

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

Your name and organisation

Name	Carmen Batchelor – Director – Family Works
Organisation (if applicable)	Presbyterian Support Otago

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>The definition of Buy Now Pay Later (BNPL) is too narrow as it only covers third party lending. The definition needs to be widened to ensure it is safe for customers. We are concerned that under the current definition big retailers are able to offer their own style of BNPL to consumers directly. The definition needs to be widened to ensure that evolving practices such as these can be achieved in a way that is fair and safe for customers. This should also include no interest phone contracts under the BNPL scheme.</p> <p>Our clients pay more in late fee penalty payments than the income that they will be bringing in. BNPL has become used as a tool for essential survival which should not be the intent of this product.</p> <p>We also do not support the definition capturing deferred payment from services where there are no additional costs to whānau at all, including for late payment.</p> <p>A review of suppliers who provide BNPL for alcohol, tobacco and gambling need addressed with urgency as this is causing significant harm in our community. In line with a harm reduction approach this needs to be done in conjunction with specialists in the mental health and addictions sector and not only in isolation as the drivers behind these purchases are psycho-social, environmental and systemic in nature and require a multi-faceted response.</p> <p>Our Financial Mentors, Good Loans and Social Work Teams are seeing an increasing number of clients buying food, vapes and alcohol on BNPL which they are trying to pay off, but then they end up with late payment fees. This then leads to no money left to purchase food to meet their immediate need, creating distress and ongoing food insecurity and further levels of hardship and poverty.</p>
2	<p>Do you have any comment on the proposed threshold of \$600? Should the threshold be higher than \$600? Lower? Why?</p>

The proposed threshold of \$600 is too high and unaffordable for our most financially vulnerable in our community.

We strongly recommend that BNPL meet the exact same requirements as any lending like personal loans, credit cards and overdrafts.

We do not support an approach of permitting lending without affordability assessments for loans below a certain threshold. A zero threshold is preferable for affordability assessments in our view. If there is a threshold it should be collective over all BNPL debts not each one.

Applying a full affordability assessment requirement as per the Credit Contract and Consumer Finance Act regulations should apply to all Buy Now Pay Later lending. Known harm caused by outright unaffordability would be prevented with a full affordability assessment. Full application would also address the well-known harm that is caused by substantial hardship from the culmination of multiple loans from separate providers. The multiple loans issue could otherwise continue where each loan is permitted when below a set threshold.

Secondly, another issue with the \$600 threshold is it means that vulnerable people can incur an unlimited amount of debts up to \$600 (it is not just an overall amount).

The impact of this \$600 threshold means that customers still have to pay up to \$150 per fortnight before needing to undergo an affordability assessment for each debt.

Our Financial Mentors and Good Loans Microfinance staff regularly see customers with multiple BNPL lenders which has placed them in significant hardship and unaffordable debt. Our clients do not have any surplus income that will enable them to get on top of the BNPL debt and thus end up unable to break the cycle leading to high rates of anxiety, depression and despair.

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

Detrimental and will continue to cause significant financial distress and harm to our most financially vulnerable in our community. The majority of people we see are a mix of people of benefits (both main and non-beneficiary assistance) and those on minimum and/or low- or middle-income wages.

The impact and cost incurred by not having sufficient income to pay other essential bills e.g., phone, power, internet needs to be factored into the financial impact of the \$600 threshold. We have had client situations involving partners completely unaware of the other partner's BNPL's which has led to financial abuse, increased rates of stress, anxiety, depression, family harm and relationship breakdown.

We have a number of clients who have experienced economic/financial abuse due to no surety of who is making the BNPL purchase on line. We have situations where a client's partner is making the purchases under her or his name and then the partner who is unaware of this is left with the debt.

The cost-of-living crisis has only exacerbated this issue and has placed our clients in a more vulnerable position and made BNPL more attractive and the only option to meet basic essential costs.

The temptation of opening up another BNPL account to meet basic essential costs is a common occurrence in the support we provide to clients. We see this in the support we provide to clients both in a financial mentoring and Good Loans/Micro finance space and this needs to be considered as part of the financial impact of the \$600 threshold.

	<p>As part of the Good Loans affordability assessment our staff factor in the total amount able to be put on BNPL as an ongoing expense which in many cases means the client misses out on fair ethical, interest free lending of up to \$7,000 due to the high level of BNPL debt.</p> <p>The impact on clients with BNPL debt also directly and negatively affects future credit opportunities. If a client has previously defaulted on BNPL debt due to not having sufficient income to pay this the debt is sent to debt collectors which means clients are unable to get into most rental properties, power or other credit.</p> <p>Our Financial Mentors experience in working with vulnerable clients indicates that often clients tick a box on-line for the terms and conditions, they don't read these or partially read in a hurry as they are desperate to meet their essential needs.</p> <p>Secondly, there is also no way of confirming when this part is completed it is actually the client who is completing this. We have some client situations where some clients share more than one account with different names to access further BNPL and for couples some partners are unaware of what the partner has purchased until they end up in debt and present to our Financial Mentors or Good Loans staff.</p> <p>ASIC data shows 20% of BNPL users are reducing or forgoing essential items to cover these costs so as not to incur further fees with BNPL providers. 15% of users state they have taking out other loans to cover these costs leading to a potential debt spiral.</p> <p>The \$600 threshold is not sufficient enough to effectively reduce the harm caused by BNPL. Unfortunately, it enables people to continue incurring multiple debts up to \$600 without limitation.</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>We do not support the threshold approach. Please see our response to support this in Q 2 and Q3.</p> <p>We are concerned about the escalating increase of credit availability based solely on previous history of making payments on time.</p> <p>We are also concerned about the variability of information and information captured held by Credit Reporting Agencies i.e., detail around late payments, instances of failure of logging payment information on credit files.</p> <p>Consistency in reporting is needed to ensure vulnerable consumers information, payments etc are transparent and clear to understand.</p>
5	<p>Should regulations 4AC–4AN apply to BNPL? Why, or why not?</p>
	<p>We support full affordability assessments requirements applying to all Buy Now Pay Later (BNPL) loans as per the Credit Contract and Consumer Finance Act regulations. This is critically important to prevent and reduce the significant and distressing economic harm caused by unaffordability on a single loan.</p> <p>The previous credit law regime with principles led requirements did not lead to better protection for clients and whānau and lends itself to inconsistent consumer protections. There needs to be clear pathways away from hardship when unaffordable loans are made by BNPL lenders.</p>

6	<p>What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?</p>
	<p>We believe application of these regulations in full are twofold. Firstly, it would lead to clearer mechanisms for clients and their whanau to have consistent consumers rights. Secondly, it would enable clear guidance for lenders on how to lend responsibly.</p> <p>At present each BNPL provider on their websites have their own hardship statement, however there is no real responsibilities for these businesses to follow through. Regulations 4AC-4AN provides customers with the rights to this support. This would hopefully lead to the relationship between the customer and the BNPL being more equitable and customers being better informed and empowered.</p> <p>Clients accessing BNPL services would have a clearer way to identify when they are making purchases with credit. Also, more client user friendly pathways to request support when they miss payments, experience hardship or need to access disputes resolution.</p>
7	<p>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>
	<p>Regulations 4AC-4AN should apply to BNPL and we do not support this approach or the expectations on BNPL lenders varying from the expectations of the Responsible Lending Code. As outlined in Q 2 and Q 3 this does not provide protection of our most vulnerable clients and their whanau. Clients utilising BNPL are actively and aggressively promoted and targeted with relentless marketing and have become a 'lifeline' for clients to meet basic essential costs.</p> <p>Consideration needs to be given to some level of enforceable action which is currently not covered in the Responsible Lending Code.</p>
8	<p>Do you have any comments on the drafting of regulations 18I(3)(c)?</p>
	<p>We strongly recommend that BNPL lenders are mandated to disclose details of payment amounts, due dates, fee structures, including fees for late payments for all loans. This also needs to include clear policies and procedures for handling hardship, complaints and disputes resolution and outlined in clear simple user-friendly language.</p> <p>Our staff are seeing increasing numbers of clients with multiple BNPL's and the amounts on repayments are different each week, which makes it difficult to draw up a budget unless it is done on a week-to-week basis. This has a particular impact on clients who are vulnerable adults with cognitive and intellectual disabilities, clients experiencing family harm and has a detrimental impact on tamariki, rangatahi and whānau. as a whole.</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>We do not support BNPL loans being exempted or adjusted from requirements currently covered by the Credit Contract and Consumer Finance Act.</p>

	<p>Any exemptions should only be granted on the basis that requirements are completely irrelevant and that the exemption does not in any way risk harm to whānau.</p>
10	<p>Do you have any other comments or suggestions for the drafting of the regulations?</p>
	<p>First comment:</p> <p>BNPL services have been known to increase people’s spending limits without consultation or checking the affordability of the new credit limit. This is unfair and unethical and should be addressed to ensure users are able to cover the newly given credit costs. This has a direct impact on clients as it masks the debt owed and draws their focus only to the available credit they can access. This does not support a client to build and/or strengthen their financial capability. It also provides a high level of irresistible highly tempting unaffordable essential and/or impulse purchases creating additional hardship.</p> <p>Afterpay is a good example of this as a user is required to access their ‘MyAfterPay’ section on AfterPay to see their current balances. The online app places significant focus on advertising based on a client’s previous spending habits.</p> <p>We support a requirement for BNPL to send a text message 48 hours before payment is due to say payment due and then another text message 12 hours before payment is due.</p> <p>Second Comment:</p> <p>Many BNPL users have access to multiple providers/accounts. This means their access to unaffordable credit multiplies substantially, creating a far bigger problem than if they were only in debt with one.</p> <p>Our Financial Mentors see many clients with multiple purchases (ranging from 4 to 17), the repayments add up to a large percentage of their income, more than their income in some instances. Some clients with many smaller purchases cannot make a payment and the \$10 fee is more than the payment they are unable to make. Default fees can often amount to more than the initial debt itself.</p> <p>Clients should have the right to be fully aware of all the costs involved (and the impact on their credit score) for missed payments.</p> <p>All BNPL’s should be lodged on your credit report and the number of active BNPL’s a client has needs to be part of the equation of affordability. Alongside this give consideration to BNPL being available on credit cards (not debit cards) as this would result in affordability assessments being undertaken by credit card companies. A further analysis of this is needed to prevent unintended consequences.</p> <p>Third Comment:</p> <p>There has been a noticeable rise in people using BNPL for essential items like food which is a worrying trend as access to food is a basic human right. This should not be something to be exploited by BNPL providers as it masks the underlying systemic reasons for food poverty. There should be some provisions to ensure people are not getting into BNPL debts to cover their basic essential costs such as food.</p>

	<p>Forth comment:</p> <p>The current drafting does not include an explicit prevention of multiple Buy Now Pay Later lenders extending credit simultaneously without checking if loans will be unaffordable from the start. This is a significant gap in protections given this issue is currently causing debt spirals. We reiterate our recommendation in response to Q2 that would address the issue.</p> <p>Fifth comment:</p> <p>We also recommend that a mechanism is put in place for affordability assessments for any further lending on credit limits that were established before the upcoming implementation of these regulations.</p> <p>Many accounts with these lenders are already open and this mechanism should prevent unaffordable lending occurring within these accounts once protections are in place.</p> <p>Sixth Comment:</p> <p>We recommend the waiving of late payment fees for vulnerable clients who are actively engaged with Financial Mentors to create a plan to pay existing BNPL's.</p>
11	<p>Do you have any comments on when the regulations should commence? Please provide reasons for your answer.</p>
	<p>As soon as practicable given the high level of harm that is occurring for our most vulnerable people, tamariki, rangatahi and whanau against a backdrop of the cost-of-living crisis, rising food, petrol, housing and fuel costs. The level of debt and financial hardship will continue to increase and deepen leading to significant distress which we are seeing in increasing numbers including economic/financial abuse, other forms of family harm and high levels of depression, anxiety and despair, including separations.</p> <p>Our clients are faced with the daily challenge of how to meet their basic essential needs today and short-term ways to survive which makes BNPL (as an unregulated loan) the most and often only option people see to meet their immediate essential needs. This provides immediate relief but has far reaching and on-going devastating consequences for clients and whanau who remain trapped in a never-ending debt spiral.</p> <p>We believe the regulations should commence with urgency and should be a high government priority which we note aligns with the government's commitment to reducing economic hardship created by the cost-of-living crisis, honouring the government commitment to reducing child poverty and achieving the agreed Child Poverty measures and targets.</p>

Other comments

	<p><i>He aha te mea nui o te ao?</i></p> <p><i>What is the most important thing in the world?</i></p> <p><i>He tangata, he tangata, he tangata</i></p> <p><i>It is people, It is people, It is people.</i></p>
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