

Submission template

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

This is the submission template for the consultation paper, *Buy Now Pay Later: Draft Credit Contracts and Consumer Finance Amendment Regulations 2022*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion paper by 5pm on **24 February 2023**. Your feedback will help us advise the Government on the *Buy Now Pay Later: Draft Credit Contracts and Consumer Finance Amendment Regulations 2022*.

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading your submission in full including your name by making a submission, unless you clearly specify otherwise. Please note that submissions are subject to the Official Information Act 1982.

Submission instructions

Please make your submission as follows:

1. Fill out your name and organisation in the table, "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion paper questions". Your submission may respond to any or all of the questions in the consultation paper. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the "Other comments" section below the table.
4. When preparing to send your submission:
 - a. Delete these first two pages of instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please clearly indicate this on the front of your submission or in the accompanying cover letter or e-mail. Any confidential information, together with reasons for withholding the information, should be clearly marked within the text of your submission. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Please provide a separate version of your submission excluding the relevant information for publication on MBIE's website.
 - d. If you do not wish for your submission to be published:

- e. Please clearly indicate this in the cover letter or e-mail accompanying your submission. However, please note that submissions remain subject to request under the Official Information Act 1982.
5. Send your submission:
- as a Microsoft Word document or searchable PDF to consumer@mbie.govt.nz (preferred), or
 - by mailing your submission to:
*Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand*

Please direct any questions that you have in relation to the submissions process to:
consumer@mbie.govt.nz

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

Your name and organisation

Name	Paul Davies
Organisation (if applicable)	Paul Davies Law Limited

Responses

1	Do you have any comments on the definition of BNPL? Are there contracts that should be caught, but are not? Are there contracts that shouldn't be caught, but are?
	The relationship with a layby sales should be addressed. Layby sales involve instalments and a transfer of possession after a specified portion of the price has been paid. It is hard to see how this is different from BNPL, which would have the effect of subjecting most all layby sales to the CCCFA. I'd suggest amending the definition of layby sale in the Fair Trading Act to require at least 50% of the price to be paid before possession can be transferred, and then to make it clear a BNPL agreement does not include a layby sale agreement.
2	Do you have any comment on the proposed threshold of \$600? Should the threshold be higher than \$600? Lower? Why?
3	What do you consider the financial impact of a \$600 threshold would be?
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)?
5	Should regulations 4AC–4AN apply to BNPL? Why, or why not?
6	What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?
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?
8	Do you have any comments on the drafting of regulations 181(3)(c)?
9	Are there other CCCFA requirements that should be adjusted or exempted for BNPL? If so, what would the impact be of applying current CCCFA requirements? What would the benefits be of adjusting or exempting from them?
10	Do you have any other comments or suggestions for the drafting of the regulations?
11	Do you have any comments on when the regulations should commence? Please provide reasons for your answer.

Other comments

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