore support lenders being exempt from regulations 4AC - 4AN and instead being required to carry out lighter affordability assessments in accordance with the principles-based requirement in section 9C(3)(a)(ii) of the CCCFA.</p> <p>However, given the uncertainty that a principles-based obligation creates for both providers and consumers, we think there should be clear guidance to avoid problems with non-compliance such as those identified during the 2018 review of the CCCFA.</p>
6	What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?
	<p>In our view, imposing the full affordability assessment requirements set out in regulations 4AC-4AN risks pushing BNPL providers out of the credit market, decreasing competition, increasing the fees or minimum amounts of credit on offer and reducing access to credit for consumers. This is not something we want to happen. Feedback we have received from consumers indicates BNPL is a popular option because it can offer a lower-cost alternative to other forms of credit, as well as the ability to spread out costs over a longer term.</p> <p>Conversely, imposing the full affordability assessment requirements could also mean that BNPL lenders would have greater certainty over what is required. They would also possibly have clearer information about a borrower’s financial position, and their ability to pay-off the loan without suffering substantial hardship.</p>
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?
	<p>As noted above, if regulations 4AC – 4AN do not apply, we consider additional guidance should be provided to lenders. In our view, this guidance should be developed after further consultation with interested parties.</p>
8	Do you have any comments on the drafting of regulations 18I(3)(c)?
	<p>We support regulation 18I(3)(c) requiring BNPL lenders to disclose key information about the loan. This information is critical to help ensure consumers can make informed decisions at the time of each purchase.</p> <p>However, we think the information should be more comprehensive. For example, it should provide information about what BNPL is, to ensure consumers understand it is a type of credit, and any implications it might have on their credit rating. Key information should also contain a statement about how consumers can change their repayment dates. Information should be available in a clear, prominent, and easy to understand format.</p>

	<p>The Australian Treasury noted the “absence of a legislated set of precontractual information and warning requirements on terms, conditions and fees may be contributing to inconsistent information quality and information”.² We agree with this and would like to see consistent information provided.</p> <p>In our view, it would be beneficial to require BNPL lenders to disclose key information in a standardised format to ensure consistency.</p> <p>We support BNPL lenders being required to be part of an external dispute resolution scheme and provide details of the scheme. However, we consider this information should be provided to borrowers prior to lending, rather than waiting for borrowers to make a complaint or hardship application. The same should apply to information about financial mentoring services.</p>
9	<p>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?</p>
	<p>As stated in previous submissions, we are concerned about the advertising of BNPL and consider stricter requirements around advertising should be introduced. In our view, the manner in which these products are advertised is likely to be contributing to financial harm.</p> <p>Advertising is often targeted at young people via social media, it normalises debt, makes the process seem very easy and can encourage irresponsible spending. Also, some providers encourage using BNPL to buy essential products such as food. Some also encourage spending by offering prizes. Advertisements also downplay the risks involved with using a BNPL service.</p> <p>Currently the Responsible Lending Code requires every lender must, at all times, exercise the care, diligence, and skill of a responsible lender in advertising. These provisions should be strengthened.</p> <p>In the UK, HM Treasury has recognised there are concerns with the way BNPL is marketed and has proposed ramping up regulation around the marketing of BNPL in response to this. For example, they have suggested requiring pre-approval of advertisements in the UK. We’d like to further consideration given to advertising here.</p>
10	<p>Do you have any other comments or suggestions for the drafting of the regulations?</p>
	<p>Yes. As mentioned in previous submissions, we think the regulations should prohibit providers from offering unsolicited credit limit increases.</p> <p>In Australia, the Government has banned unsolicited credit increases to help prevent problematic credit card debt. We would like to see similar rules in New Zealand in relation to BNPL and other forms of credit.</p>
11	<p>Do you have any comments on when the regulations should commence? Please provide reasons for your answer.</p>
	<p>We support introducing these changes as soon as possible, and within 12 months of the regulations coming into force. BNPL has rapidly increased in popularity over the last few years, and this has increased the urgency to regulate BNPL.</p>

² Australian Government, The Treasury “Regulating Buy Now, Pay Later in Australia Options paper”, November 2022, <https://treasury.gov.au/sites/default/files/2022-11/c2022-338372-op.pdf>.

We have been calling for BNPL to be regulated under the CCCFA for several years and consider that it is long overdue.

Other comments

Thank you for the opportunity to provide comment.