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# Buy-Now, Pay-Later

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Understanding the triggers of financial hardship  
and possible options to address them

Discussion  
Document  
November 2021

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New Zealand Government

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# How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on Thursday 16 December 2021.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example, references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <https://www.mbie.govt.nz/bnpl>.

This will help us to collate submissions and ensure that your views are fully considered.

Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- › sending your submission as a Microsoft Word document to [buynowpaylater@mbie.govt.nz](mailto:buynowpaylater@mbie.govt.nz).
- › mailing your submission to:

Buy Now Pay Later Project Team  
Consumer and Competition Policy Team  
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 [buynowpaylater@mbie.govt.nz](mailto:buynowpaylater@mbie.govt.nz).

## USE OF INFORMATION

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The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on how to address financial hardships arising from Buy-Now, Pay-Later products. We may contact submitters directly if we require clarification of any matters in submissions.

## RELEASE OF INFORMATION

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MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- > indicate this on the front of the submission, with any confidential information clearly marked within the text
- > provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

### **Private information**

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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## Glossary

MBIE	Ministry of Business, Innovation and Employment
BNPL provider	Buy-Now, Pay-Later providers. In New Zealand currently: Afterpay, Humm, Zip, Laybuy, Latitude (Genoapay), Openpay, Klarna
Financial mentoring services, including microfinance providers	For example: Building Financial Capability services funded by the Ministry of Social Development, Consumer NZ, Christians Against Poverty, and other 'budgeting' services supported by FinCap. Good Shepherd NZ and Ngā Tāngata Microfinance.
Instalments	Number of BNPL repayments: usually one to ten
CCCFA	Credit Contracts and Consumer Finance Act 2003
Consumer journey mapping approach	A way of analysing issues from the view of the consumer. In this case it is to understand the points in the consumer's journey from initiating a BNPL transaction that could then trigger financial hardship.
Financial hardship	When a consumer is unable to meet their debt payments and bills.
Grace period	If a consumer has missed or is late with an instalment, allowing them a certain period of time to make the instalment without facing any penalties (eg missed instalment fees). Sometimes also known as forbearance.
Missed instalment fee	Fees that are applied to the consumer if they miss or are late with an instalment. Sometimes calculated as a maximum or percentage value of the transaction. Also known as default fees.
Credit limits	Consumers are able to make transactions up to a certain value threshold. Also known as spending limits.

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# Introduction

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## Context

1. Buy-Now, Pay-Later (**BNPL**) – where consumers are able to receive goods and services immediately but pay for them in instalments over a specified period (usually one to three months) without paying interest – has become popular in New Zealand and overseas. However, there are concerns that BNPL could be creating financial hardship for some consumers. Similar concerns have been noted in Australia and the United Kingdom.

## Purpose of this discussion paper

2. The Ministry of Business, Innovation and Employment (**MBIE**) is seeking input and feedback on:
  - › the benefits of BNPL to consumers and to the wider economy
  - › how the use of BNPL could trigger financial hardship for consumers – under what circumstances and at which points in the consumer journey financial hardship could occur
  - › how risks of financial hardship could be addressed if BNPL exhibited certain desirable features
  - › what is an effective BNPL sector?
  - › the options available to achieve an effective BNPL sector, the costs and benefits of these options and how their effectiveness could be monitored and evaluated.
3. In particular, we are interested in receiving submissions from:
  - › consumers who use BNPL
  - › financial mentoring services who work to assist consumers in hardship
  - › consumer advocacy organisations who work to support the interests of consumers
  - › businesses who accept BNPL as a payment option, including small businesses
  - › BNPL providers
  - › competitors to BNPL providers
  - › other interested parties.
4. For consumers, we have provided an additional online survey which can be found here: [https://www.research.net/r/MBIE\\_BNPL](https://www.research.net/r/MBIE_BNPL).
5. Submissions will inform advice to the Government on how financial hardship could be addressed while maintaining the benefits of BNPL so that, overall, the BNPL sector delivers long-term benefits.
6. Recently the Government announced the regulation of the retail payments system, legislation to create a consumer data right, and is conducting a review of the conduct of financial institutions. Any options to address the risks of financial hardship from BNPL will take into account developments in these other areas.

## What does this discussion paper do?

7. This discussion paper is split into the following chapters:
  - i. **What does the New Zealand BNPL sector currently look like?** This section provides an overview of the BNPL sector, including recent growth areas and the current regulatory environment. It also includes an outline of what we consider to be the benefits of BNPL.
  - ii. **How financial hardship can be triggered by BNPL use?** This section contains our analysis of the types of financial hardship that could result from the use of BNPL and the points at which, and scenarios under, financial hardship could be triggered by BNPL. We outline what features might help to address these triggers. This section has been informed by financial mentoring organisations, the BNPL sector and overseas experience. We have applied a consumer journey mapping approach to identify when financial hardship is triggered.

- iii. What are the Government's objectives for an effective BNPL sector?** This section outlines what the Government considers to be the overall objective of an effective BNPL sector – one where addressing the risks of financial hardship is balanced against the benefits of BNPL. It also outlines the criteria to assess options for an effective BNPL sector.
- iv. What are the options for achieving an effective BNPL sector?** This section includes discussion and analysis of the options we have identified for implementing an effective BNPL sector.
8. This discussion document has been informed by discussions with relevant stakeholders,<sup>1</sup> available data<sup>2</sup> and the experiences of other countries. The possible options have been analysed at a high level and do not fully quantify the costs and benefits. We are seeking input on what the costs and benefits of options would be.

## Process and timeline

9. Please provide submissions by 5pm on Thursday 16 December, 2021. We may contact you to discuss your submission further.

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1 In order to understand the issues, we requested information from BNPL providers which they provided in confidence. To ensure confidentiality, we have cited the information received either anonymously, by aggregated figures, or by providing ranges. Information received from financial mentoring services has also been presented in a similar way.

2 We commissioned Centrix, a credit reporting agency, to produce a report on the BNPL sector based on its Comprehensive Credit Reporting platform which covers around 35 to 40 per cent of the New Zealand BNPL market (in terms of revenue and value of BNPL transactions), September 2021.



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# What does the BNPL sector currently look like?

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## What is Buy-Now, Pay-Later?

10. Buy-Now, Pay-Later (**BNPL**) is a relatively new form of credit available to New Zealand consumers. It allows consumers to pay for goods and services at participating businesses, typically using a mobile app at the point of sale, either in-store or online. For a fee, the business is paid for a good or service by the BNPL provider which enables the consumer to receive the good or service up-front. The consumer then pays the BNPL provider weekly or fortnightly instalments over a specified period, drawn from the consumer's linked debit or credit card.
11. BNPL differs from credit cards or other forms of consumer credit contracts in that the consumer does not pay an upfront fee or interest on the amount owed. The consumer may need to pay missed payment fees if an instalment is missed (also known as default fees).
12. Consumers can use BNPL for online goods, in store transactions and, increasingly, for services such as dental treatment and vehicle repairs.
13. We understand that in New Zealand there are currently seven BNPL providers. These are: Afterpay, Humm, Zip, Laybuy, Genoapay (Latitude), Openpay and, most recently, Klarna. All these firms also have off-shore operations. Based on information received from some of these BNPL providers, the average BNPL transaction has remained relatively steady at \$200 in 2019-20, increasing slightly to \$210 in 2020-21.

## BNPL providers earn most of their revenue by charging businesses

14. The majority of the revenue BNPL providers earn comes from charging businesses a percentage value of the price of the product or service, or a fixed fee. Information received from some BNPL providers indicates that in 2020-21, around 68 per cent to 82 per cent of revenue was generated through fees charged to businesses. The percentage of revenue generated by default fees from consumers has fallen slightly from an average of 29 per cent in 2019-20 to 26 per cent in 2020-21.

## BNPL has grown and expanded in New Zealand

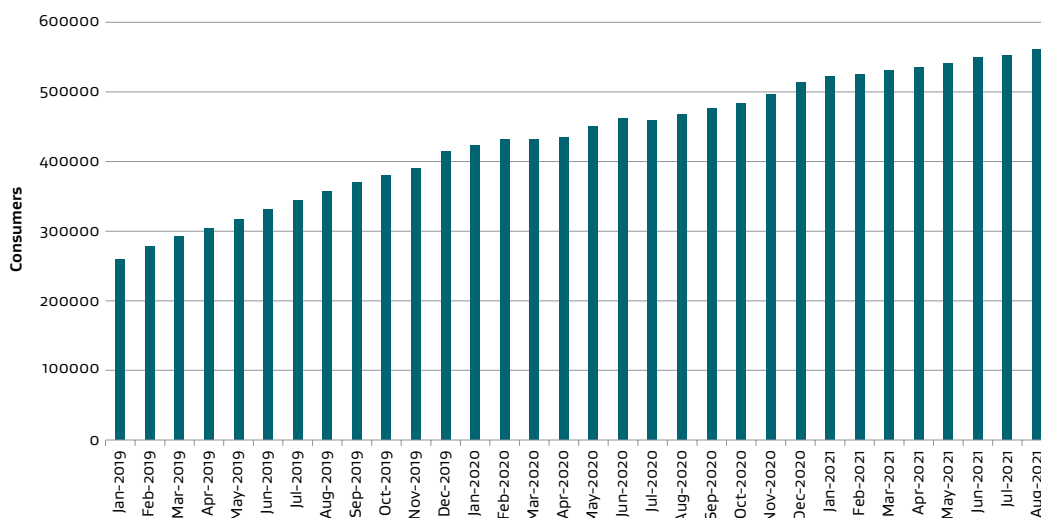
15. Various sources suggest that BNPL is rapidly becoming an established form of credit in New Zealand. According to data covering around 35 to 40 per cent of the New Zealand BNPL market,<sup>3</sup> <sup>4</sup> the number of active consumers has doubled in the last two years, with an increase of 20 per cent in the last year.

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<sup>3</sup> Data commissioned by MBIE from Centrix as part of its Comprehensive Credit Reporting platform, September 2021.

<sup>4</sup> We consider that while the Centrix data commissioned by MBIE does not cover the entire BNPL market, certain trends and attributes are likely to apply across the BNPL sector in New Zealand.

**Number of consumers actively using BNPL  
(covering around 35 to 40% of estimated total BNPL in Aotearoa New Zealand)**



16. Other sources of information also confirm that the sector has experienced rapid growth. Transactional card data from Datamine suggests that from 2019 to 2020 BNPL online transactions increased by 57 per cent.<sup>5</sup>
17. Information received from some BNPL providers suggests that most BNPL consumers are aged 45 or under. Information from Datamine also indicates that most BNPL consumers, around 75 per cent, are aged 45 or under. However, recent data also indicates that BNPL is increasing in popularity with the over 60s.<sup>6</sup>
18. According to a recent survey, women (39 per cent) are more likely than men (23 per cent) to have used BNPL within the past three years.<sup>7</sup>

#### **Why is BNPL experiencing such growth?**

19. The success of the BNPL industry has been attributed to its ability to take advantage of consumer psychology – by giving consumers instant access to goods and services at a perceived lower price due to consumers focusing on the initial instalment rather than the full cost, with no interest or fees (unless instalments are missed). The consumer psychology is even stronger for online purchases, due to the speed at which the consumer is able to make transactions, with arguably lower search costs than traditional in-store transactions.<sup>8</sup>

5 Further information at: [https://thefulldownload.co.nz/sites/default/files/2021-05/NZPost\\_TheFullDownload\\_2021.pdf](https://thefulldownload.co.nz/sites/default/files/2021-05/NZPost_TheFullDownload_2021.pdf).

6 *ibid.*

7 Survey conducted by Finder, June 2021: <https://www.finder.com/nz/buy-now-pay-later-report-2021>.

8 Specialist commentary from Dr Paul Harrison invited by Australian Senate Economic References Committee investigation into Credit and Financial Services targeted at Australians at Risk of Financial Report, 2019 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Creditfinancialservices/Report/c05](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report/c05).

## What are the benefits of BNPL?

### Benefits to consumers from using BNPL

20. Customer satisfaction from BNPL in New Zealand is high, with around 75 per cent of customers reporting extremely high satisfaction.<sup>9</sup> BNPL allows consumers to make purchases using credit but without paying establishment fees or interest. If used appropriately, BNPL can be an effective way for consumers to spread the costs of their purchases.
21. Some of the potential benefits for consumers from using BNPL appropriately are that it:
  - a. provides an effective way for consumers to spread the costs of their purchases at peak purchase times (for example, holidays or the start of the school year)
  - b. is tied to a specific good or service and therefore does not have risks that the consumer will use it to fund other transactions (unlike a personal loan, for example)
  - c. allows consumers to purchase goods and services in bulk, or in one payment to the business, allowing consumers to take advantage of any discounts
  - d. provides an ability for the consumer to demonstrate credit worthiness by successfully paying off a BNPL transaction which may be particularly beneficial for consumers who do not hold other credit products.

### Benefits to businesses which accept BNPL at the point of sale

22. For businesses which accept BNPL at the point of sale, BNPL may generate additional sales from customers who may not be able to afford the full cost of goods and services.
23. Accepting BNPL may also be something which businesses compete on – not accepting BNPL may mean sales are lost to those businesses who accept BNPL.
24. BNPL may also provide less risk to businesses compared to some other types of credit where missed payments have to be followed up by the business, often through a third party, to collect the full payment.
25. Additional benefits from some BNPL providers is that they also provide marketing and customer analysis services, to businesses which can then help generate sales.

### Economy wide benefits of BNPL

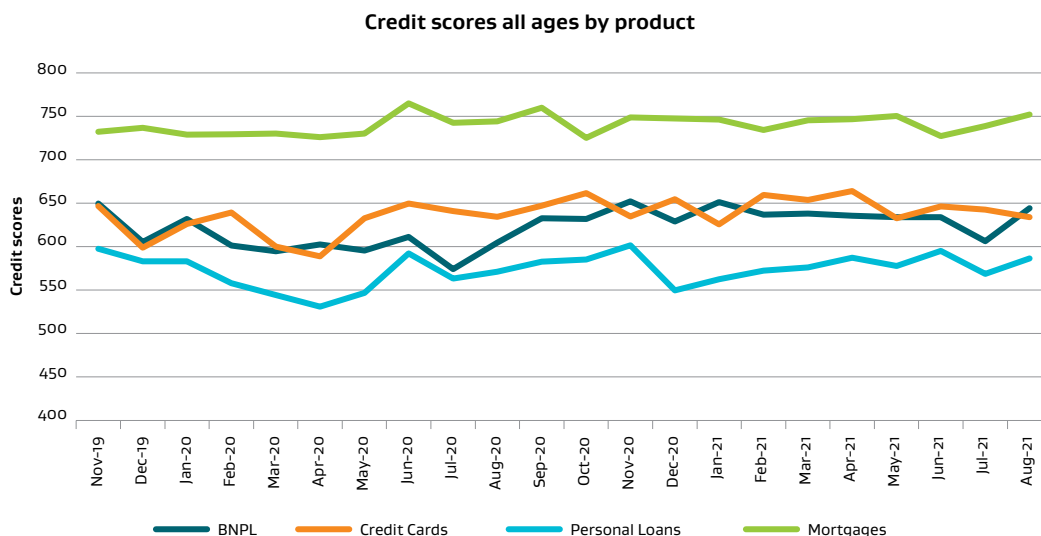
26. For the wider economy, BNPL could also be providing competition in the credit sector by providing consumers with alternatives to existing credit products. Around 45 per cent of BNPL customers also have credit cards and this trend has been relatively constant since January 2019.<sup>10</sup> The chart below shows that users of BNPL and users of credit cards have similar credit scores.<sup>11</sup> This suggests that for some consumers BNPL may be in competition with credit cards as the types of consumers having both credit cards and BNPL have a similar credit profile.

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9 Cited at New Zealand Banking Innovation Summit 16 June 2021: Rfi Insights - Innovation at the forefront, building trust in a post pandemic world.

10 Data commissioned by MBIE from Centrix as part of its Comprehensive Credit Reporting platform, September 2021.

11 *ibid.*



27. As BNPL evolves and grows, the competition impacts of BNPL may also extend to other credit and financial products.

- 1 Do you agree with our assessment of the benefits from BNPL? Yes / No / Not sure  
Are there other benefits? Please provide details.
- 2 As a consumer (or consumer representative), please outline what the benefits of BNPL are?
- 3 As a business accepting BNPL to pay for goods and services, please outline the benefits of BNPL?  
If you are a small business, are there any additional benefits from accepting BNPL?

### The future of BNPL in New Zealand

28. The BNPL industry is experiencing significant growth in New Zealand, which is forecast to continue – with reports suggesting that BNPL use could outstrip credit card payments for online transactions by 2024.<sup>12</sup>
29. Such growth, coupled with new entrants and innovative and emerging business models, has the potential to significantly disrupt the credit and payment systems industries. The types of business models being used by BNPL in New Zealand and overseas continue to evolve and change. New entrants continue to enter the market and joint ventures, partnerships and acquisitions are occurring with other firms across the financial sector.

<sup>12</sup> <https://www.nzherald.co.nz/business/buy-now-pay-later-to-outstrip-card-payments-by-2024-expert-forecasts/6CFYEBWAMIHJFF5RGIQSG5L3ZQ/>.

### BNPL Sector developments

In 2020 the Commonwealth Bank of Australia (CBA) invested (AUS) \$300million to rollout the Swedish BNPL provider Klarna into Australia and New Zealand. Since then, CBA announced its own plans to establish a BNPL product linked to its bank account offering. Also in Australia, Pay Pal has entered the BNPL sector but with no late instalment or sign up fees for the consumer. In July 2020, Afterpay announced it is due to launch its banking offering 'Money by Afterpay' in partnership with Westpac Australia and has recently announced that it has been acquired by US digital payments company Square (a provider of payment services for merchants).

Other notable evolutions in BNPL are where the BNPL provider issues the consumer a Visa or Mastercard which is linked to their BNPL account. This would allow the consumer to use their BNPL account wherever the card (Visa or Mastercard) is accepted. For example, a subsidiary of Westpac, Bundll (a partnership between Humm, a BNPL provider, and Red Bird Ventures), has recently launched a BNPL account linked to Mastercard in New Zealand. This allows consumers with Bundll accounts to pay with BNPL at any retailer that accepts Mastercard.

30. It is unclear how such emerging business models will impact the triggers of financial hardship identified in this paper. For example BNPL providers issuing Mastercard or Visa cards:
  - › will increase the number of businesses that accept BNPL as payment and therefore increases the risk of financial hardship to consumers
  - › is likely to increase competition between BNPL and existing credit products such as credit cards, which may benefit some consumers as an alternative form of credit
  - › may dampen any competition between BNPL and Mastercard or Visa in terms of payment services to businesses.<sup>13</sup>
31. Partnerships between BNPL providers and traditional credit providers, such as banks, may make it easier for those BNPL providers to leverage off existing credit processes. This may make it easier to more accurately assess affordability by having greater visibility over consumers' income and expenditure.
32. There may also be further changes to the BNPL sector in New Zealand with the progress of the consumer data right, which may be applied to the banking or financial services sector.

### BNPL and the consumer data right

The Government has agreed to progress the framework for a consumer data right, which will allow individuals and businesses to exercise control over the data held about them. A consumer data right would enable consumers to direct businesses that hold their data to share it, in safe and secure ways, to other businesses who will only be able to use it as agreed and directed.

Cabinet has agreed to establish a high-level framework in legislation that could be applied gradually to specific sectors or markets through a 'designation', such as the banking or financial services sector.

BNPL providers have been supportive of the data portability that a consumer data right will introduce. The ability to easily request, and swiftly receive, consumer financial data will enable improved lending decisions.

For more information visit <https://mbie.govt.nz/cdr>

- 4 Do you agree with our assessment of how BNPL will evolve in New Zealand? If not, please provide details.
- 5 How do you think emerging BNPL business models eg partnerships with banks and credit card companies etc. will impact consumers? Please provide details.

<sup>13</sup> Even though level of competition between BNPL providers and Mastercard/Visa may be currently limited, the ability for BNPL providers to develop their retail payment networks in the future may drive further competition.

## **Current regulatory settings exclude BNPL products from being considered as a 'consumer credit contract'**

33. As BNPL products do not charge interest or fees (other than missed payment fees) or take security, they are not required to comply with the Credit Contracts and Consumer Finance Act 2003 (CCCFA) obligations for consumer credit contracts. The obligations applying to consumer credit contracts under the CCCFA include requirements that fees are reasonable and cost-based, that lenders provide adequate disclosure, and that lenders comply with the responsible lending obligations. BNPL providers are not required to assess a consumer's financial position, or make an assessment as to whether the consumer is likely to be able to repay the credit without substantial hardship, as required under the CCCFA.
34. BNPL also falls outside the definition of "layby sale agreements" in the Fair Trading Act 1986 (FTA). As a result, BNPL consumers do not have the same protections under the FTA as they would with layby agreements.
35. BNPL providers are required to be registered on the Financial Service Providers Register and be a member of an approved dispute resolution scheme. They are also subject to the prohibition against unfair contract terms and the general restrictions against engaging in misleading or deceptive conduct in the FTA.

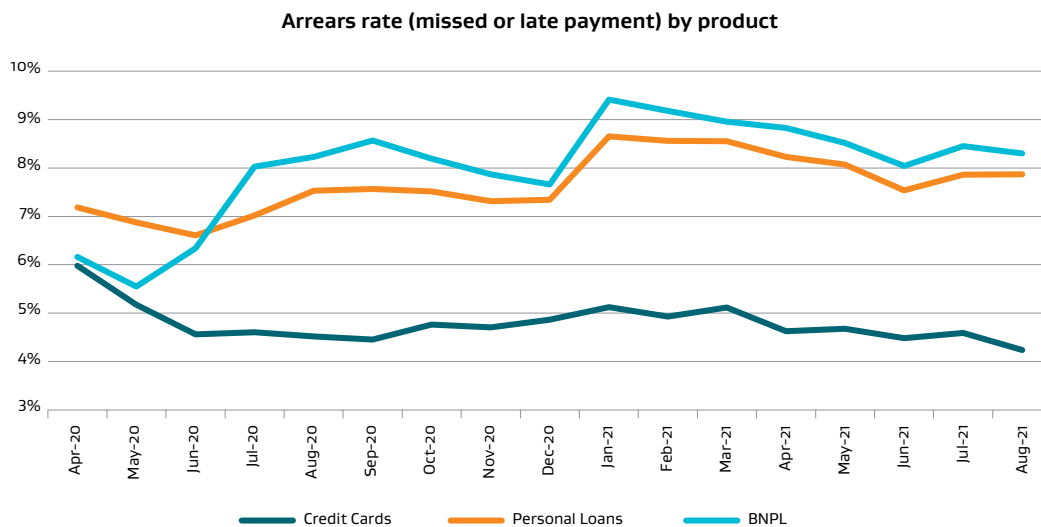
### **S137A of the CCCFA could allow for BNPL products to be treated as consumer credit contracts**

36. Section 137A of the CCCFA allows the Minister of Commerce and Consumer Affairs to recommend making regulations on 'any class of arrangements or facilities that has, or is intended to have, the effect of a person receiving a loan, or goods or services with deferred payment to be a consumer credit contract'.
37. This regulation-making power allows for products which are currently not regulated as consumer credit contracts, such as BNPL, to be brought into the scope of the CCCFA. Further detail can be found in Chapter 5 of this document.

# Financial hardship that could arise from BNPL and how are these harms triggered?

## Information from financial mentoring services

38. MBIE has received information from a number of financial mentoring services who are concerned that BNPL creates financial hardship for some consumers. These organisations assist significant numbers of New Zealanders who get into financial difficulty and help them manage their debts.
39. Financial mentors note that while BNPL presents an alternative form of credit for consumers, particularly for those who cannot access mainstream credit options due to affordability requirements, BNPL should still be viewed as debt. According to a survey conducted in January 2021, 63 per cent of BNPL consumers were extremely, or somewhat concerned, about their level of debt compared with 38 per cent of the general population.<sup>14</sup>
40. Data covering around 35 to 40 per cent of the New Zealand BNPL market,<sup>15</sup> suggests that in August 2021, 8.3 per cent of active BNPL customers were in arrears (late or missed payments). In comparison, around 7.9 per cent of personal loans and 4.2 per cent of credit cards were in arrears.



41. Financial mentors report that clients use BNPL across a range of products and services, including to purchase clothing and school gear, electronics, whiteware, dentistry and haircuts. Financial mentors note that when BNPL is used to purchase essentials regularly, such as groceries, this is likely to be an indicator of financial hardship.

<sup>14</sup> Survey conducted by Finder, reported in: <https://www.finder.com/nz/buy-now-pay-later-report-2021>.

<sup>15</sup> Data commissioned by MBIE from Centrix as part of its Comprehensive Credit Reporting platform, September 2021.

## The types of financial hardship that financial mentoring services are seeing from BNPL

42. Financial mentors also provided insights on how BNPL could be creating financial hardship in the form of unmanageable debt or consumers being unable to afford essential goods services. These fall into two broad categories as summarised below.

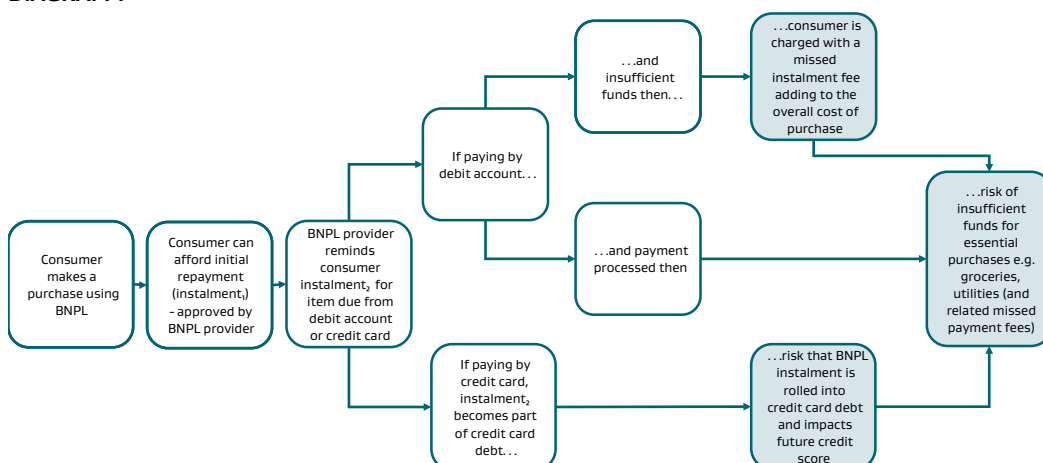
### Financial hardship triggered by a missed instalment fee

- 43. Firstly, automatic payments via debit card could create financial hardship if consumers have insufficient funds when an instalment is due. At this point, the consumer may be charged with a missed payment fee which adds to their debt burden.
- 44. Information from BNPL providers indicates that when an instalment is missed, most providers freeze the account so that the consumer is unable to make additional purchases. Fees range from flat fees, eg \$10 for a missed instalment, to a percentage of the value of the transaction. Typically these fees are capped but there may not be a cap on the number of fees that can be incurred for an account.
- 45. The harm that arises from a missed instalment fee is that the overall cost the consumer faces is higher. This adds to the debt that the consumer already faces and could impact on their ability to meet other expenses. Missed instalment fees are also likely to be an unforeseen cost, or one which is difficult to estimate at the point of transaction for the consumer (given that the consumer is unlikely to foresee that an instalment will be missed).

### Financial hardship when instalments are not missed

- 46. If there are sufficient funds in the consumer’s bank account and the BNPL instalment is processed, there is a risk that some consumers may miss other regular payments (eg utilities) and/or not be able to afford essential goods and services. This type of financial hardship may not be easily visible to BNPL providers, unlike missed instalments (see above).
- 47. Finally, while the majority of BNPL transactions occur via debit card, financial mentors note that some consumers use credit cards to pay their BNPL instalments. Information provided by some BNPL providers suggests that on average around 20 per cent of consumers use credit cards to pay for their BNPL instalments.
- 48. The risk of using credit cards is that any BNPL transactions become part of on-going credit card debt which accrues interest. These consumers may also be at risk of not being able to afford essential purchases due to their credit card repayment obligations.

DIAGRAM 1





49. Data covering around 35 to 40 per cent of the New Zealand BNPL market,<sup>16</sup> suggests that consumers who have both BNPL and credit cards are more likely to be in arrears with their credit card debt (late or missed instalments) compared to consumers who only hold credit cards. This trend is consistent across all age groups as shown in the table below.

Age Group of Consumers	Arrears:	% BNPL Arrears		% Credit Card Arrears	
	BNPL Consumer:	Yes	Yes	Yes	No
	18-24 Years	12%	12%	12%	7%
	25-29 Years	11%	11%	11%	6%
	30-39 Years	10%	10%	12%	6%
	40-49 Years	7%	7%	13%	6%
	50-64 Years	7%	7%	12%	5%
	65+ Years	10%	10%	10%	3%

**6** Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL? Please provide details.

**7** As a consumer (or consumer representative), have you faced financial hardship from BNPL?  
Yes / No / Prefer not to answer

If yes, under what circumstances have you faced financial hardship from BNPL? Please select all that apply and provide details, if possible:

- You had multiple BNPL accounts
- Your credit limits were increased beyond what you could afford
- The timing of your BNPL instalments and other expenses
- As a household, you were unable to afford the BNPL instalments
- You focused on the first payment rather than the total cost of the product or service
- You responded to BNPL marketing and as a result purchased more than you could afford
- You missed an instalment and faced missed fees (default fees)
- Your circumstances changed (eg change in employment) and you were no longer able to afford the instalments
- Other

**Because missed instalments are undesirable for the BNPL provider, the triggers that may lead consumers to miss instalments are more likely to be addressed**

50. Financial hardship from consumers failing to pay their instalments (defaulting) creates a burden for BNPL providers in the form of bad debt and additional costs. For example, if a consumer misses an instalment and continues to make more purchases using the same BNPL, this harms the consumer but also creates the potential for bad debt for the BNPL provider.
51. To avoid consumers missing instalments, BNPL providers tend to send reminders (eg email, text messages) before a payment is due to allow time for the consumer to make sure funds are available to pay for an instalment. Reminders also provide an opportunity for the consumer to make contact with the BNPL provider in case they are facing some form of hardship and require support with paying the instalment.

<sup>16</sup> Data commissioned by MBIE from Centrix as part of its Comprehensive Credit Reporting platform, September 2021.

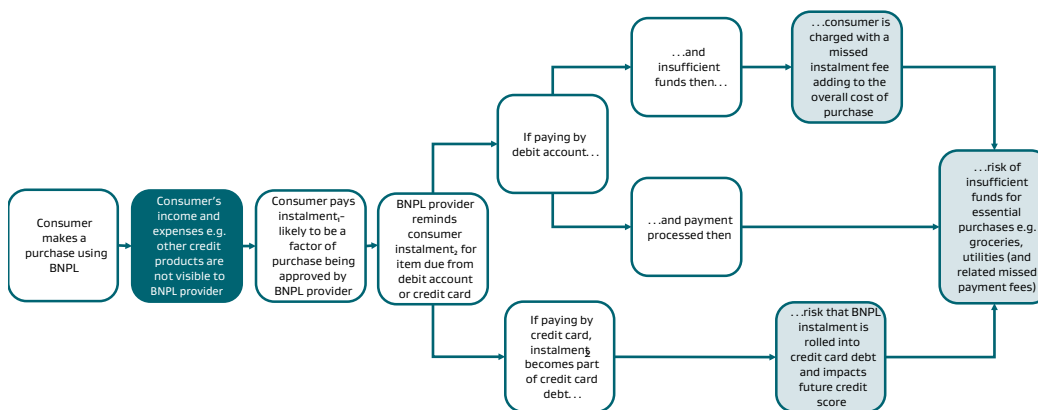
- 52. We understand that some BNPL providers have amended their processes to address some of the triggers that lead to consumers missing instalments. These include providing a grace period if an instalment is missed, which allows greater flexibility on the timing of instalments, including when the consumer is facing financial hardship (eg loss of employment).
- 53. Some forms of financial hardship (eg insufficient funds for essential purchases) are not easily visible to BNPL providers due to the instalment still being paid. Therefore the triggers which cause those harms may not have been appropriately addressed.
- 54. We have used a consumer journey mapping approach to understand what could trigger consumers to suffer from financial hardship. We consider that, for some consumers, some trigger points/scenarios may be more relevant than others. In some cases it may be a number of triggers that are creating financial hardship, for example a consumer may have multiple BNPL accounts and also hold other credit products that are not visible to the BNPL provider.
- 55. This approach is a way of illustrating and revealing which points in the BNPL journey could be strengthened to address consumers facing financial hardship. The consumer journey approaches outlined below do not necessarily reflect the policies and practices of all BNPL providers.

## Triggers of financial hardship

### BNPL providers not observing income and expenses at the point of purchase could trigger financial hardship

- 56. Information provided by financial mentoring services points towards BNPL not being affordable for some consumers. In the case of more traditional credit products, a consumer might apply for a personal loan, and the lender would assess its suitability and affordability for the consumer and decide whether to offer credit. If approved, the consumer would have access to credit.
- 57. In the case of BNPL, a consumer new to BNPL decides to make a transaction and at this point the provider makes an assessment on to offer credit or not. Usually, whether the consumer is able to pay the first instalment forms part of this assessment. In this instance, the consumer's income and expenses, including other credit products, are insufficiently assessed by the BNPL provider. As a result, the consumer uses BNPL but may not be able to afford future payments and experiences financial hardship as shown in the diagram below.

DIAGRAM 2



- 58. In households where multiple consumers hold BNPL accounts but incomes are shared, there is a risk that financial hardship spreads to the entire household.
- 59. Reductions in shared household income, and the subsequent household impacts, could be another trigger of financial hardship which is not easily visible to BNPL providers.

**8** Do you live in a household with multiple BNPL accounts?  
Yes / No / Prefer not to answer

(If Yes), has your household experienced financial hardship because as a household you could not afford the full cost of the good(s) or service(s)?  
Yes / No / Not sure

**Our understanding of how BNPL providers assess an application for credit**

- 60. Some BNPL providers use credit checks at the time an account is activated to assess whether to approve a consumer to use BNPL.
- 61. A credit check is a history of a consumer’s credit or other payment behaviour. BNPL providers can use a credit check to indicate financial reliability, and the risk of default a consumer poses. Credit checks enable providers to understand the risk of lending to the consumer and the certainty of repayment. This is not the same as an affordability assessment under the CCCFA which is a much more comprehensive process that seeks to protect the potential borrower by assessing the risk of the debt to them.
- 62. Providers differ on whether they use ‘hard’ or ‘soft’ credit checks as outlined in the box below.

Hard Credit Checks	Soft Credit Checks
<p>A hard credit check consists of a detailed credit score for each consumer including credit enquiries from other credit providers and any default or collection notices.</p> <p>A hard credit check means that a provider can use a consumer’s credit score to make a decision on whether to lend or not. It also means that the hard credit check is registered on the consumer’s credit score. This information is then available to future credit providers.</p>	<p>A soft credit check does not leave any indications that a credit check has been undertaken on that consumer’s credit file (credit footprint). As such, it only provides an indicative range on a consumer credit score rather than a detailed score, and does not provide any information on whether the consumer has defaulted or has had enquiries from other credit providers.</p>

- 63. The use of hard credit checks differs across BNPL providers. This creates a risk that BNPL providers who only conduct soft checks:
  - a. cannot observe consumers’ debt obligations
  - b. create debt obligations on consumers that are not observed by other BNPL providers.
- 64. In theory, it could be possible for BNPL providers to conduct real-time affordability assessments if they had visibility over the income and expenses of a consumer. In other countries this type of approach has been suggested as a way to ensure that each transaction is affordable to the consumer. However, this relies upon a well-developed open banking system.

### Open Banking

Open banking - allowing consumers to securely share their banking data with trusted third parties and facilitate new ways of making payments - could alleviate some of the issues around conducting affordability assessments. In the UK, the Woolard Review, published in February 2021, recommended that BNPL should be brought under the regulation powers of the Financial Conduct Authority and be required to undertake affordability checks, rather than credit checks which are focused on the risk of non-payment to the BNPL provider.

The precise regulatory details of how affordability checks will be conducted in the UK is yet to be announced. However, open banking and the ability for consumer data to be shared in real time means that real-time affordability assessments could be a pragmatic option for BNPL providers operating in the UK.<sup>17</sup>

As discussed above, the Government has agreed to establish a consumer data right which could be applied to the banking or financial services sector in order to develop open banking.

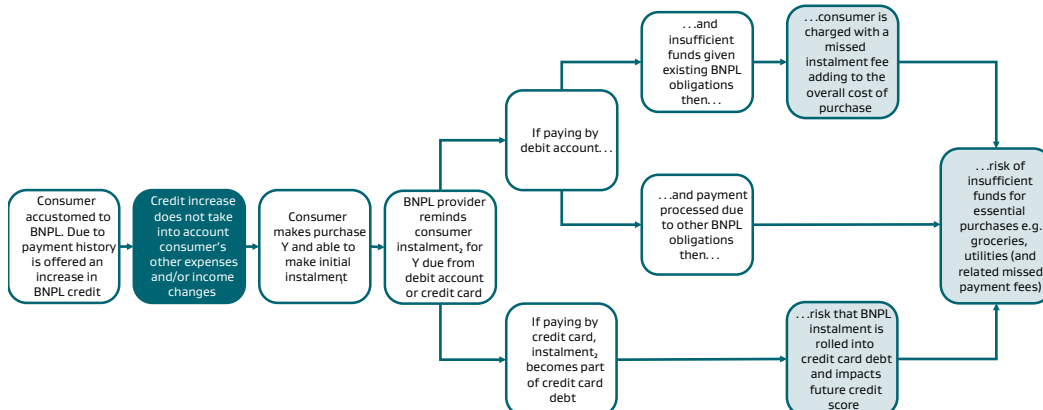
- 9** As a BNPL consumer (or consumer representative) (select one only)
- Do you value having a hard credit check being conducted **OR**
- Would you prefer a soft credit check that does not leave a 'footprint' on your credit score?
- Please explain the reasons for your answer.
- 10** What are the advantages and disadvantages (including costs) from credit checks being used to determine approval for BNPL?
- 11** What other/additional steps could BNPL providers take to assess affordability for consumers?
- What are the costs (including disadvantages) of these steps?
- What are the benefits of these steps?

### Potential for harm arises from the reliance on repayment behaviour, rather than use of comprehensive affordability assessments, to increase credit limits

65. Information from BNPL providers indicates that there are different approaches to increasing a consumer's credit limit. For some, spending limits can increase or decrease depending on how successfully a consumer has repaid instalments. Spending limits can decrease or increase automatically (without the consumer's initiation). Other BNPL providers increase credit limits if requested by the consumer, subject to any maximum limits imposed by the BNPL provider.
66. As shown in the diagram below, repayment history with BNPL is not a reliable indicator of affordability and does not take into account any changes in the consumer's income or expenses. A number of case studies provided by budgeting organisations illustrate the point at which credit limit increases become concerning, and where a number of vulnerable borrowers experience unmanageable debt or financial hardship.

<sup>17</sup> <https://www.finextra.com/pressarticle/84515/zilch-works-with-credit-kudos-to-shake-up-credit-assessment-for-buy-now-pay-later>.

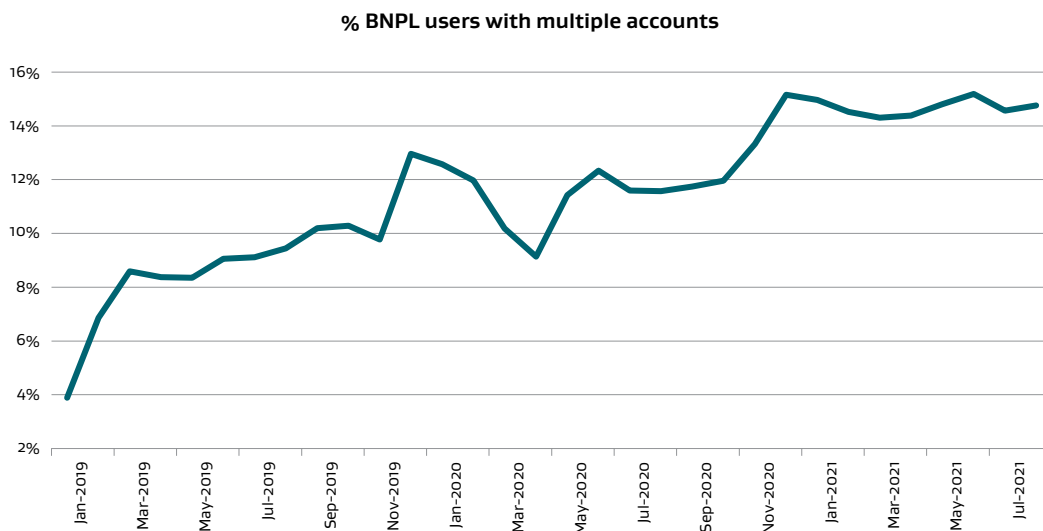
DIAGRAM 3



- 12 How might affordability assessments be conducted when BNPL credit limits are increased?
- 13 What are the costs and benefits of conducting affordability assessments when BNPL credit limits are increased?
- 14 Are there any other ways to ensure BNPL credit limits are increased responsibly?

**Potential for financial hardship could be triggered by consumers having multiple BNPL accounts**

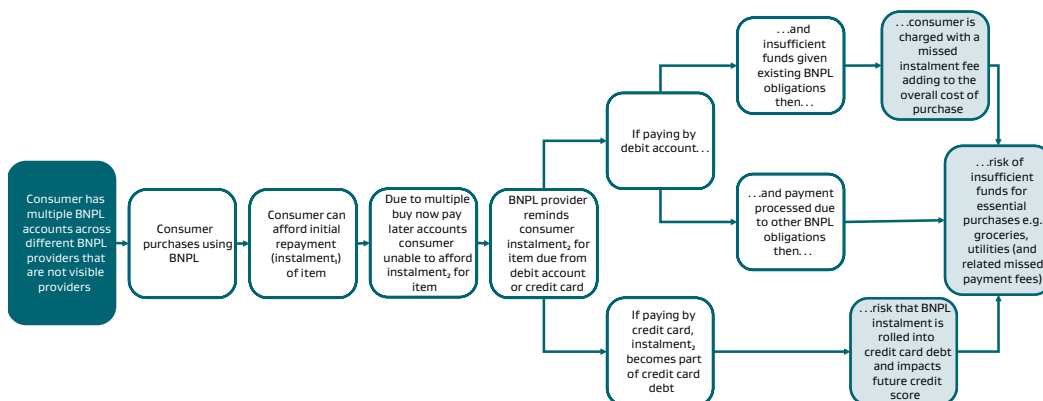
67. Data covering an estimated 35-40 per cent of the New Zealand BNPL market<sup>18</sup> indicates that consumers are increasingly holding accounts with multiple BNPL providers. In August 2020, around 12 per cent of consumers held multiple BNPL accounts. Within a year this increased to 15 per cent of consumers as shown in the figure below.



18 Data commissioned by MBIE from Centrix as part of its Comprehensive Credit Reporting platform, September 2021.

- 68. This could reflect that BNPL is increasingly being accepted at the point of sale by businesses, with some businesses accepting multiple BNPL options. This results in more consumers using multiple BNPL accounts for their different spending needs. For other consumers, having multiple BNPL accounts may be an effective way to budget.
- 69. At least one BNPL provider has stated that a consumer’s history of successful repayments with a competing BNPL service may be used as a signal for credit worthiness.
- 70. It may be that a consumer is able to manage one or more BNPL account and pay instalments without any adverse impacts. However, because of a lack of affordability assessments and the timing of instalments, when a consumer holds multiple BNPL accounts their ability to manage instalments across BNPL providers, with potentially different instalment timings, could create financial hardship.
- 71. Information from financial mentoring services also indicates that multiple BNPL accounts may be unsuitable for some consumers because of the total amount of credit available. For example, as outlined by one financial mentoring service, due to their credit history a consumer was not be able to have a credit card limit of \$2000 but could have four BNPL accounts with different providers, each with a credit limit of \$500, which amounted to \$2000.
- 72. As noted previously, when an instalment is missed, many BNPL providers freeze the consumer’s account. One approach could be to explore how BNPL providers could share information on consumers who have had their accounts frozen to avoid these consumers opening multiple BNPL accounts and risking financial hardship.

**DIAGRAM 4**

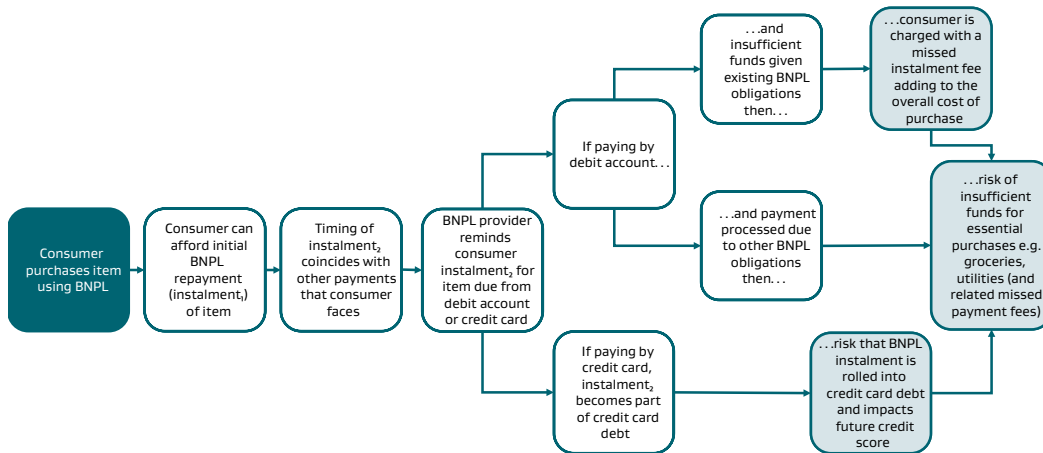


<b>15</b>	Are there any other issues with consumers having multiple BNPL accounts that we have not identified?
<b>16</b>	How effective and practical would it be to share information with other BNPL providers of consumer accounts which have been frozen?  Not effective / Somewhat effective / Very effective  Not practical /Somewhat practical / Very practical  Please provide details.
<b>17</b>	How could information about consumers having multiple BNPL accounts be appropriately shared across the BNPL sector?
<b>18</b>	What are the costs (including disadvantages) of the approaches you describe in Question 17?  What are the benefits of the approaches you describe in Question 17?

**Potential for financial hardship from the timing of instalments**

- 73. Information from financial mentoring organisations suggests that if the timing of instalments does not coincide with the timing of income and/or occurs at the same time as other expenses, this could also trigger financial hardship. At the point of transaction, the consumer may not be aware what other expenses are due at the same time, or before the next instalment is due, which could push some consumers into using overdrafts and potentially incurring other fees.
- 74. We note that some BNPL providers are working flexibly with consumers and allowing them to amend the timing of instalment payments to ensure that they do not create financial hardship. However, our understanding is that this ability to amend instalment payment timings is not standardised across BNPL providers. Nor does this payment timing flexibility address financial hardship if it is triggered by the BNPL transaction being unaffordable in the first place.

**DIAGRAM 5**

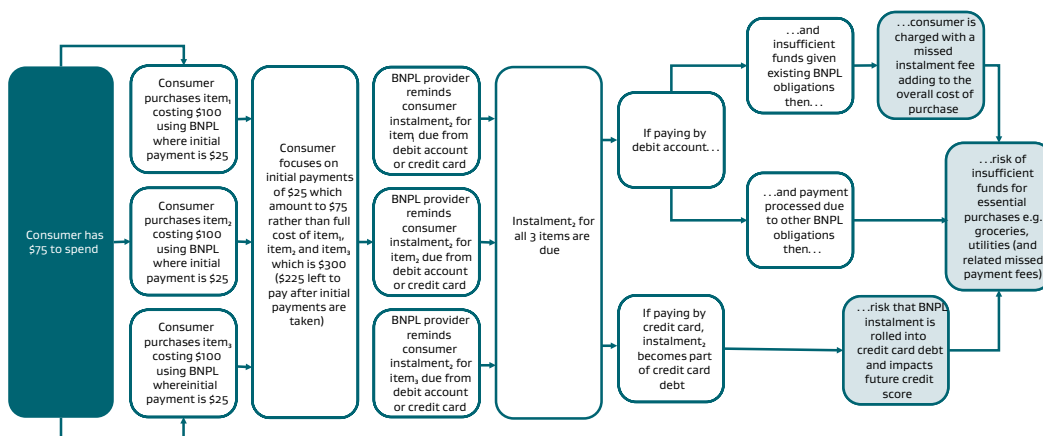


- 19 What tools and processes could be introduced to better align the timing of BNPL instalments with income and other expenses?
- 20 What are the costs (including disadvantages) of such tools and processes?  
What are the benefits of such tools and processes?

**Consumer purchasing behaviour is impacted by the BNPL model**

- 75. Insights from budgeting organisations suggest that consumers focus on the initial instalment rather than the full cost of the product or service. When combined with promotions from BNPL providers (eg app push notifications) this encourages consumers to spend beyond what they can afford and discourages consumers to save.

DIAGRAM 6



**Personal Finance Management Tools**

One way of encouraging consumers to be financially responsible could be to require consumers to use a Personal Finance Management (PFM) tool which would, among other things, highlight to the consumer the timing of instalment payments, timing of other expenses, and how much total BNPL purchasing they are able to afford.

PFM tools may be best targeted at particular customer segments, where the potential risks of financial hardship may be higher eg new customers, or customers with a recent increase in credit limits.

- 21** When making BNPL transactions, how could consumers be made more aware of the total costs of their purchases?  
 What are the costs of these tools?  
 What are the benefits of these tools?

**Consumers who require help when in financial hardship**

76. BNPL providers have indicated that they have processes and policies in place when consumers are unable to pay their instalments and face financial hardship. However, we also received information from a financial mentoring service that debt collection services were being used to collect BNPL debt as small as \$400. Consistency in approach across the BNPL sector would assist consumers who have defaulted to ensure a minimum standard of care is provided to consumers in financial hardship.
77. There may be consumers who continue to pay instalments but may be facing financial hardship. Insights from financial mentoring services indicate that there is evidence of some consumers relying on BNPL to purchase essential goods and services such as groceries. Reliance on BNPL to pay for essential goods and services, may indicate that some consumers are deferring facing their financial difficulties and not be accessing financial assistance with the consequence that their debt problems may accumulate over time.
78. One way of addressing this issue could be for BNPL providers to be alert to consumers who regularly use BNPL to pay for essential items and provide these consumers with access to financial mentoring services.

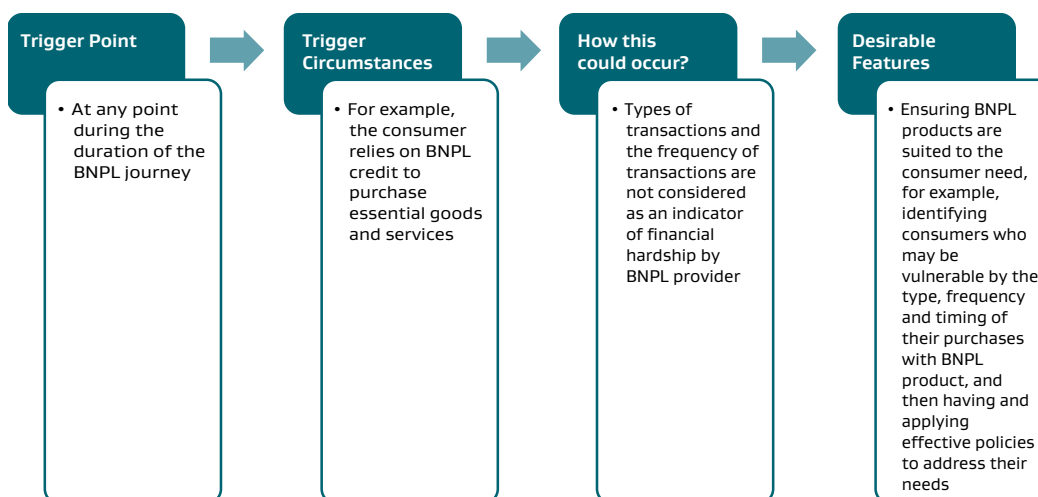
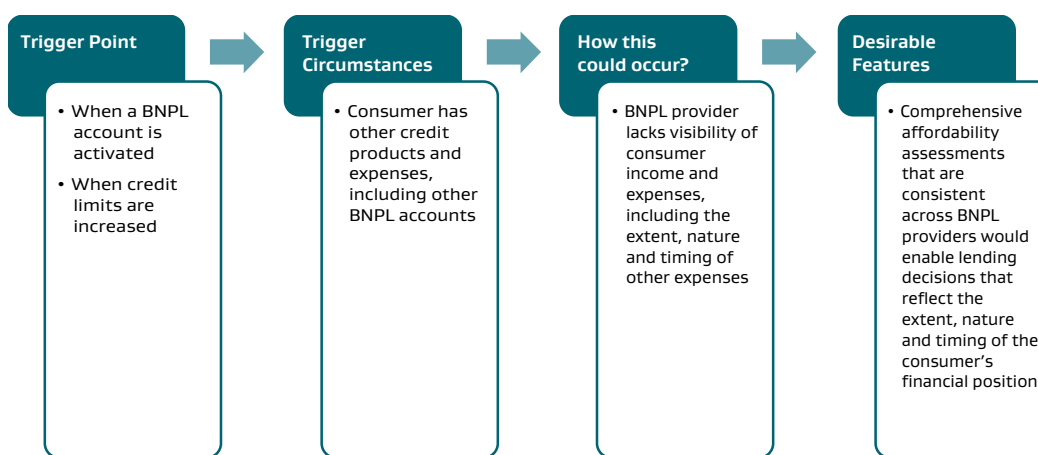


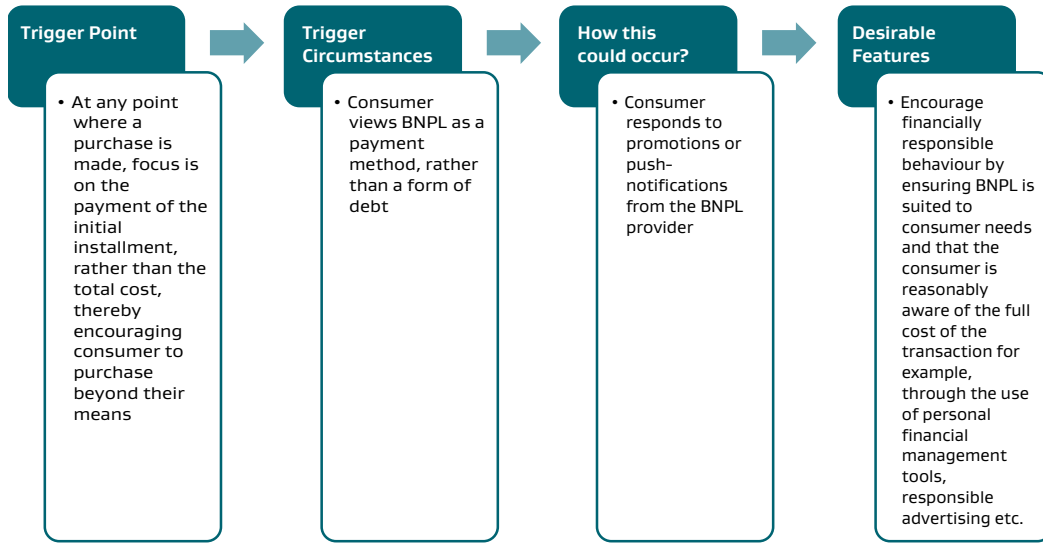
<b>22</b>	As a consumer (or consumer representative), what has been your experience of receiving help from BNPL provider/s if you missed an instalment and/or faced financial hardship?
<b>23</b>	How could BNPL providers be more responsive to consumers relying on BNPL to pay for essential goods and services?  What are the costs of these tools?  What are the benefits of these tools?

Summary of consumer trigger points and desirable features of BNPL

79. The diagrams below summarise what we consider to be:

- › the triggers of financial hardship in terms of points in the consumer journey and under what circumstances
- › how this financial hardship could occur
- › features of BNPL which could mitigate financial hardship.



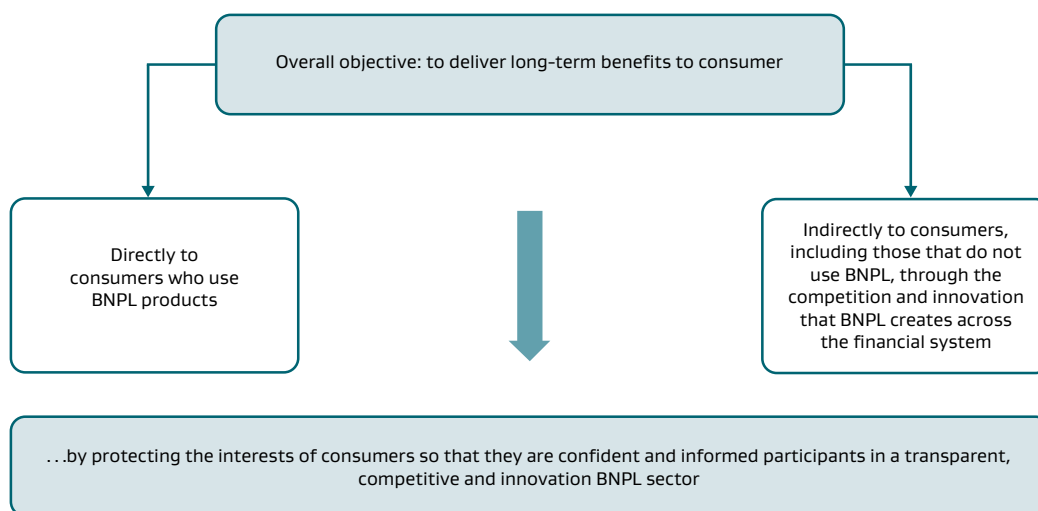


- 24** Do you have any comments on the triggers of financial hardship, how they occur, and the features which could mitigate financial hardship?
- 25** Do you agree with our view that the lack of affordability assessments is likely to be a key reason why some consumers using BNPL face financial hardship?

# Our view of what an effective BNPL sector looks like

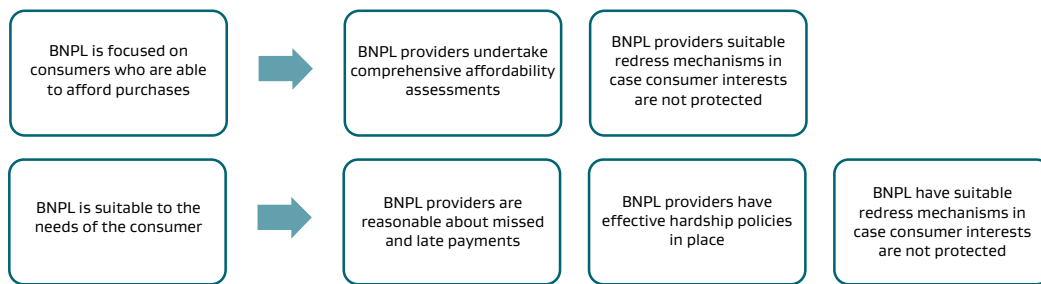
## Delivering long-term benefits to consumers

80. The Government's overall objective is that the BNPL sector delivers long-term benefits to consumers. These benefits may occur:
- a. directly to consumers who use BNPL
  - b. indirectly to consumers, including to those that do not use BNPL, through the competition and innovation that BNPL creates across the financial system.
81. To deliver long-term benefits to consumers, we consider that the interests of BNPL consumers should be protected so that they are confident and informed participants in a transparent, competitive and innovative BNPL sector.



82. For the sector to deliver long-term benefits to consumers, we consider that the triggers of financial hardship discussed in Chapter 3 need to be addressed by ensuring that BNPL is:
- a. focused on consumers who are able to afford purchases
  - b. suitable to the needs of the consumer at any point in their BNPL journey.
83. For BNPL providers, this amounts to:
- a. undertaking affordability assessments
  - b. the process and fees related to missed and late payments being reasonable
  - c. having effective financial hardship policies
  - d. an effective mechanism for consumers to complain and seek redress if they consider BNPL providers<sup>19</sup> are not complying with the points above.

<sup>19</sup> We note that BNPL providers are part of the Financial Services Provider Register.



84. We also consider that there is a need for consumers to demonstrate financial responsibility. To deliver on this objective, we consider that this is role for both consumers and BNPL providers – for consumers to be incentivised to be financially responsible and for BNPL providers to encourage consumers to exercise financial responsibility. There could also be a role for government to improve financial capability around BNPL use.



**Ensuring consistency across BNPL providers to deliver long-term benefits to all consumers**

- 85. As can be expected in a new and fast moving sector, there is likely to be variability in how different providers with different market segmentation are dealing with triggers of financial hardship.
- 86. We acknowledge that some BNPL providers may already have some policies and processes in place to address some of the triggers of financial hardship. However, we consider that all BNPL providers and their products need to have consistency around minimising financial hardship so that the sector delivers long-term benefits to consumers.

**How to achieve an effective BNPL sector**

- 87. Chapter 5 outlines some potential options which could help achieve an effective BNPL sector. In addition to protecting the interests of consumers, we also consider that to deliver long-term benefits to consumers, it is necessary to ensure that the BNPL sector is competitive and innovative and that any option is credible. We therefore consider that the options are assessed against the following criteria:
  - a. effectiveness at protecting the interests of consumers
  - b. flexibility – to allow for the BNPL sector to continue innovating
  - c. legitimacy – to ensure credibility and trust.
- 88. As part of the options analysis, we will also need to consider how efficiently options can be implemented by assessing the compliance costs to each affected party. We expect that submitters’ answers to the questions covering the costs and benefits of each option will include information about likely compliance costs.

26	Do you have views on the overall objective for the BNPL sector?
27	Do you have any views on how the interests of consumers could be protected?
28	Do you have any views on the criteria used to assess how to achieve an effective BNPL sector?

# What form could an intervention into the BNPL sector take?

89. We have identified three main options to achieve an effective BNPL sector which delivers long-term benefits to consumers by protecting the interests of consumers.

## Option One: status quo

- 90. Under this option, BNPL remains exempt from the CCCFA. We understand that the BNPL sector in New Zealand is developing a voluntary sector code, however the sector may not address the triggers of financial hardship we have identified in Chapter 3.
- 91. Individual providers may decide to address the triggers of financial hardship identified and put into place policies to ensure that BNPL is focused on consumers who are able to afford purchases and suitable to their needs. However, this will reflect the individual priorities of BNPL providers.

### Assessment against effectiveness, flexibility and legitimacy

- 92. In terms of effectiveness, Option One carries the risk of a lack consistency across the BNPL sector. This means that the interests of some consumers will be protected while other consumers could be subject to the triggers of financial hardship.
- 93. Under this option, there is flexibility for the BNPL sector to continue innovating. The work being conducted by financial mentoring organisations and reputational drivers associated with either positive or negative protection of consumer interests may drive competition towards the long-term benefits of consumers. However, BNPL providers may not be sufficiently incentivised to tackle the triggers of financial hardship effectively and consistently across the sector as there is no legitimate way to hold the BNPL providers to account for not protecting consumers.

Positives	Negatives
<ul style="list-style-type: none"> <li>• Would not require regulatory intervention or government investment and so no additional cost or resource necessary from government.</li> <li>• Enables BNPL sector to continue innovating. For example, may facilitate BNPL providers to innovate to protect consumers by enabling providers to assess the specific nature of their consumers' issues, to design and implement specific solutions.</li> <li>• Individual BNPL providers' protections may become a factor in consumer choice and a point of competitive difference that has the potential to deliver long-term benefits to consumers.</li> </ul>	<ul style="list-style-type: none"> <li>• Providers maintain different and disjointed assessments for approval of access to credit.</li> <li>• No incentive to improve individual BNPL performance – risk of sector failing to address triggers of financial hardship.</li> <li>• No ability to enforce improved standards for consumers or to hold providers accountable for outcomes.</li> <li>• Inconsistent and fragmented approach may have little positive impact on consumer behaviour.</li> <li>• Voluntary code focuses on priorities which may not necessarily be in the interests of consumers.</li> <li>• BNPL providers are not subject to consumer protections in a similar way to other credit providers and so, all other things equal, have a competitive advantage.</li> </ul>

**29** Do you have any comments on Option One: status quo? Please provide evidence if possible.

**30** What are the costs and benefits of Option One for any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL? Please provide evidence if possible.

## Option Two: Government establishes appropriate incentives for BNPL providers to have an industry code which addresses the triggers of financial hardship

94. Under this option, the government would facilitate a voluntary industry code for the BNPL sector. The industry code would be focused on ensuring consumers are able to afford purchases and that BNPL is suitable for the needs of the consumer on an on-going basis, whilst ensuring there is sufficient flexibility for the sector to continue to innovate and provide competition.
95. This option would also incorporate an ongoing independent review of how BNPL providers are addressing the triggers of financial hardship and protecting the interests of consumers. The outcome of the review would then determine whether sufficient progress was being made on addressing triggers of financial hardship through the industry code. If the review determined that progress was insufficient, the Government may wish to pursue further regulatory options.
96. In addition to the review providing legitimacy to the industry code, such a review would provide an effective monitoring and evaluation mechanism for the sector overall and be able to identify how individual BNPL providers may need to improve their performance to ensure compliance with the industry code.

### Australia BNPL Industry code

In Australia, BNPL providers adhere to the Australian Finance Industry Association (AFIA) BNPL Code of Practice which was implemented on 1 March 2021. It is a voluntary industry code that has been developed by industry, working with the government. Progress of the Industry Code is to be monitored by an independent committee appointed by AFIA.

### Assessment against effectiveness, flexibility and legitimacy

97. In terms of flexibility, an industry code is likely to allow the sector to continue innovating and therefore provide effective competition to other credit products. Whether an industry code is effective at protecting the interests of consumers, is supported by the credibility of the review.
98. For the review to be credible and provide legitimacy to the industry code, we consider that it would need to be conducted independently of the sector and regularly. One approach could be for the Minister to direct MBIE to conduct the review. Another approach could be for the Commerce Commission to be encouraged to conduct the review through the Minister of Consumer and Commerce Affairs' annual Letter of Expectation process.

Positives	Negatives
<ul style="list-style-type: none"> <li>• A code developed and implemented by the BNPL sector may be better informed by the market and evolving technological context than equivalent interventions by government.</li> <li>• Repeal, updates and adaptations of a voluntary code will be easier to implement than government regulations, due to less formal processes.</li> <li>• The costs of creating a voluntary code are borne by industry rather than government.</li> <li>• If outcomes remain unsatisfactory, signalling a review to determine whether regulation is necessary incentivises the industry to make progress on the industry code.</li> </ul>	<ul style="list-style-type: none"> <li>• Providers would need to be careful that cooperating on the code does not pose issues to competition. Providers would need to be careful that cooperating on the code does not pose issues to competition.</li> <li>• A voluntary code may not result in a satisfactory level of protection to consumers.</li> <li>• An industry code may lack credibility, as consequences rely on self or co-reporting and self-enforcement. However, the inclusion of an independent review reduces this.</li> </ul>

- |           |  |
|-----------|--|
| <b>31</b> | Do you have any comments on Option Two: Government establishes appropriate incentives for BNPL providers to have an industry code which addresses the triggers of financial hardship? Please provide evidence if possible. |
| <b>32</b> | What are the costs and benefits of Option Two to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if possible.     |

## Option Three: Apply CCCFA to regulate BNPL products

99. As discussed in Chapter 2, BNPL products are not required to comply with the CCCFA, and therefore do not have to comply with the responsible lending obligation to assess that loans are affordable, including the new Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 (**Affordability and Suitability regulations**).

### How the CCCFA could be applied to BNPL

100. Section 137A of the CCCFA provides for classes of arrangements or facilities to be declared a consumer credit contract. Using this power would allow for BNPL products to be regulated under the CCCFA and impose minimum standards to all BNPL products. Section 137A requires the Minister to:
- a. be satisfied that declaring BNPL products to be consumer credit contracts covered by the CCCFA would protect the interests of the consumers
  - b. have considered the economic impacts
  - c. have consulted with those who the Minister considers will be substantially affected by the regulations.
101. Applying the CCCFA to BNPL products would likely require exemptions from certain provisions of the CCCFA.
102. Our initial assessment suggests that the Lender Responsibility Principles (section 9C) of the CCCFA would be most relevant to address the triggers of financial responsibility. Specifically, the Lender Responsibility Principles would ensure that BNPL providers:
- a. undertake comprehensive affordability assessments at the point of account activation, and/or when credit limits are increased
  - b. encourage consumers to exercise financial responsibility (eg assisting the consumer to be reasonably aware of the full implications of making the transaction).
103. The CCCFA also contains protections for consumers against unreasonable fees, and in the event that consumers experience unforeseen hardship. We therefore consider the following sections relevant to deliver long-term benefits to consumers:
- a. unreasonable fees – Subpart 6, sections 41 and 44A
  - b. changes on grounds of unforeseen hardship – Subpart 8, sections 55-56 and 57A.
104. The Responsible Lending Code elaborates on the lender responsibility principles and offers guidance on how those principles may be implemented by lenders. It may be that amendments to the Responsible Lending Code (or a specific BNPL Responsible Lending Code) would be required for the BNPL sector to ensure the any lender responsibilities applied to the sector are fit for purpose.
105. In addition to the above, we consider that consumers are supported to demonstrate financial responsibility, by BNPL providers being subject to a disclosure requirement. This disclosure requirement could be tailored for the sector and still be consistent with the purpose of the CCCFA. For example a short disclosure statement may consist of:
- › the BNPL provider’s contact details (Schedule 1, (a) and (aa))
  - › the initial unpaid balance (Schedule 1, (b) and (c))
  - › the fees payable (if any) (Schedule 1, (n))
  - › the payments required (Schedule 1, (o))
  - › the consumer’s hardship rights (Schedule 1, (sa))
  - › the BNPL provider’s dispute resolution scheme details (Schedule 1, (ua)).

106. In addition, a disclosure requirement would encourage the sector to compete on particular product features and would support the objective of protecting the interests of consumers.

**Assessment against effectiveness, flexibility and legitimacy**

- 107. The monitoring and enforcement powers available in the CCCFA provide legitimacy to Option Three. In terms of effectiveness, the CCCFA would protect consumer interests however it will be important to ensure that exemptions from the CCCFA are fit for purpose to ensure there is sufficient flexibility for the sector to continue innovating and competing with other credit products.
- 108. Given that the sector is evolving, there is a risk that even with exemptions from the CCCFA and a specific BNPL Responsible Lending Code (or amendments to the existing Responsible Lending Code), compliance would be unworkable for some BNPL providers, who may choose to exit. The resulting concentration in the sector could mean that the innovation and competition provided by BNPL across the financial system are lost.
- 109. Over the long-term, as open banking and the ability for BNPL providers to assess affordability in real time increases, we consider that the risk of the CCCFA being unworkable for the sector is likely to decrease.
- 110. An alternative approach could be to introduce aspects of CCCFA sequentially as the sector matures. For example, initially the sector could be subject to a disclosure requirement which then allows for the regulator to effectively monitor the BNPL sector (under section 111 of the CCCFA). This would allow the Government to explore whether additional aspects of the CCCFA are required to protect the interests of consumers. There may be additional costs to this approach which we would like to test with stakeholders (see questions below).

Positives	Negatives
<ul style="list-style-type: none"> <li>• No barriers to effective implementation or enforcement, due to neutral role of the regulator.</li> <li>• Government has ability to design the intervention fully to adequately address the triggers of financial hardship.</li> <li>• More trust and confidence from public in the approach.</li> <li>• BNPL products are aligned to other credit products in terms of regulation (competitive neutrality).</li> </ul>	<ul style="list-style-type: none"> <li>• Potentially unworkable for the BNPL sector as a whole. May mean exit of some BNPL providers depending on what parts of the CCCFA are exempt or tailored to the sector.</li> <li>• Significant time and resource costs to enact.</li> <li>• Limited flexibility due to legislative process. Difficult to amend to reflect changes in context.</li> <li>• Large compliance burden on BNPL sector, potentially limiting innovation and raising the entry barrier on the market.</li> <li>• Costs are likely to be passed on to businesses or consumers, which will increase the cost of borrowing or the costs of consumer goods.</li> </ul>

- 33** How could Option Three be designed (including the timing of requirements) to ensure BNPL delivers long-term benefits to consumers? Please provide evidence if possible.
- 34** What are the costs and benefits of Option Three and how it is designed to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if possible.



## Monitoring and evaluation

111. If Government decides to proceed with either Option Two or Option Three, it will be important to put in place a monitoring and evaluation plan to measure if BNPL delivers long-term benefits to consumers by protecting the interests of BNPL consumers so that they are confident and informed participants in a transparent, competitive and innovative BNPL sector.
112. Our monitoring and evaluation plan will be informed by the preferred option. For example, as outlined above, a regular independent review of Option Two would provide an effective monitoring and evaluation mechanism as well as making the option more credible.
113. It would be useful to receive feedback on how BNPL could be measured to deliver long-term benefits to consumers. For example, we could measure and track the number of defaults as a percentage of transactions (or as percentage of BNPL accounts) to track how BNPL could be creating financial hardship that occurs from consumers missing payments.
114. To track other forms of financial hardship such as the inability to afford essential goods and services, defaulting on other payments or accumulating credit card debt, insights from consumer surveys could be used.

**35** Do you have any suggestions on how we could measure and track progress against whether BNPL is delivering long-term benefits to consumers? Please provide evidence if possible.

# Discussion Paper Summary of Questions

1	<p>Do you agree with our assessment of what the benefits are from BNPL?</p> <p>Yes / No / Not sure</p> <p>Are there others? Please provide details</p>
2	As a consumer (or consumer representative), please outline what are the benefits of BNPL?
3	<p>As a business accepting BNPL to pay for goods and services, please outline the benefits of BNPL?</p> <p>If you are a small business, are there any additional benefits from accepting BNPL?</p>
4	Do you agree with our assessment of how BNPL will evolve in New Zealand? If not, please provide details
5	How do you think emerging BNPL business models eg partnerships with credit cards, banks etc. will impact consumers? Please provide details
6	Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL? Please provide details
7	<p>As a consumer (or consumer representative), have you faced financial hardship from BNPL?</p> <p>Yes / No / Prefer not to answer</p> <p>If yes, under what circumstances have you faced financial hardship from BNPL? Please select all that apply and provide details, if possible:</p> <ul style="list-style-type: none"> <li>• You had multiple BNPL accounts</li> <li>• Your credit limits were increased beyond what you could afford</li> <li>• Because of the timing of your BNPL instalments and other expenses</li> <li>• Because as a household, you were unable to afford the BNPL instalments</li> <li>• You focused on the first payment rather than the total cost of the product or service</li> <li>• You responded to BNPL marketing and as a result purchased more than you could afford</li> <li>• You missed an instalment and faced missed fees (default fees)</li> <li>• Your circumstances changed (e.g. change in employment) and you were no longer able to afford the instalments</li> <li>• Other</li> </ul>
8	<p>Do you live in a household with multiple BNPL accounts?</p> <p>Yes / No / Prefer not to answer</p> <p>(If Yes), has your household experienced financial hardship because as a household you could not afford the full cost of the good or service?</p> <p>Yes / No / Not sure</p>
9	<p>As a BNPL consumer (or consumer representative) (select one only)</p> <ul style="list-style-type: none"> <li>• Do you value having a hard credit check being conducted <b>OR</b></li> <li>• Would you prefer a soft credit check that doesn't leave a 'footprint' on your credit score?</li> </ul> <p>Please explain the reasons for your answer.</p>
10	What are the advantages and disadvantages (including costs) from credit checks being used to determine approval for BNPL?
11	<p>What other/additional steps could BNPL providers take to assess affordability for consumers?</p> <p>What are the disadvantages (including costs) of these steps?</p> <p>What are the benefits of these steps?</p>

12	How might affordability assessments be conducted when BNPL credit limits are increased?
13	What are the costs and benefits of conducting affordability assessments when BNPL credit limits are increased?
14	Are there any other ways to ensure BNPL credit limits are increased responsibly?
15	Are there any other issues with consumers having multiple BNPL accounts that we have not identified?
16	How effective and practical would it be to share information with other BNPL providers of consumer accounts which have been frozen?  Not effective / somewhat effective / very effective  Not practical / Somewhat practical / Very practical  Please provide details.
17	How could information about consumers having multiple BNPL accounts be appropriately shared across the BNPL sector?
18	What are the costs (including disadvantages) of the approaches you describe in Question 17?  What are the benefits of the approaches you describe in Question 17?
19	What tools and processes could be introduced for the timing of BNPL instalments to be better aligned to income and other expenses?
20	What are the costs (including disadvantages) of such tools and processes?  What are the benefits of such tools and processes?
21	When making BNPL transactions, how could consumers be made more aware of the total costs of their purchases?  What are the costs of these tools?  What are the benefits of these tools?
22	As a consumer (or consumer representative), what has been your experience of receiving help from BNPL provider/s if you missed an instalment and/or faced financial hardship?
23	How could BNPL providers be more responsive to consumers relying on BNPL to pay for essential goods and services?  What are the costs of these tools?  What are the benefits of these tools?
24	Do you have any comments on the diagrams above summarising the triggers of financial hardship, how they occur, and the features which could mitigate financial hardship?
25	Do you agree with our view that the lack of affordability assessments is likely to be a key reason why some consumers using BNPL face financial hardship?
26	Do you have views on the overall objective of the BNPL sector?
27	Do you have any views on how the interests of consumers could be protected?
28	Do you have any views on the criteria used to assess how to achieve an effective BNPL sector?
29	Do you have any comments on the discussion of Option One: status quo? Please provide evidence if available.
30	What are the costs and benefits of Option One for any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL? Please provide evidence if available.
31	Do you have any comments on the discussion of Option Two: Government establishes appropriate incentives for BNPL providers to have an industry code which addresses the triggers of financial hardship? Please provide evidence if available.
32	What are the costs and benefits of Option Two to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.
33	How could Option Three be designed (including the timing of requirements) to ensure the BNPL delivers long-term benefits to consumers? Please provide evidence if available.

- 34** What are the costs and benefits of Option Three and how it is designed to any relevant parties eg consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers? Please provide evidence if available.
- 35** Do you have any suggestions on how we could measure and track progress against whether BNPL is delivering long-term benefits to consumers? Please provide evidence if available.
- 35** Do you have any suggestions on how we could measure and track progress against whether BNPL is delivering long-term benefits to consumers? Please provide evidence if available.



