



COVERSHEET

Minister	Hon Dr Duncan Webb	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023	Date to be published	9 October 2023

List of documents that have been proactively released		
Date	Title	Author
August 2023	Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023	Office of Minister of Commerce and Consumer Affairs
24 August 2023	Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023 LEG-23-MIN-0171 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Legislation Committee

CREDIT CONTRACTS AND CONSUMER FINANCE (BUY NOW PAY LATER) AMENDMENT REGULATIONS 2023

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023 (the **BNPL Regulations**).

Policy

- 2 In October 2022, Cabinet agreed to declare the class of buy now pay later (**BNPL**) contracts to be consumer credit contracts under the Credit Contracts and Consumer Finance Act 2003 (the **Act**) [*GOV-22-MIN-0038* refers]. These class declarations can be made by regulations, under section 137A of the Act. Cabinet did this to extend the protections of the Act to consumers for whom these loans may result in financial hardship.
- 3 To ensure regulation of BNPL is workable and appropriate to the nature of these loans, Cabinet has agreed to modify three obligations that would normally apply to lenders under the Act [*GOV-22-MIN-0038* and *CAB-23-MIN-0348.01* refer]. This was informed by public consultation, including on draft regulations. These three modified obligations are outlined below.
- 4 Firstly, the Act normally requires lenders, before entering into an agreement or materially changing an agreement, to make inquiries satisfying them that the loan will be affordable for the consumer. The details of this requirement are prescribed by regulations. The BNPL Regulations exempt all BNPL loans from these affordability assessments on conditions that the lender instead:
 - 4.1 first obtains a comprehensive credit report on the applicant when they sign up;
 - 4.2 provides lending information back into the credit reporting system;
 - 4.3 gets another comprehensive credit report before they increase a borrower's credit limit;
 - 4.4 has a credit policy which lays out how they take into account information from credit reports in lending decisions; and

IN CONFIDENCE

- 4.5 makes clear to consumers, at the point of each purchase using BNPL, the default fees (for missed or late instalments) and the timing of instalments.
- 5 Although comprehensive credit reports do not provide the same assurance of affordability as the assessment normally required by the Act, they would ensure BNPL lenders have reliable information about a borrower's financial position. This is intended to reduce the risk of borrowers already in problem debt obtaining BNPL loans, while ensuring that compliance costs are proportionate. If there is continued evidence of financial hardship caused by BNPL, the BNPL Regulations could be amended in future to require affordability assessments.
- 6 Secondly, the Act requires lenders to make inquiries to satisfy themselves the loan will be suitable given the consumer's needs and objectives. The BNPL Regulations implement Cabinet's decision to exempt BNPL loans from this requirement. Cabinet accepted that suitability inquiries are unlikely to be useful in these cases, given the simple and fixed nature of BNPL loan offerings. There would therefore be minimal benefit to consumers to justify potentially significant changes to the processes BNPL lenders use.
- 7 Thirdly, the Act normally requires lenders to disclose in advance to borrowers that they have the right to cancel the contract within five days. Cabinet agreed to exempt BNPL lenders from this requirement because their cancellation policies are currently more generous than this right, allowing borrowers to cancel at any time by repaying the debt [GOV-22-MIN-0038 refers]. The exemption is given on the condition that lenders instead disclose their (compliant) cancellation policies.
- 8 In addition to these modified requirements on BNPL lenders, consumers will benefit from a number of important protections under the Act, including:
- 8.1 duties on lenders to assist borrowers to make informed decisions, and treat them reasonably and ethically;
 - 8.2 a range of disclosure obligations;
 - 8.3 protections from unreasonable default fees;
 - 8.4 the ability for borrowers experiencing financial hardship to apply to have their repayment contract varied.

Timing and 28-day rule

- 9 The BNPL Regulations will come into force in September 2024. This will give BNPL lenders time to prepare for compliance. These regulations therefore comply with the 28-day rule.

Compliance

- 10 The Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023 comply with:

IN CONFIDENCE

IN CONFIDENCE

- 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 10.3 the principles and guidelines set out in the Privacy Act 2020;
 - 10.4 relevant international standards and obligations;
 - 10.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 11 Section 137A of the Act requires regulations of this kind to be made only on the recommendation of the Minister of Commerce and Consumer Affairs, with the Minister:
- 11.1 being satisfied that the regulations are necessary or desirable in order to promote the purposes of the Act;
 - 11.2 having had regard to the economic substance of the relevant arrangement; and
 - 11.3 having consulted with persons who will be substantially affected by the regulations.
- 12 I am satisfied that these requirements have been met.

Regulations Review Committee

- 13 There are no grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 14 The regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 15 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted when policy approvals were given by Cabinet in October 2022 [*GOV-22-MIN-0038* refers]. This Regulatory Impact Assessment was revised in accordance with the necessary requirements and re-submitted when further policy approvals were sought from Cabinet in August 2023 [*CAB-23-MIN-0348.01* refers].

Publicity

- 16 I intend to notify stakeholders of the approval of the Regulations.

IN CONFIDENCE

Proactive release

- 17 I intend to proactively release a copy of this paper, subject to redactions as appropriate, within 30 business days of decisions being confirmed by Cabinet.

Consultation

- 18 A wide range of agencies and interest groups have been consulted on the proposals given effect by the BNPL Regulations. The Treasury, Commerce Commission, Reserve Bank of New Zealand, Department of Prime Minister and Cabinet, Office of the Privacy Commissioner, and Ministry of Social Development were consulted, as well as the National Emergency Management Agency. We have also carried out both targeted and, where relevant, public consultation with interested parties, including banks and other lenders, BNPL lenders, local authorities, consumer advocates and financial mentors.
- 19 These same agencies were also given the opportunity to be consulted on the BNPL Regulations themselves and this paper, and the Commerce Commission provided comments.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that Cabinet agreed in October 2022 to declare buy now pay later contracts to be consumer credit contracts for the purposes of the Credit Contracts and Consumer Finance Act 2003 [*GOV-22-MIN-0038* refers];
- 2 **note** that Cabinet agreed in August 2023 to exempt buy now pay later loans from requirements to conduct affordability and suitability assessments, and to disclose the borrower's right to cancel within five days, on conditions intended to protect the interests of consumers without creating excessive compliance costs or workability issues for these lenders [*CAB-23-MIN-0348.01* refers];
- 3 **note** the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023 will give effect to the decisions referred to in recommendations 1 and 2 above;
- 4 **authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023;
- 5 **note** that the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2023 come into force on 2 September 2024;
- 6 **note** that section 137A of the Credit Contracts and Consumer Finance Act 2003 requires the responsible Minister, before recommending the making of an Order in Council, to be satisfied that the regulations are necessary or desirable in order to promote the purposes of the Act, have regard to the economic substance of the relevant arrangement, and consult with persons substantially affected by the regulations;
- 7 **note** the advice of the Minister of Commerce and Consumer Affairs that these requirements have been met.

Authorised for lodgement

Hon Duncan Webb

Minister for Commerce and Consumer Affairs