

7 December 2, 2020

### **Introduction**

1. Laybuy welcomes the Government's release of the Buy-Now, Pay-Later Discussion Document November 2021 (**MBIE Discussion Document**) which is focused on understanding the triggers of financial hardship within the Buy-Now Pay-Later (**BNPL**) sector and possible options to address them.
2. As the MBIE Discussion Document rightly identifies, the BNPL sector has grown rapidly in recent years (with active BNPL consumers rising by 20% in the last 12 months<sup>1</sup>) and Laybuy agrees that consumers must be protected from financial hardship, especially during the COVID-19 pandemic lockdowns which have impacted the economy, jobs and household's financial wellbeing.
3. Laybuy already implements a range of effective measures to protect its consumers from financial hardship, as discussed further below.
4. Laybuy submits that a voluntary industry code applying to the entire BNPL industry would address the triggers of financial hardship effectively, proportionally and consistently without removing the unique advantages of BNPL as a form of low cost credit that consumers and retailers find beneficial. A voluntary industry code would require BNPL providers to take deliberate action to minimise the risks of financial hardship and ensure consistency across the BNPL industry so all consumers can receive appropriate protection.

### **Benefits of BNPL**

5. BNPL services deliver significant benefits to consumers by allowing them to access low cost credit and spread their payments interest-free over a number of weeks. BNPL services are structured to provide this unique benefit without the significant fees and interest charges which are associated with traditional credit cards and other sources of consumer credit.
6. BNPL services are a more "disciplined" product than a credit card. At the time of entering into the BNPL transaction the consumer must review, authorise and confirm the repayment schedule and their instalment payments are scheduled to be deducted in line with the agreed schedule. This ensures the consumer has complete knowledge and transparency of the full cost of the purchase and minimises what is required on the part of the consumer to meet their obligations. In addition, Laybuy incorporates a "pay now" functionality which enables consumers to manage their purchases in an ongoing manner and pay instalments ahead of time to pay off the full amount sooner where that is convenient for their circumstances.
7. BNPL services also ensure the easy availability of real-time information through the use of apps and the provision of frequent updates as opposed to other forms of credit which rely on monthly statements. This makes it very easy for consumers to track the amount of credit being used.
8. BNPL providers are offering a useful product that consumers appreciate. This is simply traditional lay-by updated for the 21st century, however the risk now sits with the BNPL provider rather than the retailer. The unique and practical benefits offered by BNPL services hold a great appeal for consumers and as a result, the usage of BNPL services in New Zealand has doubled since 2019.<sup>2</sup>

### **Proportionality**

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<sup>1</sup> BNPL Insights Report dated November 2021 produced by Centrix, page 5.

<sup>2</sup> BNPL Insights Report dated November 2021 produced by Centrix.



9. Any measures implemented to address the risk of financial hardship must take into account the benefits of BNPL and be proportional to the impact of BNPL credit.
10. BNPL credit generally forms only 9% of the unsecured debt profile of a typical BNPL consumer. The average BNPL credit limit is approximately \$420 per plan as compared to \$8,655 for the average credit card or \$15,300 for the average personal loan.<sup>3</sup>
11. Subjecting the BNPL industry to the full Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) regulatory framework would significantly increase compliance costs for BNPL providers and these costs would likely have to be passed on to consumers and retailers.
12. BNPL providers, who borrow from accredited lenders to provide credit for small discretionary purchases by consumers, are operating under a completely different model to banks who borrow from their depositors and on-lend these funds to their borrowers and therefore must maintain the significant equity and regulatory compliance teams required to comply with the CCCFA. The regulation of banks through the CCCFA is also needed to protect consumers given the wider range of services offered which bring with them a wider range of risks.
13. Subjecting BNPL providers to the CCCFA is unnecessary given that the risks can be addressed through a voluntary industry code and regulation through the CCCFA would lead to the increased costs of regulatory compliance being passed on to retailers and consumers. Laybuy considers that any additional friction for consumers due to regulatory requirements would also remove one of the key benefits of BNPL services. A voluntary industry code is the best way to ensure the appropriate balance at this current point and maintain the benefits of BNPL services for retailers and consumers.
14. Laybuy submits that what is needed is appropriate proportional measures for the current activities of the BNPL industry to address the risks of financial hardship.

#### **Laybuy's Measures to Address Financial Hardship**

15. Laybuy has invested time and resource into understanding the triggers of financial hardship, without which it would not have a sustainable customer base. As a result, Laybuy has yet to see any evidence of significant financial hardship or harm amongst its consumers.
16. Laybuy agrees that BNPL services should only be for consumers that can afford those purchases, and should remain suitable to the needs of the consumer at all points in their BNPL journey.<sup>4</sup> Laybuy has therefore implemented a range of effective measures to protect consumers (detailed further below) including:
  - a. Comprehensive new customer onboarding procedures (including hard credit checks through an external provider);
  - b. A generous approach to missed payments including flat late fees (that are only imposed after allowing a 24 hour grace period for consumers to remedy the missed payment) and an additional 45 day grace period for consumers to remedy their missed payments before accounts are referred to debt collection;
  - c. An extensive financial hardship policy administered by an empowered Hardship Team aimed at working with consumers and their unique circumstances; and

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<sup>3</sup> BNPL Insights Report dated November 2021 produced by Centrix, page 9.

<sup>4</sup> MBIE Discussion Document at para 82.



- d. Other measures to reduce financial hardship such as allowing for flexibility in the timing of payments and preventing the use of Laybuy's BNPL services for certain types of goods or services. For instance Laybuy chooses not to partner with retailers of groceries or liquor as well as some other types of goods and services such as guns or ammunition or gambling.
17. Laybuy uses the measures outlined above to ensure that our consumers are enjoying the benefits of our BNPL services without the risk of financial harm. Ensuring that consumers are satisfied with Laybuy's services and can only access a level of credit that is affordable for them is essential to the success of Laybuy's business.

#### **Voluntary Industry Code**

18. Laybuy has long supported and advocated for a voluntary industry code as demonstrated by Laybuy's efforts in 2020 to both establish an industry body for New Zealand and draft the code itself. On 6 May 2021, at the request of Laybuy's CEO Gary Rohloff, representatives of the BNPL industry met with the Minister for Commerce and Consumer Affairs, Hon Dr David Clark, to discuss the draft industry code which Laybuy spearheaded.
19. Laybuy agrees with MBIE that there is a need to ensure that BNPL is focused on consumers who are able to afford purchases and BNPL services are suitable to the needs of the consumer at any point in their BNPL journey.<sup>5</sup> Laybuy considers that the areas set out in the MBIE Discussion Document<sup>6</sup>, as follows, are key:
- a. Undertaking affordability assessments;
  - b. The process and fees related to missed and late payments being reasonable;
  - c. Having effective financial hardship policies; and
  - d. An effective mechanism for consumers to complain and seek redress if they consider BNPL providers are not complying with the points above.
20. Laybuy also agrees that a voluntary industry code should be supported by an independent review process to assess how BNPL providers are addressing the triggers of financial hardship and protecting the interests of consumers through the requirements of the code.<sup>7</sup> Laybuy submits that the independent review should be conducted between 2 and 3 years after the code enters into force to allow sufficient time for its implementation. This approach would be similar to the review required within 2 years under the AFIA Code.<sup>8</sup> This independent review could focus on whether the BNPL industry is still able to deliver benefits to consumers and whether the protections implemented are reducing financial hardship and safeguarding consumers from risks.
21. In 2021, we have seen Australia implement voluntary regulation of BNPL through an industry code, and the UK open consultation on what shape regulation of BNPL should take. Laybuy has been actively involved in these regulatory processes, and has valuable learnings to apply to New Zealand's unique context. In the UK, Laybuy originally led efforts to institute a voluntary code and is now supporting the Government's approach to regulation and is providing helpful input to inform the approach. Laybuy considers that regulation is now justified in the UK given the differing circumstances and state of the BNPL industry in the UK. The BNPL market is less mature in the UK and was initially dominated by a single player implementing a business model which faced a number of criticisms which in turn drove recognition by the Government and BNPL industry of the need for regulation. It is factually

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<sup>5</sup> MBIE Discussion Document at para 82 and 83.

<sup>6</sup> MBIE Discussion Document at para 83

<sup>7</sup> MBIE Discussion Document at para 95.

<sup>8</sup> Clause 7.1 of the AFIA Buy Now Pay Later Code of Practice 1 March 2021.



distinguishable from New Zealand's context in key respects because our market is more mature and has a number of key providers including Laybuy, Afterpay, Humm, ZIP, Latitude, Openpay and Klarna.

22. Laybuy has set out below its views on the key measures that should be included in a voluntary BNPL industry code in New Zealand.

### **Key Elements of a Voluntary Industry Code**

#### **A. Undertaking Affordability Assessments**

23. Laybuy supports requiring hard credit checks through an external provider on all new consumers before activation of a BNPL account as the best currently available method to ensure that only consumers who are able to afford BNPL services can access them.

##### *Credit checks*

24. A hard credit check means that a provider can use a consumer's credit score to inform the decision on whether to lend or not, and the outcome is also registered on the consumer's credit report so it is accessible to inform future credit providers.<sup>9</sup> This allows BNPL providers to ensure that they are not creating unaffordable debt given consumers' other obligations and provides visibility of BNPL credit for all future lenders. The use of credit checks provides better data for decision making and an independent perspective on affordability.
25. Laybuy has already implemented hard credit checks for all new consumers and currently works with Centrix in New Zealand to provide these.
26. Laybuy recognises that hard credit checks serve a dual purpose by also providing a layer of protection around identity theft. Credit check enquiries with an external provider are effectively an independent identity verification tool.

##### *Open Banking*

27. The MBIE Discussion Document points out that credit checks are "*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.*"<sup>10</sup> Laybuy appreciates the benefits of full affordability assessments through open banking and has already partnered with an open banking provider in the UK.
28. However, MBIE also recognises that implementing widespread full-scale affordability assessments relies on a well-developed open banking system (as exists in the UK) and the necessary legislation for information sharing, which is not yet established in NZ.<sup>11</sup>
29. In the interim, a hard credit check through an independent consumer credit company is the safest available approach to ensure that consumers have the means to afford purchases.

##### *Increasing Credit Limits*

30. Conducting further external affordability checks prior to increasing consumer's credit limits is not feasible (given the cost and requirement for permission), nor required if a hard credit check is already undertaken at the time of account opening. Currently Laybuy uses internal data including a consumer's

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<sup>9</sup> MBIE Discussion Document at para 62.

<sup>10</sup> MBIE Discussion Document at para 61.

<sup>11</sup> MBIE Discussion Document at para 64.



repayment history to inform affordability checks and decisions to increase a consumer's credit limit. There is potential in the future for this decision to be informed by other sources of information such as the continuous credit reporting regime outlined below which will alert BNPL providers to multiple BNPL accounts being opened or defaults occurring with other providers. Given this, the increase in a consumer's credit limit can be safely approved based on their ability to meet their BNPL payments to the provider.

31. Laybuy ensures that consumers are able to opt out of any approved increases in credit limits if they do not wish to have their credit limit increased. This is another step we take to ensure that the control remains in the hands of the consumer and risk is minimised.

#### *Multiple BNPL Accounts*

32. The proportion of BNPL consumers using multiple BNPL accounts is steadily increasing (from 4% at the start of 2019 to 15% as at Sept 2021,<sup>12</sup>) so enabling the visibility of credit enquiries from other credit providers is critical to an assessment of the financial position of new consumers.
33. The BNPL industry in New Zealand has already taken steps to address this through an initiative with Centrix for a continuous credit reporting regime which will enable all BNPL providers to receive regular updates on consumers who have multiple BNPL accounts as well as those consumers who are in default. Laybuy was the first BNPL provider to join this initiative with the remaining BNPL providers due to join in Q1 2022. Hard credit checks would also be another method of ensuring this necessary visibility across the industry.

## **B. Reasonable Approach to Missed and Late Payments**

34. Laybuy supports key practices for handling missed payments (such as flat fees, grace periods and working constructively with consumers in default before referring missed payments to debt collection) being embedded in the voluntary industry code to ensure a consistent level of consumer support across the BNPL industry.

#### *Flat Fees*

35. The MBIE Discussion Document identifies that “in 2020-21, around 68 per cent to 82 per cent of revenue was generated through fees charged to businesses” and “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”.<sup>13</sup> Laybuy's percentage of revenue from late fees for the 6 months ending 30 September 2021 was 27% in New Zealand while the remainder of revenue was primarily derived from retailers. This reflects the fact that for BNPL providers, retailers are essentially our 'customers'. Laybuy's business model is not focused on generating revenue from default fees, which means it is in our best interests to support our consumers to keep using BNPL services in a sustainable and affordable way.
36. Laybuy only charges a flat fee for late and missed payments, as opposed to charging a percentage value of the transaction. Laybuy supports the voluntary industry code requiring fixed flat default fees for missed or late payments as an industry standard.
37. This approach minimises financial hardship, by reducing uncertainty and burdensome costs for consumers. Laybuy also understands that consumers want full visibility and transparency when it comes to fees.

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<sup>12</sup> BNPL Insights Report dated November 2021 produced by Centrix, page 7.

<sup>13</sup> MBIE Discussion Document at para 14.



### *Grace Periods and Consumer Support*

38. Laybuy is active in addressing the underlying causes of missed instalments and seeks to work with its consumers to support them through difficult periods of their BNPL journey.
39. As soon as a payment is missed the consumers BNPL account is suspended so that they cannot utilise any further credit, a 24 hour grace period is then allowed for consumers to make up their missed payment before any fee is applied. The Laybuy Hardship team responds to consumer enquiries and requests and is empowered to make decisions to help consumers including waiving fees or extending the grace periods for missed payments. By default, Laybuy offers a 45 day grace period for outstanding missed payments before further remedial action is taken.
40. Laybuy operates its enquiry and support processes via email to ensure full visibility and transparency of all matters and correspondence.

### **C. Financial Hardship Policy**

41. Laybuy supports BNPL providers being required to have a financial hardship policy under the voluntary industry code to ensure appropriate action is taken by BNPL providers to address financial hardship if and when it arises.
42. Laybuy has already implemented a Financial Hardship and Assistance policy which is available on our [website \(FHA Policy\)](#)<sup>14</sup>. Laybuy's FHA Policy is designed to help consumers get through periods of genuine financial hardship by finding appropriate sustainable solutions when consumers find themselves unable to reasonably keep up their BNPL payments. Laybuy is constantly reviewing and interrogating its FHA Policy to ensure it is fit for purpose.
43. Laybuy's FHA policy recognises that a number of situations and events that can contribute to financial hardship including injury or illness, changes in employment status and significant life events such as relationship breakdown.
44. Laybuy's FHA Policy details our system for dealing with unforeseen financial hardship which requires consumers to provide information to Laybuy's Hardship team. The Hardship team then assesses each application on a case-by-case basis and works with the consumer to provide a personalised solution. The most common interim solutions, given the generally small nature of the repayments, will be a temporary postponement of payments or (in special circumstances) support in repaying the outstanding principal.
45. At present only 0.4% of BNPL consumers (4 in every 1000) are currently reported as being in financial hardship, and of those, only 8% were recorded as being in arrears on their BNPL accounts.<sup>15</sup> Those consumers who require and access Laybuy's financial hardship support services represent a very small proportion of the total number of consumers who access Laybuy's BNPL services.
46. Laybuy is looking to further its efforts to work with consumers who are struggling to make their payments including by referring consumers to third parties who are able to provide further financial and budgetary assistance where necessary.

### **D. Effective Mechanism for Redress for Consumers**

47. Laybuy is already registered on the Financial Service Providers Register and is a member of an approved dispute resolution scheme as required under the CCCFA. Laybuy submits that this provides a

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<sup>14</sup> <https://www.laybuy.com/nz/unforeseen-financial-hardship>

<sup>15</sup> BNPL Insights Report dated November 2021 produced by Centrix, page 20.



key avenue of redress for consumers who encounter difficulties with BNPL providers and should be maintained.

48. The implementation of a voluntary BNPL industry code in New Zealand supported by the industry body could also provide another avenue of redress for consumers. Consumers would then be able to contact the industry body or report BNPL providers for failing to satisfy the requirements of the voluntary industry code.

#### **E. Further Steps to Address Risks of Financial Hardship**

##### *BNPL for Essential Goods and Services*

49. The MBIE discussion document states that when BNPL is used to purchase essentials regularly this can be an indicator of financial hardship.<sup>16</sup>

50. Laybuy takes proactive steps to avoid this risk by carefully considering which retailers to partner with in offering its BNPL services. Laybuy has chosen not to partner with retailers of groceries or liquor as well as some other types of goods and services such as guns or ammunition or gambling.

##### *Timing of Payments*

51. Another step Laybuy takes to ensure affordability is to allow consumers to choose their own timing for payments, by allowing the consumer to select their nominated instalment day. Laybuy's research has shown that most consumers budget around their weekly grocery shop. The ability to choose their own day of the week for payments allows consumers to align payments with their income so that they can build them into their weekly discretionary spending.

Yours sincerely,

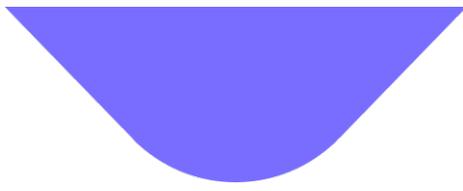


**Gary Rohloff**  
**Managing Director**  
**Laybuy**

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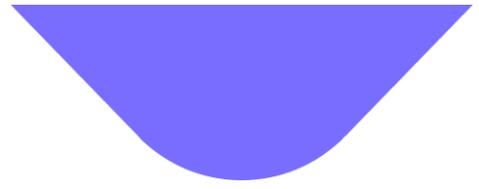
<sup>16</sup> MBIE Discussion Document at para 41.




**Schedule – References to Answers to Questions in MBIE Discussion Document**

	<b>Discussion Document Questions</b>	<b>Reference to Answer</b>
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>	See paragraphs 5 to 8
2.	As a consumer (or consumer representative), please outline what are the benefits of BNPL?	N/A
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>	N/A
4.	<p>Do you agree with our assessment of how BNPL will evolve in New Zealand?</p> <p>If not, please provide details</p>	See paragraphs 9 to 11
5.	How do you think emerging BNPL business models e.g. partnerships with credit cards, banks etc. will impact consumers? Please provide details	See paragraphs 9 to 14
6.	Do you agree or disagree with our summary of the types of financial hardship that could occur from BNPL? Please provide details	N/A
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> </ul>	N/A



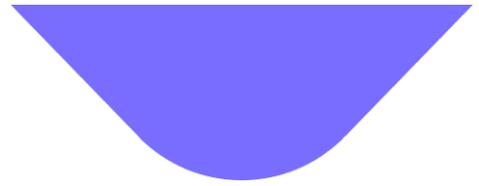


	<ul style="list-style-type: none"><li>• You focused on the first payment rather than the total cost of the product or service</li><li>• You responded to BNPL marketing and as a result purchased more than you could afford</li><li>• You missed an instalment and faced missed fees (default fees)</li><li>• 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>	N/A
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>	N/A
10.	<p>What are the advantages and disadvantages (including costs) from credit checks being used to determine approval for BNPL?</p>	See paragraphs 24 – 26
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>	See paragraphs 27 – 31
12.	<p>How might affordability assessments be conducted when BNPL credit limits are increased?</p>	See paragraphs 30 - 31
13.	<p>What are the costs and benefits of conducting affordability assessments when BNPL credit limits are</p>	See paragraphs 30 - 31



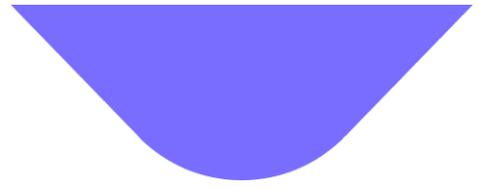
	increased?	
14.	Are there any other ways to ensure BNPL credit limits are increased responsibly?	See paragraphs 30 - 31
15.	Are there any other issues with consumers having multiple BNPL accounts that we have not identified?	See paragraphs 32 - 33
16.	How effective and practical would it be to share 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	See paragraphs 32 - 33
17.	How could information about consumers having multiple BNPL accounts be appropriately shared across the BNPL sector?	See paragraphs 32 - 33
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?	See paragraphs 32 - 33
19.	What tools and processes could be introduced for the timing of BNPL instalments to be better aligned to income and other expenses?	See paragraph 51
20.	What are the costs (including disadvantages) of such tools and processes?  What are the benefits of such tools and processes?	See paragraph 51
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?	See paragraphs 6 - 7
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?	N/A
23.	How could BNPL providers be more responsive to consumers relying on BNPL to pay for essential goods and services?	See paragraphs 49 – 50





	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?	See paragraphs 23 - 51
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?	See paragraphs 19 and 23
26.	Do you have views on the overall objective of the BNPL sector?	See paragraphs 5 - 14
27.	Do you have any views on how the interests of consumers could be protected?	See paragraphs 5 - 14
28.	Do you have any views on the criteria used to assess how to achieve an effective BNPL sector?	See paragraphs 5 – 8.
29.	Do you have any comments on the discussion of Option One: status quo?  Please provide evidence if available.	N/A
30.	What are the costs and benefits of Option One for any relevant parties e.g. consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL?  Please provide evidence if available	N/A
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.	See paragraphs 15 - 22
32.	What are the costs and benefits of Option Two to any relevant parties e.g. consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers?  Please provide evidence if available.	See paragraphs 15 - 22
33.	How could Option Three be designed (including the timing of requirements) to ensure the BNPL delivers long-term benefits to consumers?	See paragraphs 9 - 14





	Please provide evidence if available.	
34.	<p>What are the costs and benefits of Option Three and how it is designed to any relevant parties e.g. consumers, BNPL providers, businesses accepting BNPL as a payment option, competitors to BNPL providers?</p> <p>Please provide evidence if available.</p>	See paragraphs 9 - 14
35.	<p>Do you have any suggestions on how we could measure and track progress against whether BNPL is delivering long-term benefits to consumers?</p> <p>Please provide evidence if available.</p>	See paragraph 20.

