



FINANCIAL SERVICES FEDERATION

8 March 2023

Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email to: consumer@mbie.govt.nz

Dear Madam/Sir,

Re: Draft Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022

The Financial Services Federation (“FSF”) is grateful to the Ministry of Business, Innovation and Employment for the opportunity to respond on behalf of our members to the draft Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations (“the Regulations”) recently published by the Ministry.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing, and credit-related insurance providers of New Zealand. We have over 85 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

Introductory Comments

The FSF supports bringing Buy Now Pay Later (“BNPL”) providers under the Credit Contracts and Consumer Finance Act (“CCCFA”). The BNPL industry has been operating unregulated in New Zealand until now so bringing it under the CCCFA will lead to better outcomes for consumers and create more competition in the market between BNPL and other comparable types of credit. The current business model of BNPL is a revolving credit system which allows consumers to have access to a higher credit limit in exchange for good repayment behaviours. There is no assessment of affordability, no default fee regulation, limited credit checking, and consumers may open BNPL accounts with multiple providers.

The Regulatory Impact Statement (RIS) for the Regulations identifies that the primary reason for bringing BNPL under the CCCFA is the risk of financial hardship to consumers. The other focus of the RIS is to ensure continued competition and innovation within the market. The FSF believes that the draft Regulations do not adequately address the risk of financial hardship in their current form and may have the effect of limiting competition by favouring the BNPL providers.

The FSF believes that to properly address the focuses of the RIS the Regulations should be amended to either:

- Expand the \$600 threshold to include other low-cost merchant consumer credit with a similar risk level to encourage competition in the market; or
- Remove the threshold so that BNPL must go through the same affordability assessments as other lenders captured under the CCCFA in all instances.

The FSF is also concerned that the Regulations do not address the existing BNPL accounts which consumers already have access to. Many consumers in New Zealand already have BNPL accounts with lines of credit above \$600 and in some cases consumers have multiple accounts with different providers. The Ministry needs to consider how these existing accounts can be dealt with to ensure that they adequately address the risk of hardship to consumers. The FSF believes that at the very least the Regulations need to specify that BNPL providers will need to reassess the affordability of the line of credit they offer to individual consumers as the credit runs down or when an increase in credit limit above \$600 is applied for.

Consultation Questions

The consultation questions will now be answered below.

1. *Do you have any comments on the definition of BNPL? Are there any contracts that should be caught, but are not? Are there contracts that shouldn't be caught, but are?*

The FSF believes that if a specific exemption is going to be given to BNPL providers who provide credit under the threshold then the definition of BNPL should be expanded to include other low-cost merchant consumer credit with a similar risk level to BNPL.

Including other low-cost merchant consumer credit in the definition will have the effect of encouraging competition in the market to ensure better outcomes for consumers. This is because the selective application of the exemption will lead to consumers disproportionately favouring BNPL products which will reduce variety and innovation in the market.

This option can be achieved by removing (b) from the definition to allow for other third-party merchant lenders to be entitled to the same benefits BNPL will receive.

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

The FSF's concern with the \$600 threshold is that this amount is per BNPL provider, meaning that a consumer would have the ability to get a BNPL account with each of the six different providers operating in the New Zealand market at the time of writing, for up to \$600 each without any affordability assessments. This greatly impacts the affordability of the line of credit and of any subsequent credit other lenders may offer.

If a consumer was to open an account with each of the providers currently operating in New Zealand, they could have access to a maximum of \$3,600.00 worth of credit without having to go through an affordability assessment. This is a significant amount of debt to incur without BNPL providers making the correct enquires to ensure that consumers can afford to repay without hardship.

Due to the above it is the FSF's belief that there should be no threshold for BNPL under the current definition proposed in the Regulations. Affordability should have to be assessed regardless of the total amount of the line of credit. The \$600 threshold should only be applicable if the Regulations were to specify that it must be a total of \$600 worth of BNPL credit across all providers rather than from each provider.

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

As described above in question 2 the FSF's concern with the \$600 threshold is that consumers would be able to get \$600 worth of BNPL credit from multiple providers.

It is the FSF's view that if the \$600 dollar threshold is to be kept then it should be across all BNPL providers rather than per provider. This would lessen the potential for financial hardship on consumers in line with the aim of the RIS.

4. *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)?*

The FSF believes that a more appropriate measure for affordability would be to focus on the repayment amounts per week rather than the credit limit threshold. A fortnightly repayment of \$150 (one quarter of \$600) is a significant obligation to enter into without an affordability assessment, particularly if that is then multiplied up to 6 times. By focusing on repayment amounts, it would be easier to ensure the consumer will find the line of credit affordable even if their circumstances change.

An example of this could be allowing a higher loan amount with low weekly repayments to come under the exemption e.g. a maximum of \$15 a week for 104 weeks. This will provide better protection for consumers in situations where the lender is exempt from undergoing a full affordability test. The FSF believes it is in the best interests of both providers and consumers to ensure that consumers will be able to afford their repayments without hardship.

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

The FSF's view is that regulations 4AC to 4AN are overly prescriptive for all lenders and the CCCFA should move back to a principles-based approach for all lenders other than those that fall under the definition of high-cost lenders as defined in the CCCFA. The CCCFA should take one singular approach to ensure consistency and certainty in the law. However, as this feedback is only in conjunction with BNPL under the CCCFA it is the

FSF's belief that BNPL should have to apply regulations 4AC-4AN. This is for the reasons outlined above.

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

Please refer to the answer to question 5.

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?*

Please refer to the answer to question 5.

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

The FSF believes that the drafting of this section is reasonable.

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 them?*

BNPL providers' default fees and merchant fees are currently unregulated. This means that it is likely that they will adjust their default fees to pass along additional costs imposed by application of the CCCFA to consumers. The FSF believes that BNPL default fees should be defined and regulated in the Regulations to provide greater protection to consumers.

BNPL providers should also be required to undergo credit checks and provide information into the general credit data pool. Currently the regulations state that providers will have to undergo extensive credit checking and reporting, but the FSF believes that this is too ambiguous as it does not state whether BNPL providers need to do anything with the information they acquire. Credit reports and the supply of credit reporting information helps ensure lending confidence in New Zealand. The information gives all potential credit providers a deeper understanding of a person's total credit obligations and how well they are managing them. This is particularly important for smaller lenders who may only have one line of credit with a consumer (e.g. a car loan) and therefore cannot have the same insights as a large bank with multiple financial relationships with a consumer (e.g. credit cards, transaction account and mortgage).

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

No.

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

The FSF believes that the commencement date should be 6 months from the date the final regulations are released. This will give BNPL providers sufficient time to implement all changes to their operating model.

Bringing BNPL under the CCCFA has been in process for a significant period so providers should already have started putting processes in place to implement the regulations once they are in force.

Generally, to ensure the Regulations adequately address the risk of hardship without limiting competition in the market the FSF strongly believes that they should be amended to either include other forms of low-cost merchant consumer credit in the definition of BNPL or to remove the threshold entirely. Once again, the FSF is grateful to MBIE for the opportunity to provide feedback on the Regulations.

Please do not hesitate to reach out if you wish for us to speak further on any of the points made in this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Katie Rawlinson', written in a cursive style.

Katie Rawlinson
Legal and Policy Manager
Financial Services Federation



FINANCIAL SERVICES FEDERATION

Appendix A - FSF Membership List as at October 2022

Non-Bank Deposit Takers, Specialist Housing Lenders, Leasing Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Credit-related Insurance Providers, Affiliate Members	Affiliate Members incl Credit Reporting, Debt Collection Agencies
<p>XCEDA (B)</p> <p>Finance Direct Limited ➤ Lending Crowd</p> <p>Gold Band Finance ➤ Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p><u>Specialist Housing Lenders</u></p> <p>Basecorp Finance Limited</p> <p>Liberty Financial Limited</p> <p>Pepper NZ Limited</p> <p>Resimac NZ Limited</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Euro Rate Leasing Limited</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p>	<p>AA Finance Limited</p> <p>Auto Finance Direct Limited</p> <p>BMW Financial Services ➤ Mini ➤ Alphera Financial Services</p> <p>Community Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Scania Finance NZ Limited</p> <p>Toyota Finance NZ ➤ Mazda Finance</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ SBS Insurance</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Humm Group</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Limelight Group</p> <p>Mainland Finance Limited</p> <p>Metro Finance</p>	<p>Nectar NZ Limited</p> <p>NZ Finance Ltd</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prosopa NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yoogo Fleet</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</p> <p><u>Insurance Premium Funders</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p> <p><u>Affiliate Members</u></p> <p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p>Experieco Limited</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>Landscape Ltd</p> <p>KPMG</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>PWC</p> <p>Simpson Western</p>	<p>Verifier Australia</p> <p><u>Credit Reporting, Debt Collection Agencies,</u></p> <p>Baycorp (NZ) ➤ Credit Corp</p> <p>Centrix</p> <p>Collection House</p> <p>Debt Managers</p> <p>Debtworks (NZ) Limited</p> <p>Equifax (prev Veda)</p> <p>Illion (prev Dun & Bradstreet (NZ) Limited</p> <p>Quadrant Group (NZ) Limited</p> <p>IDCARE Ltd</p> <p>Total 89 members</p>



FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022



48%

NON-BANK

BANK

of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

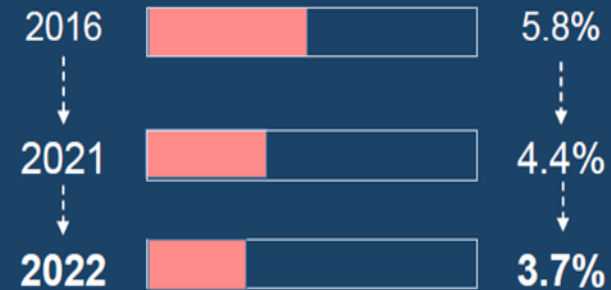
Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%



Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	\$329B
Value of Consumer Loans	\$7.6B
Value of Business Loans	\$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	\$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	\$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	\$330M

Average Value of Loan:

Mortgage	\$171,932
Vehicle Loan	\$12,393
Unsecured	\$2,467
Other Security	\$5,754
Lease Finance	\$2,804

Average Monthly Instalment:

Mortgage	\$257
Vehicle Loan	\$463
Unsecured	\$144
Other Security	\$302
Lease Finance	\$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	\$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	\$590M

Average Value of Loan:

Mortgage	\$443,784
Vehicle Loan	\$28,869
Unsecured	\$7,443
Other Security	\$32,374
Lease Finance	\$24,921

Average Monthly Instalment:

Mortgage	\$2,281
Vehicle Loan	\$1,064
Unsecured	\$799
Other Security	\$11,044
Lease Finance	\$939