



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



# Consultation paper

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## Draft Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022

19 December 2022

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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 **24 February 2023**.

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/have-your-say/exposure-draft-of-credit-contracts-and-consumer-finance-buy-now-pay-later-amendment-regulations-2022>. 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 [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz).
- mailing your submission to:

Consumer Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473

Wellington 6140  
New Zealand

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

### Use of information

The information provided in submissions will be used to inform the final drafting of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022. We may contact submitters directly if we require clarification of any matters in submissions.

## Release of information

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:

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- provide a separate version excluding the relevant information for publication on our website.

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The Privacy Act 1993 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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List of acronyms and abbreviations

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BNPL	Buy now pay later
CCCFA	Credit Contracts and Consumer Finance Act 2003
Draft Regulations	Exposure draft of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022
Regulations	Credit Contracts and Consumer Finance Regulations 2004
MBIE	Ministry of Business, Innovation and Employment

# 1 Introduction

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## Proposed regulation of buy now pay later

1. Buy now pay later (**BNPL**) is a relatively new and fast-growing credit alternative in New Zealand. By using BNPL, consumers can get access to goods or services now, but pay for them later in a series of interest-free instalments.
2. BNPL providers are not currently required to comply with the Credit Contracts and Consumer Finance Act (**CCCFA**). This is because they do not charge interest or credit fees, nor do they take a security interest over goods. Concerns have been raised about BNPL causing financial hardship for some consumers.
3. On 31 November 2022, the Government agreed to apply the CCCFA to BNPL, so consumers using this form of credit will receive many of the same protections as borrowers in other consumer credit contracts – like credit cards and personal loans. However, the Government intends that the obligations are applied proportionately, having regard to the nature of BNPL and the lack of interest and credit fees. This will allow the benefits of BNPL to be retained.
4. The Government has therefore also agreed:
  - a. that BNPL credit amounts below a threshold would not be required to undergo the prescribed CCCFA affordability assessment, but would be required to undergo comprehensive credit reporting
  - b. to consult on a threshold amount of \$600, and to consult on two options for what assessments would apply over the threshold
  - c. that BNPL providers will need to disclose certain key information before each purchase made using BNPL.
5. The accompanying exposure draft of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022 (**Draft Regulations**) proposes to implement these decisions by amending the Credit Contracts and Consumer Finance Regulations 2004 (**the Regulations**). We are seeking further feedback on the details of the changes.
6. More information about the problem definition and Cabinet’s decisions are provided in the [Cabinet paper](#) and [regulatory impact statement](#).

## Process and timeline

7. Following the close of this consultation on **24 February 2023** we will consider the feedback and whether any changes are necessary to the Draft Regulations. We will also consider what additional guidance should be provided in the Responsible Lending Code in respect of BNPL.

## 2 Key issues for feedback

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8. Through this consultation process we are seeking feedback on:
  - a. the definition of BNPL used in the Draft Regulations
  - b. the threshold credit amount above which affordability assessments will be required
  - c. whether those affordability assessments should include compliance with the Regulations
  - d. other obligations of the CCCFA that might need to be adjusted for BNPL
  - e. any other comments on the drafting of provisions to improve clarity and workability.

### How should BNPL be defined?

9. BNPL is defined in clause 4 of the Draft Regulations. The definition is intended to cover BNPL business models that are not otherwise caught by the CCCFA. It aims to avoid capturing other forms of lending where there may be less risk of financial hardship.

1

Do you have any comments on the definition of BNPL? Are there contracts that should be caught, but are not? Are there contracts that shouldn't be caught, but are?

### What threshold amount of BNPL credit should trigger the need to carry out an affordability assessment?

10. Cabinet agreed that BNPL lenders will be required to assess affordability for larger amounts of BNPL credit, and to consult on a proposed threshold of \$600. In setting this threshold, Cabinet considered the average size of BNPL loans, the ability for borrowers to service BNPL loans, and the revenue generated by BNPL providers.
11. The Government is consulting on the threshold amount to ensure it best achieves the Government's aims of reducing financial hardship while retaining the benefits. We are also seeking feedback on the financial implications of this threshold, compared to any other threshold.
12. Regulations 18I(1) and 18I(2) of the Draft Regulations provides that BNPL below a credit amount of \$600 will be exempt from affordability requirements under section 9C(3)(a)(ii). However, regulations 18I(3)(a) and 18I(3)(b) provide that, as a condition of the exemption, lenders must participate in comprehensive credit reporting.

2	Do you have any comment on the proposed threshold of \$600? Should the threshold be higher than \$600? Lower? Why?
3	What do you consider the financial impact of a \$600 threshold would be?
4	Aside from the dollar amount, do you have any comments on how the threshold is drafted in regulations 18I(1) and 18I(2), or the exemption condition requiring comprehensive credit reporting is drafted in regulations 18I(3)(a) and 18I(3)(b)?

### Should BNPL affordability assessments comply with the affordability regulations?

13. Cabinet has agreed that affordability assessments should be required for BNPL loans above the \$600 threshold discussed above. Cabinet agreed to consult on two options:
  - a. Option 1: Lenders do not need to comply with regulations 4AC–4AN. However, lenders must still carry out an affordability assessment in accordance with the principles-based requirement in section 9C(3)(a)(ii) of the CCCFA. This requires that lenders carry out reasonable inquiries so as to be satisfied that it is likely that the borrower will make payments under the contract without substantial hardship.
  - b. Option 2: Lenders must carry out a full CCCFA affordability assessment in accordance with the regulations 4AC–4AN. These regulations set out a detailed process for assessing the borrower’s income and expenses.
14. Clause 5 of the Draft Regulations gives effect to Option 1 by providing an exception from regulations 4AC-4AN for BNPL.
15. Option 2 is the default treatment of BNPL above the threshold, if no exception is provided from the Regulations for BNPL.

5	Should regulations 4AC–4AN apply to BNPL? Why, or why not?
6	What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?
7	If regulations 4AC–4AN do not apply to BNPL, what guidance (if any) should be given to BNPL lenders through the Responsible Lending Code about compliance with section 9C(3)(a)(ii) of the CCCFA?

### Other issues

16. Disclosure of key contract terms is a key requirement of the CCCFA. For loans subject to the CCCFA, lenders are required to disclose key information about contract terms when the contract is entered into and when the contract is varied. This assists consumers to make informed decisions about entering into or varying a credit contract.
17. Some consumer credit contracts, including some BNPL contracts, are ‘revolving credit contracts’. These contracts provide an ongoing facility for borrowers to make purchases

without entering into or varying the contract. This means that purchases can be made without additional disclosure being made to the borrower.

18. In the case of BNPL, Cabinet has agreed that an additional, specific disclosure should be made before each purchase that includes the dates on which payments are due, the amount of those payments, and the fee that will be incurred if payments are missed. This is intended to ensure that borrowers are aware of their specific obligations and to help them avoid missing payments and incurring default fees.
19. This specific disclosure obligation is given effect by regulation 18I(3)(c) of the Draft Regulations.

8 Do you have any comments on the drafting of regulation 18I(3)(c)?

9 Are there other CCCFA requirements that should be adjusted or exempted for BNPL? If so, what would the impact be of applying current CCCFA requirements? What would the benefits be of adjusting or exempting from them?

10 Do you have any other comments or suggestions for the drafting of any other provisions in the Draft Regulations?

#### Commencement

20. We are considering what an appropriate commencement date for the Draft Regulations would be (i.e. the period of time after the Draft Regulations are made before they come into force). We would like to hear submitters' views on the length of time that should be provided to BNPL lenders to implement the changes.

11 Do you have any comments on when the Draft Regulations should commence? Please provide reasons for your answer.