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Consumer Policy
Building, Resources and Markets
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Submission to MBIE: BNPL Draft Credit Contracts and Consumer Finance Amendment Regulations 2022

Contents

1. Introduction

Afterpay welcomes the opportunity to provide this submission to the Ministry of Business, Innovation and Employment (**MBIE**) and provide our comments on the exposure draft of the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022 (**Draft Regulations**), which propose to amend the Credit Contracts and Consumer Finance Regulations 2004 (**CCCFA**).

2. Executive Summary

Afterpay has always supported Buy Now Pay Later (**BNPL**) regulation that is fit-for-purpose, tailored to the risks and benefits of our product, and focused on achieving positive consumer outcomes for New Zealanders. For more than half a decade, Afterpay has delivered significant benefits for consumers and businesses in New Zealand, while minimising consumer detriment through inbuilt and industry-leading consumer protections. We welcome the opportunity to build on this foundation by contributing to a BNPL regulatory framework that is proportionate, enforceable, and covers all providers.

In this submission we provide an overview of Afterpay's pay-in-four BNPL product, how we have designed it to ensure consumers are protected, and how best to amend and tailor the Draft Regulations so they can achieve strong outcomes in the long-term. Our responses to the questions raised in the consultation paper are evidence-based, proportionate, and tailored to the sector. They also reflect our experience developing outcomes-focused regulation with governments and regulators in many jurisdictions, including the United Kingdom, the United States and Australia.

Establishing – and maintaining – high standards of consumer protection, providing regulatory certainty to industry, enhancing financial inclusion and promoting responsible lending decisions are all necessary objectives that BNPL regulation should aim to achieve. The government and MBIE now have an opportunity to achieve these goals by striking the right balance in a BNPL regulatory framework: applying safeguards that protect vulnerable consumers and reduce the risk of financial difficulty, without curtailing innovation and competition in this growing sector, and maintaining the many consumer and merchant benefits of the product. This is consistent with the government's stated policy objective.[1]

Afterpay's view is that the Draft Regulations do not achieve this balance in their current form (or as currently drafted). In addition, we are concerned that the Draft Regulations will have the unintended consequence of shifting consumers away from low value BNPL products and towards higher value and higher cost products.

As a first principle, we believe that legislation is required for regulation of BNPL products. The regulation of BNPL does not constitute a small or minor change in public policy.

[1] Regulatory Impact Statement, Preventing financial hardship caused by the use of Buy-Now, Pay-Later, 10 November 2022, p 7: "The challenge is to reduce the risk of those consumers overextending themselves, while not increasing the cost or reducing access to credit for the majority of consumers."

Importantly, incorporating BNPL into the CCCFA via regulations does not provide sufficient ability to ensure that BNPL is regulated in a fit-for-purpose manner. The CCCFA was not designed with BNPL products in mind and significant tailoring is required to accommodate it in a manner that would not produce unintended consequences and damaging consumer and business outcomes. This work has not yet been undertaken. Considering the wide scope of obligations, penalties, and compliance imposed by the CCCFA regime, this work should be completed before regulations are drafted. Only then will it be possible for a sustainable and outcomes-focused regulatory framework for BNPL to be designed and implemented.

We believe that the future regulatory framework should explicitly acknowledge and codify the consumer protections that have been built into our product, including that Afterpay:

- Prevents customers from spending as soon as they are in arrears.
- Starts a customer on a low initial spending limit that only increases gradually with proven on-time repayment behaviour.
- Provides dynamic spending limits, which may increase or decrease depending on the customer's repayment performance.
- Requires new and many existing customers to make their first repayment upfront for each purchase.
- Does not provide a guaranteed line of credit.
- Does not perform a one-off assessment of a customer's capacity to pay.
- Is used for regular, relatively small-value transactions.
- Caps late fees at a low level.

We note that MBIE and the government have acknowledged it is important to retain these benefits and product features, many of which go above and beyond the current law. These features are fundamental to how BNPL products work, and by codifying them in formal regulation, the government can ensure all current and future BNPL providers are bound by the same high standards and remove the risk of pre-existing CCCFA obligations reshaping our products to look like traditional high-interest credit.

Overall, our submission is designed to help build a solid and evidence-based foundation to develop a BNPL regulatory framework that delivers positive outcomes for all stakeholders, particularly vulnerable consumers.

Our recommendations include the following:

1. **Introduce bespoke BNPL legislation** – Afterpay believes that BNPL regulation should be addressed in primary legislation that is subject to the parliamentary process. This would be consistent with the Legislation Guidelines published by the Legislation Design and Advisory Committee, which state that matters of significant public policy – such as applying an onerous regime to a new and innovative industry and introducing significant obligations – should be addressed in legislation. A bespoke regulatory framework of this kind would be consistent with the approach taken in the United Kingdom and Australia through wide-ranging and thorough

consultation with industry. **In the absence of fit-for-purpose BNPL legislation either in standalone legislation or an amendment to the CCCFA, a full review of the CCCFA should be conducted to understand how it would apply to BNPL**. The Commerce Commission has drawn similar conclusions, identifying a number of issues applying the CCCFA to BNPL that would need to be addressed in order for "regulation to operate effectively", including the continuing disclosure requirements and hardship application process.[2] More detail about our concerns with the use of secondary legislation to regulate BNPL can be found in the BNPL Industry Submission.

2. **Enhance financial inclusion by amending the credit limit threshold to $1,000** – Afterpay strongly supports a scalable approach to BNPL spending limits that includes proportionate lending obligations once certain thresholds are reached. We believe the proposed credit limit threshold of $600, after which an affordability assessment is required, is too low. Increasing this threshold will support a larger number of consumers who use BNPL to participate in the economy, while ensuring a low risk of potential harm. The in-built consumer protection features of our product play a key role in ensuring that consumers can have access to a safe product. This includes pausing accounts at the first sign of non-repayment and requiring the first instalment to be paid upfront in most instances. We also provide generous and accessible hardship policies to mitigate any consumer harm.

3. **Introduce a principles-based affordability assessment** – Afterpay supports the introduction of a tailored affordability assessment for the sector and believe Option 1 is the best existing mechanism to apply to the sector. An affordability assessment in accordance with the principles-based requirement of the CCCFA has the most potential to protect vulnerable consumers. By contrast, a full CCCFA affordability assessment represents a disproportionate and damaging response that is not reflective of the evidence of consumer harm in the BNPL sector. There is, however, uncertainty about what a principles-based affordability assessment would entail in practice for BNPL. Further industry consultation should occur to ensure there is appropriate guidance in the Responsible Lending Code that supports data-focused lending driven by digital-only and technology-driven products, like Afterpay.

4. **Maintain voluntary Comprehensive Credit Reporting (CCR)** – Afterpay acknowledges the government's position that the credit reporting regime can play an important role in future BNPL regulation. However, there is no compelling or appropriate justification for the proposal to *mandate* CCR, which is unprecedented in the New Zealand context. In Australia, CCR has only been mandated for the big four banks, in response to their failure to engage with the CCR system as large and dominant incumbents. Australia's Treasury department has already acknowledged that it has no intention of mandating CCR for other entities or product types, including BNPL, in part due to negative impacts for consumers and competition.

[2] Commerce Commission New Zealand, Submission to Buy-Now, Pay-Later Discussion Document, November 2021.

Importantly, there are existing solutions that address the perceived need for CCR (as outlined below) which have the potential to cause far less harm to consumers.

5. **Introduce a 'safe harbour' provision for BNPL providers that participate in Centrix's PayWatch initiative** – PayWatch, also known as the BNPL indebtedness indicator, is a tailored response to the challenge of consumers, who may be in financial hardship, being able to access multiple BNPL accounts. Instead of mandatory CCR, such a provision would obviate any regulatory requirement to participate in CCR if the BNPL provider uses PayWatch. Participation in this regime addresses the key issues and concerns outlined by the government and consumer advocates and should be embraced in formal regulation.

6. **Maintain and codify key features of BNPL that benefit consumers and differentiate it from traditional credit** – The Draft Regulations do not reflect key features of BNPL products that provide important consumer protections. Features including dynamic spending limits, suspending accounts at the first sign of non-repayment, and using past payment performance as a metric to determine affordability should be included in the Draft Regulations or risk forcing BNPL products to act more like traditional credit.

7. **Ensure the BNPL regulatory framework enables digital and technology-driven companies to continue serving consumers and businesses in an efficient manner** – Afterpay is concerned that there is insufficient flexibility in the CCCFA to accommodate digital businesses which use technology and automated processes to operate their products and enhance customer engagement. Our product has been specifically designed as an alternative to traditional credit products to serve customers who are comfortable with the ease and efficiency of using a digital-only product. This is clear from our consumer research. New Zealand can continue to support a thriving fintech sector by ensuring that its public policy settings are technology-neutral.

8. **MBIE and the Australian Treasury should coordinate and align their respective reviews of BNPL regulation** – The Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on the Coordination of Business Law (the MoU) sets out principles to guide coordination efforts in relation to the advancement of a trans-Tasman single economic market. One of the principles outlined in the MoU is that measures should deliver substantively the same regulatory outcomes in both countries in the most efficient manner. Aligning regulatory approaches could enable greater efficiencies for BNPL providers, many of which operate in both markets, and promote transparency for consumers and merchants.

9. **Provide industry with appropriate timelines to implement technical infrastructure and comply with the new regulations –** Clear and reasonable timelines will be required to manage the transition to the new regulatory regime.

3. About Afterpay

Afterpay is an Australian-founded financial technology company and a wholly owned subsidiary of Block, Inc. (NYSE: SQ). We are a leading international player in the BNPL sector, having revolutionised the way that consumers pay for goods and services by turning the traditional model of high-cost consumer credit on its head.

Afterpay is a no cost service to the customer, if instalment payments are made on time. Responsible spending rules and consumer protections are built into the service – these rules help ensure customers never revolve in debt. In circumstances where the customer does not pay their instalment payments on time, their service is immediately suspended until any overdue payments are met, and late payment fees can be applied. Notably, late payment fees are fixed, capped and do not accumulate or compound over time.

Merchants benefit significantly by being part of the Afterpay ecosystem, as it delivers them value, reduced risk, and deeper engagement with customers. Merchants invest in providing the Afterpay service to their customers because Afterpay provides a powerful marketing platform for reaching consumers, as well as reducing their operational costs. As a result, the cost of Afterpay is not borne by the consumer which in turn drives positive merchant outcomes.

Afterpay is purposefully designed with important consumer safeguards in place. Unlike a traditional credit product, Afterpay does not charge interest, and we do not charge default interest if consumers are late. Although we apply late payment fees, these fees are capped at a fair level and can never exceed 25% of the original value of the customer's order or $68, whichever is less.

In addition, we freeze a customer's account as soon as a payment is missed, to prevent the customer from taking on more than they can afford. This is in stark contrast with other traditional credit products, like credit cards, where very low minimum payment requirements mean that consumers can extend their credit card debt over many years at interest rates of 20% or more. It also means that Afterpay's business model and profitability rely on consumers paying on time and therefore not incurring any charges – non-paying consumers cannot generate new sales for Afterpay.

Our approach has consistently delivered better consumer outcomes than traditional regulated credit products that are subject to the CCCFA and responsible lending obligations. Evidence of this can be seen in Afterpay's credit losses and impairment charges, which are significantly lower compared to traditional credit.[3] Further, the overwhelming majority of Afterpay transactions are from repeat customers who have shown positive repayment behaviour.

Our research shows that the majority of customers are mindful of their purchasing habits. Customers use Afterpay as a tool to help them spread the costs of items and better

[3] Block, Quarterly Results Q3 2022 state Afterpay's loss rates are 0.96% of Gross Merchant Value.

manage their finances.[4] It is clear that when customers are unable to access other forms of credit, due to our product design, Afterpay offers significant benefits in allowing them to access short-term, interest-free credit to meet their everyday needs. In 2020 alone, Accenture analysis in Australia found that Afterpay customers saved over $110 million when compared to traditional credit cards.[5] That research also found that vulnerable consumers gain the most from switching from credit cards to Afterpay. The most vulnerable credit card users pay up to seven times more in fees compared to Afterpay users.[6]

Afterpay was founded in 2014 and since then, the BNPL industry has grown rapidly and exported around the world. The sector remains nascent, though, representing less than 1% of payments and less than 5% of retail spend in most jurisdictions. Its growth in New Zealand, driven by home-grown companies and emerging fintechs, has significantly disrupted the credit industry. This disruption is leading to more choice, and ultimately better outcomes, for consumers.

4. Our presence in New Zealand

Afterpay is one of the leading BNPL providers in New Zealand. Since 2017, we have helped more than half a million New Zealand consumers and supported tens of thousands of businesses of all sizes across the country.

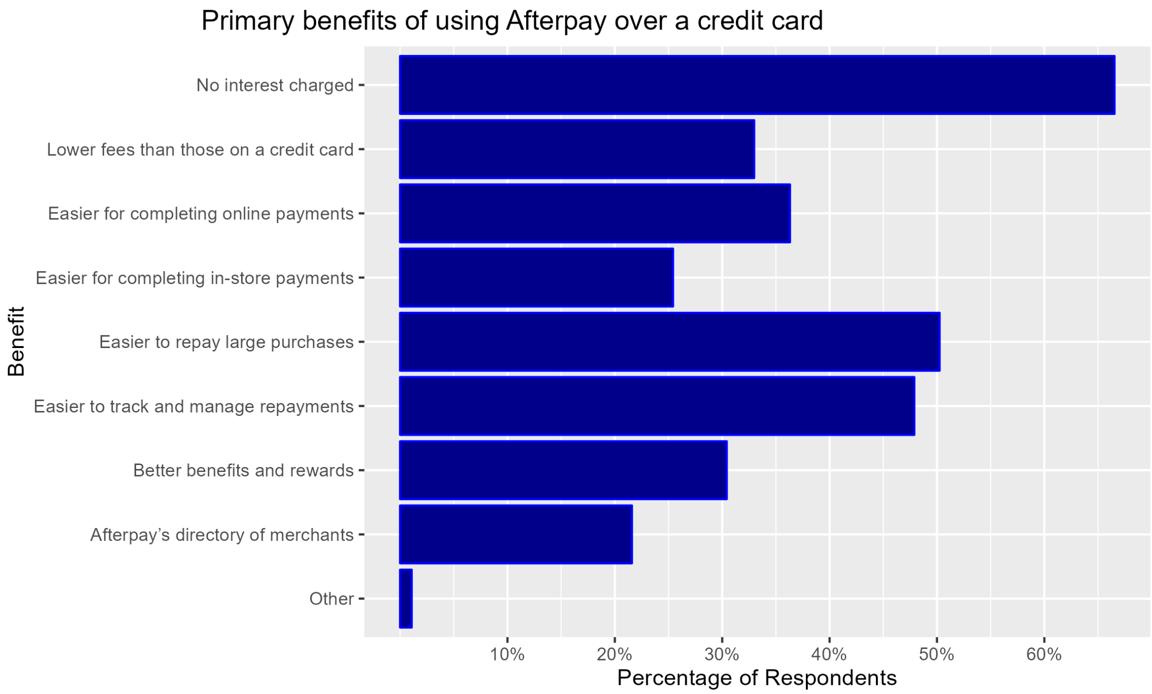
Recent economic analysis from BIS Oxford Economics, commissioned by Afterpay, demonstrates how our business has contributed meaningful benefits to consumers and businesses in New Zealand. Some of the key findings of this analysis include:[7]

- Afterpay generated **net welfare benefits of over $153 million for consumers and merchants in New Zealand in FY22**.
- For consumers, the gross benefits are estimated at between **$22 million and $45 million** in FY22 with the key benefits being savings from avoided interest and better budgeting, smoothed cash flows and greater control over finances.
- The gross benefits to merchants from Afterpay equated to **$259 million** in FY22. This was driven by increased sales and induced demand, exposure to new customers, and increased brand and customer engagement. Merchants also benefited from a range of increased efficiencies, including reduced customer service costs, reduced fraud, lower marketing costs, reduced operational costs, and customer referrals.
- **The level of consumer hardship relative to the Afterpay account base is low**. In FY22, we received 4,079 hardship applications in New Zealand and 100% of these were approved. This represents **less than 1%** of our total customer base.

[4] Accenture, The Economic Impact of Afterpay, 2020.
[5] Accenture, The Economic Impact of Afterpay, 2020.
[6] Accenture, The Economic Impact of Afterpay, 2020.
[7] BIS Oxford Economics, Economic Impact of Afterpay in NZ, March 2023.

- Afterpay created or retained **9,500 jobs** to the economy in FY22, either directly or through a combination of indirect and induced effects. Of these, Afterpay helped directly support 4,200 jobs of which 1,300 were jobs with retail merchants.
- Afterpay contributed nearly **$1.3 billion in Gross Domestic Product (GDP)** to the New Zealand economy in FY22. Afterpay purchases directly contributed $305 million in GDP to the retail sector in FY22 and a further $231 million was directly contributed to other sectors from these retail purchases.
- For every $1 million spent by consumers using Afterpay in FY22, there was a corresponding $900,000 contribution to GDP. Likewise, every $1 million spent resulted in 6.6 jobs being maintained across the NZ economy.
- In a survey of 1,019 New Zealand users of Afterpay, 66% of users indicated that **avoiding interest payments** was an important benefit of Afterpay. BNPL users also described a range of benefits such as ease of repayment of large purchases (50%), better tracking and management of repayments (48%), and easier completion of online payments (36%).
- Respondents viewed Afterpay as superior to credit card usage on a number of criteria, particularly due to the fact that no interest was charged (66%), it was easier to pay as amounts were broken down into smaller instalments (50%) and it was easier to track and manage payments (48%).
- BNPL is still very much in its infancy, representing roughly 10% of all e-commerce transactions and just 5% of all the point of sale transactions during 2021 in New Zealand. While still a small percentage of the retail payments system, BNPL has helped the New Zealand economy innovate, adapt to emerging trends, and grow its fintech sector. Moreover, BNPL is providing much needed competition in the consumer credit market as younger generations of consumers vote with their feet and adopt more consumer-friendly products like Afterpay, rather than opting for the incumbent credit card market.

Figure 1: Afterpay benefits in relation to credit card usage



5. Defining Buy Now Pay Later

Question 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?

The definition of BNPL in the Draft Regulations must be both sufficiently broad and specific so that all types of BNPL business models are covered, creating a level playing field for providers and maintaining strong competition in the market

As already outlined, while BNPL is still a nascent and emerging sector, it has rapidly expanded over the past decade. The market is both diverse and competitive, encompassing both startups, traditional credit providers, and global technology companies. These providers have designed a range of BNPL products and services that have significantly disrupted the credit and payment systems industries. There can be significant differences between BNPL products, business models, and the consumers and businesses they serve. Key differences within the BNPL industry centre around borrowing limits, fee structures and repayment requirements. For the Draft Regulations to achieve their purpose, all providers of a BNPL product should be held to the same regulatory standards, while ensuring obligations are proportionate and scalable. The definition of BNPL should not result in some providers of comparable services being exempt.

The Draft Regulations should also apply relevant thresholds contained in the definitions of other consumer credit contracts. While the definition of "BNPL contract" in the Draft Regulations accurately describes BNPL arrangements, this may result in CCCFA requirements and obligations applying to BNPL providers in a broader range of circumstances than other consumer credit contracts. For example, the BNPL contract definition is not limited to contracts where the credit is to be used wholly or predominantly for personal, domestic or household purposes. To ensure consistency, BNPL contracts should be limited in scope in this same way.

MBIE will also need to consider the different ways our products could be structured to ensure that regulation and relevant obligations are applied consistently to all BNPL contracts. This will likely require legislative change as this will not be possible by simply designating a BNPL contract to be a consumer credit contract.

6. Scalable and proportionate thresholds

Question 2: Do you have any comment on the proposed threshold of $600? Should the threshold be higher than $600? Lower? Why?

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

The Draft Regulations should enhance financial inclusion by providing access to safe, low cost BNPL products supported by a formal regulatory framework and inbuilt consumer protections

We believe there are compelling public policy reasons to enable Afterpay to provide new customers with a low initial spending limit, and we strongly support the introduction of a credit threshold under which BNPL providers are not required to undertake comprehensive affordability assessments.

Access to low harm and low cost BNPL products, like Afterpay, has supported a vast number of New Zealanders. Many BNPL customers are eschewing traditional high-interest credit products entirely and choosing a better alternative at the outset. These individuals should not be precluded from accessing products like Afterpay without first having built a credit file using higher cost and higher risk products. Setting the threshold at the right amount, which balances financial inclusion with regulatory safeguards, is therefore key to maintaining a high level of access to credit.

We believe the proposed $600 limit is too low to readily achieve these benefits and submit that this threshold should be raised to $1,000. This high level is supported by the fact that there is limited evidence of consumer detriment caused by BNPL but substantial economic gain for the vast majority of users. As noted above, Afterpay generated net benefits of over $153 million for consumers and merchants in New Zealand in FY22. Benefits included interest and fee savings, budgeting benefits to consumers, growth in sales and associated profits for merchants, and cost efficiencies for merchants. These benefits are significant, particularly for consumers who would otherwise have used high-cost credit cards, which risk placing consumers into a debt spiral. Moreover, from analysing our own data against that of a credit bureau, we see that those that may have performed poorly with traditional credit or have had an incident in their lives, such as a bankruptcy, actually perform well on a safer product like Afterpay. This is because of the way our product is designed.

A higher threshold is also better balanced against the requirements of the emerging BNPL regulatory framework: a principles-based affordability assessment, credit checks, PayWatch, and other CCCFA obligations. More importantly, all consumers below a $1,000 threshold would be protected by a large number of existing consumer protections built into Afterpay, which produce positive customer outcomes and mitigate potential harm. These consumer protections are not reflected in the Draft Regulations, but are key product features that have successfully contributed to 95% of all Afterpay instalments being paid on time and 98% of all purchases not incurring late fees.

These features, which include pausing accounts at the first sign of non-repayment and requiring payment of the first instalment upfront, are important considerations in determining the level at which the threshold should be set. Our real time interventions and generous and accessible hardship policy mitigate the consumer harm that traditional affordability assessments are designed to address. If a customer thinks they may not be able to make a payment, they will have the ability to reschedule the payment date to a more suitable date. If a consumer misses a payment, their Afterpay account is frozen until they have settled this payment. If the consumer does settle a missed Afterpay payment, they can access the platform, but their indicative spending limit will have been reduced to reflect their repayment performance. Customers must then demonstrate a consistent pattern of repayment behaviour over a period of many months before their indicative spending limit will increase.

Afterpay's dynamic spending limits in response to payment behaviour can proactively support customers who may be more vulnerable at the first sign of financial difficulty. We introduce measures to provide customers with the space and time to address any financial challenges before they are able to access any further spending. If consumers are in financial difficulty, we have an extensive and sensitive hardship policy in place to support them, and their ability to spend on our platform will be suspended. We also ensure that, where appropriate, we refer customers to the relevant financial mentors and budgeting services that can provide guidance to customers with debt problems.

At the same time, the risk of consumers using multiple BNPL products when they may be experiencing financial difficulty is now directly addressed via Centrix's PayWatch initiative.

As set out in other parts of this submission, we also do not believe the evidence supports mandating CCR for BNPL transactions under the relevant threshold. No other credit providers are required to participate in full CCR in New Zealand. In Australia, only the big four banks have been compelled to participate in Australia's CCR system, as they play a critical role in supporting the availability of CCR data. As part of the Australian Treasury department's recent consultation on BNPL reform, it was noted that under all three regulatory options, participation in the credit reporting framework would continue to be voluntary.

Instead, the combination of Afterpay's existing product safeguards, coupled with the PayWatch initiative, provide a solid foundation for ensuring that consumers that are borrowing under $1,000 are protected from the risk of overindebtedness, and the harms that are associated with traditional credit products.

Mandating CCR will result in a regulatory burden that will skew BNPL providers to providing much larger spending limits for customers, or encourage consumers to seek out higher cost credit products.

Although credit cards are subject to the CCCFA, the product design of a credit card means that consumers are typically provided with a large credit limit that is based on a one-time assessment of affordability. At the same time, credit cards typically only require a monthly repayment amount of 3% of the outstanding balance, with interest rates of 20% or more applicable, trapping some consumers into a cycle of revolving debt. These business models generate substantial revenue from interest and other charges. In other circumstances, consumers may be pushed toward payday lenders – an even poorer outcome.

These counterfactual scenarios must be carefully considered, so that the new BNPL regulatory framework does not produce unintended consequences and poorer consumer outcomes.

afterpay

7. Credit reporting and PayWatch

Question 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)?

Maintain voluntary Comprehensive Credit Reporting (CCR) for BNPL providers – mandating CCR is inconsistent from a global and domestic policy perspective and will not guarantee good consumer or regulatory outcomes

Mandating BNPL participation in CCR is inconsistent with laws that apply to the rest of the consumer credit industry.

CCR is not mandated for any other financial services entity in New Zealand, including the major banks. Looking abroad at similar jurisdictions where CCR exists, mandatory participation has been viewed as a last resort in response to protracted refusal to participate by the largest financial services entities. In Australia, for example, CCR has been mandated only for the country's four largest banks – most of which are present in New Zealand. The Australian Productivity Commission noted in 2017 that "participation in comprehensive credit reporting has been low to date" and in response to credit providers failing to meet a threshold of 40 percent of data threshold, the then Prime Minister moved to mandate reporting only for the four major banks because "they account for approximately 80 percent of the volume of lending to households". As the Prime Minister stated in a media release at the time, "this will allow smaller providers the flexibility they need to develop their systems, while still creating a critical mass of participating credit providers".[8] These regulations took nearly four years to pass through the Australian Parliament. To date, no other credit provider has been mandated to participate in CCR by the Australian Parliament.

Commenting on the New Zealand and Australian reforms in 2018, the New Zealand Privacy Commissioner stated that New Zealand did not face the same voluntary participation challenges: "voluntary participation rates had reached substantially higher rates in New Zealand at a comparable stage of implementation (i.e. 2 years ago) and have now grown to cover the majority of the banking market".[9] Despite the more advanced level of industry participation, the same review found that CCR "shows some evidence of benefits to participants in the credit reporting system but, so far, limited evidence of benefits to individuals, the community and the economy".[10]

New Zealand's regulators and parliament have not required the country's highly concentrated banking sector, which controls the vast majority of consumer credit information, to participate in CCR. These financial institutions hold information on

[8] The Hon Scott Morrison MP, Media release, 'Mandating comprehensive credit reporting', 2 November 2017.
[9] Privacy Commission New Zealand, Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code, 10 April 2018.
[10] Privacy Commission New Zealand, Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code, 10 April 2018.

mortgage, credit card, personal loan, car loan and business finance repayment performance. By comparison, the Australian Treasury noted in its BNPL analysis that "... BNPL debts only represented 0.3 per cent of all unsecured debt in personal insolvency cases".[11] MBIE similarly found that BNPL typically represents a fraction of a consumer's credit position with the average BNPL transaction value being $150 and the average credit limit being $592.

The government has given all credit providers the time and opportunity to voluntarily participate in CCR since the regime was introduced in 2012, allowing market forces to generate public policy outcomes, including stronger participation in CCR. Afterpay's product, with its built-in consumer protections, as well as the broader BNPL sector, should be afforded the same opportunity and conditions.

Credit reporting and credit checks should only apply once an affordability assessment is triggered per the regulations

The Draft Regulations' proposal to mandate participation in CCR, including credit checks, at any credit level (i.e. any amount between $1 and the proposed $600) is highly concerning and will exacerbate negative impacts on consumers and compound issues already present in the credit reporting system that are highly complex and pre-date the introduction of BNPL.

Mandating credit checks and credit reporting, as part of CCR, below the threshold effectively mandates that BNPL providers conduct two affordability assessments – one at the point of sign-up and another if and when that same customer is provided a spending limit above the threshold. This runs counter to the objective of the proposal, which is to enable financial access to low cost and low value BNPL products. It would result in a range of unintended and perverse consequences for consumers, which are outlined further below. Removing CCR obligations below the threshold would better balance the needs of consumers and reduce the burden on the current mainstream model of CCR that fails to offer a complete or proportionate solution to the challenges associated with BNPL. It would also limit a consumer's negative exposure to the credit reporting system, which is particularly sensitive for young people (for example, there is potential for repeat marks and negative strikes on a thin credit file).

Afterpay recognises that credit checks can play a role in BNPL regulation

Once a consumer reaches the credit threshold, Afterpay believes credit checks can play a role in an affordability assessment. A credit check would provide Afterpay with specific information about a customer's credit worthiness (via their credit score) and potential liabilities, since all credit inquiries are recorded on a consumer's credit file. In tandem with Centrix's PayWatch initiative, this would provide visibility that is appropriate to the value and risk of BNPL products. This visibility would extend to the broader credit market, ensuring other financial institutions can make risk-based decisions about a customer's use of a low value BNPL facility. Along with other information (including, for example,

[11] Australian Treasury, BNPL Options Paper, p 12.

using a customer's past repayment performance on BNPL platforms) this could form the foundation of a principles-based affordability assessment under the new regulations.

However, it must be noted that the current credit score and credit history model can actually harm consumers and exacerbate financial exclusion. This harm should not be underestimated; isolating consumers from low cost and low risk products, like Afterpay, can have severe consequences for individuals and communities. Credit scoring can disadvantage those with thin credit files such as young people (particularly younger women), freelancers, and those who have lived abroad. Consumers with higher credit scores get cheaper loans and credit card offers, while consumers with lower credit scores get more expensive loans and might be unable to access affordable credit altogether.

CCR was not designed with BNPL in mind

Regulations in New Zealand do not require products like Afterpay to participate in CCR or conduct credit checks. Although it is true that the diversity of the BNPL sector means that some providers participate in credit reporting, the primary objective of regulatory reform is to appropriately balance consumer protections (including responsible lending), innovation and financial inclusion – and this can be done by the BNPL industry without mandatory CCR .

BNPL providers like Afterpay have designed products that are fundamentally different to traditional credit products and as such do not fit within the existing credit reporting regime. This includes the fact that Afterpay:

- Starts a customer on a low initial spending limit that only increases gradually with proven on-time repayment behaviour;
- Provides dynamic spending limits, which may increase or decrease depending on the customer's repayment performance;
- Does not provide a guaranteed line of credit;
- Primarily used for small-value transactions, with an average order size of around $150 and a maximum possible limit of $3,000;
- Has a short repayment period (maximum of 8 weeks) and offers the ability to repay early at no cost; and
- Prevents a customer from spending as soon as they are in arrears.

The growth of BNPL products, like Afterpay, has highlighted the legacy issues in the credit reporting system, which pre-dates the creation of BNPL products. Detailed debt serviceability assessments based on income and expense estimates, which have been common in New Zealand for mortgages under responsible lending obligations, are not meaningful or appropriate for BNPL products. These methodologies are meant to estimate a borrower's position to allow a lender to make lending decisions over a very long time horizon. They do not cater for very short-term payment products that do not allow debt to revolve. Fundamental reform of the credit reporting regime and credit bureau operational capabilities is needed so that they can collect BNPL data in real time and reflect a consumer's BNPL history in their credit file in a way that does not negatively impact their credit score. Governments have a role to play in ensuring that the credit reporting system is fit for the future, and in this context, we note the Office of the Australian Information Commissioner's major review of the Privacy (Credit Reporting) Code 2014 to determine whether it remains fit-for-purpose and provides adequate privacy protections for individuals.

Given the nature of our product, and its use for small-value transactions, mandating CCR and credit checks below the BNPL credit threshold would have little benefit despite providing some visibility to other credit providers. The Cabinet briefing document on these reforms demonstrates this point: consumer spending limits associated with BNPL products remain very low. According to data provided by BNPL lenders for the year 2020-21, across the industry, the average BNPL transaction value was $150 while the average credit limit was $592.[12] Because Afterpay pauses spending at the first sign of non-repayment, customers cannot revolve in debt and positive repayment behaviour is encouraged.

Instead of performing credit checks and participating in credit reporting, Afterpay's approach delivers consistently better outcomes for customers and does not discriminate against more vulnerable consumers. Evidence of this can be seen in Afterpay's credit losses and impairment charges, which are lower compared to traditional credit and other BNPL competitors. Further, the overwhelming majority of Afterpay transactions are from repeat customers who have shown positive repayment behaviour. While Afterpay customers tend to have higher than average incomes and lower financial liabilities, around half do not have an established credit file. In addition, from analysing our own data against that of a credit bureau we see that those that may have performed badly with traditional credit or have had an incident in their lives, like a bankruptcy, actually perform well on a safer product like Afterpay.

We are, however, particularly aware of the need to find a mechanism for different BNPL providers to share relevant data to ensure that a customer is not overleveraging themselves with a number of BNPL arrangements. To address this issue, the BNPL industry in New Zealand has recently implemented the PayWatch initiative with New Zealand credit bureau, Centrix, which represents a tailored and effective response to the risk of vulnerable consumers using multiple BNPL accounts when they are in financial difficulty.

Establish a PayWatch 'safe harbour' provision in the Draft Regulations

The New Zealand BNPL industry, including Afterpay, has developed an BNPL indebtedness indicator (called Paywatch) in partnership with New Zealand credit bureau, Centrix. Currently more than 90% of the BNPL industry supports this initiative.

We strongly support the inclusion of a 'safe harbour' provision in the Draft Regulations, instead of having CCR be mandated. Such a provision would remove the regulatory

[12] Office of the Minister of Commerce and Consumer Affairs, Cabinet briefing: Preventing financial hardship caused by the use of Buy-Now, Pay-Later, 10 November 2022.

obligation to participate in CCR if the BNPL provider uses PayWatch – a BNPL-specific model of credit reporting that addresses the issue of consumers in financial difficulty accessing multiple BNPL services.

Under PayWatch, each BNPL industry participant accessing the Centrix service will be alerted if a new account applicant has an active overdue account with another BNPL provider. The service operates based on a daily feed from each participant denoting every active account that is overdue, in circumstances where a customer has consented to their information being disclosed for this purpose. Where one or more payments is more than seven days overdue, we will be alerted of that new customer's status, and the number of BNPL providers that have provided an overdue status on that customer.

This information will be used as part of the upfront affordability assessments being conducted by BNPL providers to ensure we continue to lend responsibly. Each BNPL provider is still responsible for making their own independent decision on whether to provide its services to any such customer.

PayWatch has a number of important advantages over the traditional credit reporting system. It is closer to real-time in providing an indication of someone's indebtedness status with a BNPL provider and has comprehensive coverage of consumers using BNPL products, whereas many younger adult consumers have thin or blank traditional credit files with the credit reporting bureaus.

PayWatch is also an example of industry and credit bureaus working together to find solutions. We note that credit bureaus in other countries have announced other initiatives designed to accommodate BNPL product data sets.

8. Affordability assessments and lending practices

Question 5: Should regulations 4AC–4AN apply to BNPL? Why, or why not?

Afterpay supports Option 1 – a principles-based affordability assessment

Afterpay strongly recommends the adoption of Option 1, which would require lenders to carry out an affordability assessment in accordance with the principles-based requirement in section 9C(3)(a)(ii) of the CCCFA and provide an exception from regulations 4AC-4AN. This would require lenders to 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, while removing the highly intrusive, costly and disproportionate requirements of making enquiries into and verifying the borrower's likely income and relevant expenses.

A principles-based affordability assessment represents a tailored response to the nature of BNPL products that are low value, low cost and low risk. It also represents the preferred option of MBIE as detailed in the Regulatory Impact Statement:

> *"This RIS concludes that Option Six (light affordability assessments above $600) is the option that is most likely to achieve our objectives... While there is some risk, we consider that this is the option with the lowest risk of increasing the cost of credit while minimising financial hardship from BNPL arrangements".*[13]

Of the two options detailed in the consultation paper, Option 1 more appropriately balances the government's policy objectives, providing flexibility for the sector to continue supporting consumers and businesses while limiting the potential for harm on vulnerable people or those already experiencing financial difficulty. Importantly, the introduction of Option 1 would not function in isolation – it would instead complement a range of existing consumer protections that are built into our product that act holistically and apply immediate interventions and safeguards.

It is unclear, however, how a principles-based affordability assessment would function in practice and be tailored to BNPL. Further industry consultation should occur to develop appropriate guidance on how this applies *proportionately* to contracts above and below the threshold to be included in the Responsible Lending Code.

Question 6: What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?

Option 2 represents a disproportionate response with negative unintended consequences for both consumers and industry

Afterpay does not support this option because it is not reflective of the evidence of consumer harm in the BNPL sector, and would impose unjustifiable costs on industry by requiring providers to conduct income and expense verifications. The impost of these requirements would wholly reshape BNPL products away from low value and low cost products.

The Government and MBIE has stated that any affordability assessment for BNPL must be tailored to the risks and benefits of BNPL products – Option 2 clearly fails this test. MBIE's analysis in the Regulatory Impact Statement is clarifying: it demonstrates that Option 2 would provide "no flexibility" and "would likely decrease competition, increase the cost of borrowing, and reduce access to credit".[14] These outcomes are antithetical to the purpose of these reforms, which is to support people with financial difficulty who attempt to access BNPL by providing the right consumer protections.

[13] Regulatory Impact Statement, Preventing financial hardship caused by the use of Buy-Now, Pay-Later, 10 November 2022, p 2.
[14] Regulatory Impact Statement, Preventing financial hardship caused by the use of Buy-Now, Pay-Later, 10 November 2022.

Question 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?

An individual's proven repayment history for BNPL products should be an important metric to assess affordability

In Afterpay's extensive experience, previous repayment behaviour on our platform is the best predictor of a customer's repayment capacity. In recognition of this, a customer's proven repayment history for a BNPL product should be a key input into any affordability assessment regime.

For existing BNPL customers, their BNPL transaction history provides meaningful evidence that the product is appropriate for them. In practice, this means existing account holders should not be subject to additional affordability assessment (such as a credit check) under any new regulatory regime to continue accessing their existing BNPL account. In addition, if a BNPL customer has a proven repayment record, then this information should be usable by a BNPL provider as part of any additional affordability assessment required for increases to that customer's spending limits.

Other jurisdictions have adopted scalable frameworks to assess affordability. The BNPL Code of Practice in Australia, for example, requires BNPL providers to conduct additional affordability checks when customers are borrowing over a certain threshold (AU$3,000). We are strongly supportive of this approach, as it ensures the right balance is struck between protecting consumers and allowing innovative and low risk products to operate.

The use of BNPL data for affordability assessments is also reflected in consumer preference. In research conducted for Afterpay in Australia by Mandala consulting, consumers were asked which type of affordability check would be most suitable for BNPL. 48% of consumers answered that they wanted to be assessed based on their actual performance on BNPL platforms (i.e. by their repayment history - in line with what Afterpay already does), while 37% indicated support for a rapid credit check. Notably, only 15% of BNPL users thought checking their income and bank statements was a suitable assessment of BNPL access.[15] We believe the Australian and New Zealand markets are comparable in their consumer attitudes, and that very similar results and preferences would be revealed in the New Zealand context.

We recognise that, historically, credit card providers have also argued that historical payment performance should be relied upon to provide increased credit card limits to consumers. However, there is a fundamental difference between someone's ability to maintain minimum repayments on a credit card account (typically 3% of the outstanding balance), versus a requirement to pay down purchases in four equal fortnightly instalments. For example, a consumer that makes a $1,000 purchase on a credit card is only required to make a $30 monthly repayment. Whereas a consumer that makes a

[15] Afterpay – Regulatory Cost of Option 3 – Research Report, Mandala, December 2022.

$1,000 purchase with Afterpay is required to make their first repayment ($250) upfront, and three fortnightly repayments of $250.

A consumer that demonstrates an ability to meet fortnightly instalment payments of $250 is clearly in a different category to a consumer that is able to maintain monthly credit card repayments of $30. Thus the reliability of past repayment performance on Afterpay's platform is much stronger.

Credit checks can play a role as part of an affordability assessment for higher value BNPL products

Afterpay recognises the consultation paper's proposal that the credit reporting regime can play an important role in future BNPL regulation. Any requirements in this regard should strike the appropriate balance between strong consumer outcomes, responsible lending and financial inclusion. As argued above, conducting credit checks on BNPL customers above the credit limit threshold can play a role in an affordability assessment as part of Option 1. While we do not believe the evidence indicates this is necessary for low value and low risk BNPL products, credit checks are far more proportionate and supportive of financial inclusion than the obligations required in Option 2.

It should also be noted that significant modernisation of the credit reporting system is required for it to be effective in the BNPL context. This includes the ability to collect BNPL data in real-time and reflect a consumer's BNPL history in their credit file in a way that does not negatively impact their credit score. This will require ongoing engagement with the credit bureaus and a focused review of the current regime by the government.

A non-prescriptive approach to affordability assessment tools should be maintained for BNPL

While credit checks have historically played a role as an affordability assessment tool, other tools – including product design tools – are also important. The regulatory framework for BNPL affordability assessments should remain flexible in recognition of a product's inherent low risk nature in comparison to other credit products.

A non-prescriptive approach also better enables the incorporation of new affordability assessment tools and processes. Innovative tools like Open Banking can play a role in evolving credit decisioning frameworks. Similarly, more bespoke options like the development of the BNPL Paywatch initiative present important assessment tools that should not be precluded from consideration under any proposal contemplated by the government.

Changing spending limits and dynamic limits in BNPL

As previously outlined, Afterpay's practice is to start customers on low limits, pause new purchases when repayments are not made and only increase limits with proven on-time repayment behaviour. Conversely, spending limits can also reduce if repayment behaviour changes. By only increasing a customer's spending limit after they have demonstrated strong repayment behaviour, Afterpay ensures that lending responsibly is built into our business model.

Dynamic spending limits are a central consumer protection feature of BNPL and critical to the underlying BNPL model. Inhibiting BNPL providers' abilities to adjust spending limits in response to repayment behaviour would result in a highly perverse consumer outcome by likely forcing BNPL providers to provide much higher spending limits at the point of customer sign up.

Our experience in Australia with self-regulation through the BNPL Code of Practice is useful in understanding the effectiveness of regulating dynamic spending limits through proportionate and scalable obligations.

The BNPL Code was developed in response to a formal recommendation of a 2019 Senate inquiry, which found that the BNPL industry should develop self-regulatory arrangements that strengthen consumer protections and establish clear standards across the sector. Following significant consultation and design work, the BNPL Code was launched in March 2021. It contains clear and effective criteria for assessing new customers that reflects the concepts of proportionality, the importance of product design in regulation, and supporting financial inclusion in the economy. The Code's graduated approach to suitability ensures that providers continue to apply appropriate checks at all stages of the customer journey. For example, the Code requires members to satisfy a number of upfront criteria to confirm that the product is suitable for a customer, including being reasonably satisfied that the customer is not vulnerable. Of critical importance is a customer's ability to make the first repayment upfront. If a customer is unable to satisfy this initial requirement, we believe that our product is not suitable for that customer and we do not allow them to transact.

Above spending limits of $3,000, the BNPL Code requires BNPL providers to conduct additional affordability checks (such as a credit or income check). Because these affordability checks cannot happen without customer consent, the BNPL Code applies a proportionate framework for ensuring that customer spending limits cannot be increased dynamically beyond this threshold. This threshold has proven effective in managing risk and ensuring strong repayment rates in the BNPL sector to date and presents a reasonable benchmark that can be adjusted in response to further data under a new regulatory regime.

Importantly with any BNPL product using dynamic spending limits, customers should be able to set their own spending limits that are lower than what they would otherwise receive from a BNPL provider. Afterpay already allows our customers to set their spending limits below (but not above) the level determined by our credit risk policy.

Limited evidence of consumer detriment

To date, there has been little evidence of BNPL causing consumer detriment in New Zealand, or indeed any other similar jurisdiction. As MBIE has consulted on these regulations, much of the evidence has been anecdotal, and has not directly addressed the true drivers of financial difficulty. There is also an absence of evidence that is focused on the counterfactual – i.e. what consumer outcomes would arise in the absence of BNPL products, or in circumstances where BNPL products are more difficult to access. These issues are acknowledged in the Regulatory Impact Statement:

> "*Key evidence of consumer harm comes from an MBIE survey which, while surveying a relatively large number of users, used a non-representative sampling frame (social media promotion), and may be biased as a result.*"

This is significant because the question of how to minimise consumer detriment on vulnerable consumers and those facing financial difficulty is the driving force behind these regulations. Having an accurate, reliable and nuanced understanding of consumer detriment is therefore essential to designing outcomes-based regulation and applying the concept of proportionality.

The fast growth of BNPL and its use by younger generations of consumers is not evidence of consumer harm. Instead, this reflects strong consumer appetite for simple products that are transparent and easy to use, and operate much more fairly than traditional credit products. Research from Monash University draws similar conclusions, explaining that the relationship between financial stress and BNPL use is "not clear-cut" and that "generalisations about young people being "hooked" on BNPL credit are therefore inaccurate. As in any demographic, attitudes vary."[16]

The potential sources of consumer detriment from BNPL products remains limited. Centrix data demonstrates that hardship levels as a result of BNPL use have remained consistently low (0.4%, or 4 in every 1,000 BNPL customers). And as noted already in this submission, the level of consumer hardship relative to Afterpay's customer base remains low – in FY22, we received 4,079 hardship applications (which represents less than 1% of our total customer base) and 100% of these were approved.

These outcomes compare favourably with CCCFA-regulated consumer credit products, despite the difference in regulatory classification.

For example, Centrix data shows that when comparing consumer outcomes by age cohorts, the results are very favourable for BNPL. BNPL arrears (for a given age cohort) are no higher, and in some cases lower, than credit cards and personal loans. Average credit scores for BNPL are also higher than personal loans.[17]

[16] Lucas Walsh, Beatriz Gallo Cordoba and Blake Cutler, '90% of young people had financial troubles in 2022, and 27% used 'buy now, pay later' services', *The Conversation*, 20 December 2022.
[17] Centrix, Buy Now Pay Later Insights, August 2022.

Figure 2: Arrears by age group for BNPL and non-BNPL users

Arrears by age group

Arrears:	% BNPL Arrears	% Credit Card Arrears		% Personal Loan Arrears	
BNPL Consumer:	Yes	Yes	No	Yes	No
Age Group:					
18-24 Years	12%	13%	8%	11%	11%
25-29 Years	12%	12%	6%	11%	11%
30-39 Years	10%	12%	6%	10%	10%
40-49 Years	8%	13%	6%	9%	9%
50-64 Years	7%	12%	5%	8%	7%
65+ Years	10%	10%	3%	7%	5%

- Arrears levels by **age group** for BNPL and non-BNPL consumers.
- Risk levels of **BNPL is very similar to that of unsecured personal loans** across all age groups.
- Credit card debt caries significantly **more risk** for BNPL consumers versus non-BNPL. Trend observed across all age groups.
- BNPL consumers with credit cards tend to **pay their BNPL** commitments ahead of their credit card bills.

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Likewise, economic analysis by BIS Oxford Economics examined the issue of consumer loss in New Zealand, noting that some regulators and consumer groups have expressed concerns that some consumers may sacrifice essential items in order to pay off BNPL debts or may experience hardship as a result of accessing multiple BNPL services.[18] BIS Oxford Economics argues that the issue of consumer loss should be examined in net terms – that is, to what extent are consumers as a whole worse off in net terms relative to the situation prevailing without Afterpay? In this context, they note that BNPL customers previously used other payment platforms to undertake spending and that these same consumer issues arise with other forms of payment, such as credit cards, personal loans, cash and debit cards. Consumer loss exists and substitution of essentials occurs for these alternative forms of payment – they are not confined to BNPL services such as Afterpay, and would exist without them. These traditional forms of payment have been in existence for much longer periods of time than BNPL and account for a much larger market share of consumer purchases. All these issues must be taken into account.

Since the introduction of Afterpay, BIS Oxford Economics's consumer survey found that Afterpay consumers use our product safely and are better positioned to manage their finances when compared to their use of a regulated product, like a credit card, which has a one-off affordability assessment. It found that 17.3% of Afterpay users who had used credit cards in the last 12 months had given up essential items in order to make credit

[18] BIS Oxford Economics, Economic Impact of Afterpay in NZ, March 2023.

card payments in the past, while 9.2% reduced essential item expenditure.[19] These are higher proportions than those given by these same consumers for their use of Afterpay itself, as indicated below.

Figure 3: Experience of Afterpay and credit card users as a result of making repayments[20]

Experience	Consumers who have used Afterpay in the last 12 months(%) *	Afterpay users who have used a credit card in last 12 months (%)**
I was able to budget better	39.0	16.7
I was able to pay household bills	10.9	7.9
I was able to save more	21.7	12.9
I was able to purchase essentials I could not purchase otherwise	23.5	8.0
Went without essentials to make repayments	6.5	9.2
Cut back on essentials to make repayments	11.7	17.2

The latest BNPL consumer study by the Consumer Financial Protection Bureau (CFPB) in the United States highlights this point. It estimates “that a majority of BNPL borrowers would face credit card interest rates between 19 and 23 percent annually if they had chosen to make their purchase using a credit card”.[21] And even for prime and super-prime borrowers who use BNPL, “interest rates on credit card debt are more than 15 percentage points higher than the zero percent APR offered by the pay-in-four product, conditional on the consumer making payments on time”.[22]

Further, the question of what consumers deem ‘essential’ varies significantly. The Australian Finance Industry Association’s recent study on BNPL found that consumers’ definition of ‘essentials’ changes by age and over time and according to personal circumstances.[23] Understanding these evolving consumer attitudes and patterns is essential to the debate about consumer loss. For example, many consumers surveyed deemed “socialising with friends, mobile phone ownership, streaming services, saving money, gym membership, pet ownership, household bills, childcare, child-related expenditure and car ownership” as essential. The range of life stage segments surveyed – spanning ‘Independent Starters’, to ‘Young Families’, and those ‘Enjoying Retirement’ –

[19] Based on Pureprofile’s sample of 1,019 Afterpay respondents in January-February 2023. 625 (61%) of these had used credit cards in the last 12 months.

[20] Pureprofile, BIS Oxford Economics analysis.Figures may not sum to total due to rounding. *n = 1,019 ** n = 625.

[21] Consumer Financial Protection Bureau, Consumer Use of Buy Now Pay Later, March 2023.

[22] Consumer Financial Protection Bureau, Consumer Use of Buy Now Pay Later, March 2023.

[23] Australian Finance Industry Association, The Economic Impact of BNPL in Australia, 2022.

differed in their definition of essentials, whether it be mortgage repayments, medical services, or accessing streaming services. In fact, according to the study, only 24% of consumers in the 'Finding their Feet' segment, 31% of 'Independent Starters' and 34% of 'Young Families' indicate that there has been no change in the type or purchases they see as essential, compared to 66% of the 'Mature Workers' and 76% of the 'Enjoying Retirement' segment, who have a fixed view on what they regard as essential.[24]

9. Product disclosures

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

Afterpay provides clear and understandable disclosures that help consumers make informed decisions

Afterpay provides clear and comprehensive information at all stages of the customer journey. This begins with providing consumers with information about the product before asking them to confirm acceptance of our Terms of Service. This includes information on the terms under which we are offering the service, the conditions that the consumer has to meet, including payment dates and amounts, and any fees associated with missed payment. A key reason for Afterpay's existence is that it has provided clearer and more accessible information to customers to help them manage their budget effectively when compared to traditionally regulated credit products that are incentivised to allow customers to revolve in debt. Our model provides consumers with the relevant information at the most salient point in the consumer journey. Because our product is simple and transparent, we do not have voluminous disclosures or legalese that risks overwhelming the customer.

Afterpay provides consumers with information and 'friction' in every single transaction, not just at the point of sign up

It is important to note that Afterpay provides the same information throughout the customer journey each time a customer opts to use the Afterpay product to complete a transaction. At every transaction the consumer is provided with:

- Information on the full cost of the purchase;
- The repayment schedule including dates and exact payments due on those dates;
- Essential information about the nature of the product and any rights and responsibilities associated with our Terms of Service, including the risk of late fees;
- A link to the full terms and conditions;
- A check box to be completed by the customer to confirm that they accept the terms of the agreement;
- A confirmation button to confirm purchase; and

[24] Australian Finance Industry Association, The Economic Impact of BNPL in Australia, 2022.

- Email confirmation immediately after the transaction which contains all of the information listed above, as well as further details on what to do if they need to return or require a refund for any items.

The above process demonstrates that the transactional 'friction' is applied to every customer transaction made via Afterpay, not just at the initial sign-up stage. In addition, the existence of the ongoing relationship allows customers to better understand product features, compared to a traditional consumer credit product where the provider and customer may only interact once. We agree that providing clear contractual information is important and would welcome fit-for-purpose and bespoke requirements to be mandated in this regard.

The vast majority of Afterpay customers are mindful about their purchasing habits. Mandating clear and transparent communications can help further promote this across the BNPL sector.

Accenture research shows that the majority of customers are mindful of their purchasing habits. Customers use Afterpay as a tool to help them spread the costs of items and better manage their finances.[25] In a study of Afterpay consumers in Australia 90% valued Afterpay's help with budgeting as an important product feature.[26]

Furthermore, it is clear that where customers are unable to access other forms of credit, when used responsibly, Afterpay offers significant benefits in allowing them to access short-term, interest-free credit to meet their everyday needs. In 2020 alone, Afterpay customers saved over $110 million when compared to traditional credit cards.[27]

We believe mandating clear and transparent communications will provide further confidence to BNPL customers. Tailored requirements will ensure that, for example, BNPL providers act responsibly to ensure that a new customer can only borrow small amounts until they are able to demonstrate that they have the capacity to take on a higher spending limit. Similarly, if a customer misses a payment, BNPL providers should be required to take appropriate action such as immediately suspending them from the platform until any overdue payments are met.

BNPL customers should be able to check their balances at any time, either online through a website or via an app. A customer's account page should provide details of all of their purchases including when payments are due and how much they will be. Responsible lending should also involve providing customers with the option to move payment dates, pause payments to manage a returns process, or change their preferred payment option for each order. These functions provide customers with control of their payments that does not exist with many traditional credit products.

[25] Accenture, Economic Impact of Afterpay, 2020.
[26] Afterpay BNPL Consumer Research Report, Mandala, December 2022.
[27] Accenture, Economic Impact of Afterpay, 2020.

We believe that Afterpay's existing processes, such as smart and continuous monitoring of a customer's repayment behaviour, coupled with the clear and accessible information, provides greater benefits and protections to consumers than many traditional, regulated credit products. BNPL products are designed to support low value purchases over a short period of time, and our customer interventions and communications are geared towards preserving the integrity of this model.

All disclosure obligations intended to apply to BNPL should be reviewed and tailored to ensure they are fit-for-purpose

Afterpay provides comprehensive information at all stages of the customer journey, disclosing important information in a clear and timely manner.

The existing disclosure regime in the CCCFA is not fit-for-purpose for BNPL services, and if applied, would only confuse customers and create a significant burden on BNPL providers with little to no consumer benefit. This stems from the fact that the CCCFA was not designed with BNPL products in mind. Because of this, the existing obligations are not an appropriate regime to manage the risks of customer harm. For example, for revolving credit facilities, the CCCFA requires that continuing disclosure is made every 45 days. This period is longer than the duration of repayments for a purchase made using Afterpay.

In addition to the content and timing of disclosures, the method of disclosures, particularly initial disclosure, needs to be considered in the context of an online product where credit is advanced at the point of purchase. Moreover, disclosure obligations will need to be tailored to allow electronic disclosures.

10. Consumer fees and charges

Question 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?

Afterpay's approach to fees and charges

Afterpay generates the vast majority of its revenue from merchants and our best customers are those who pay on time. Our product is designed to be free to consumers, provided on-time repayments are made. Where consumers do miss a repayment Afterpay applies a small, capped fee, set out in Afterpay's Terms of Service.[28] We believe these fees are reasonable, clearly described for consumers to understand, and disclosed at key points in the customer journey. We support the introduction of obligations that mandate this approach to fees.

Importantly, when an Afterpay customer fails to make a repayment, their account is frozen and that consumer is prevented from using Afterpay until their payments are up to

[28] Afterpay Terms of Service - New Zealand.

date; a product feature which completely eliminates the risk of consumers falling into a debt spiral – the kind of which credit card providers rely on to be viable.

11. Advertising and marketing

Question 10: Do you have any other comments or suggestions for the drafting of the regulations?

Advertising and marketing principles

Afterpay ensures that we are meeting high advertising standards that do not put the consumer at risk. We adhere to strict marketing principles in our communications with the public, whether through direct to consumer campaigns or through pre-approved assets used by merchants on their own platforms.

In relation to the promotion of Afterpay by our merchant partners, we have a compliance framework in place to help ensure that merchant advertising in respect of our BNPL product is appropriate. Our Marketing and Sales teams are given regular training either in-house or via online external courses, on advertising standards, and we provide comprehensive guidelines for all merchants so they understand how to present Afterpay to consumers, including the appropriate language and disclaimers to use. Our merchant integrations team works closely with merchants prior to launch of Afterpay on their platforms to ensure that promotion of our product meets the standards and requirements we set out in our guidelines. It should also be noted that the BNPL industry is also already subject to the same New Zealand Fair Trading Act requirements as other financial product providers. Consistent with these requirements, Afterpay promotes and advertises its BNPL product appropriately across different channels.

12. Commencement

Question 11: Do you have any comments on when the regulations should commence? Please provide reasons for your answer.

It is too soon to provide feedback on when the regulations should commence because final decisions on the content of the Draft Regulations have not been made, and there is therefore too much uncertainty about the financial, compliance and technical impact of the framework.

Compliance with the regulations will be partly dependent on resource constraints and the availability of software engineers and other technical roles to design and implement internal product changes and integrate external requirements, including affordability assessments.

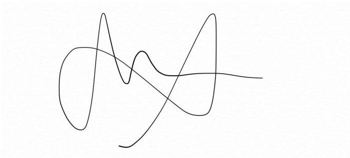
Overall, while it is too early to provide an accurate estimate, we consider 12-18 months to be the minimum timeframe required to become compliant with the regime.

13. Conclusion

BNPL is an innovation that has delivered significant benefits to New Zealand consumers, retailers and the broader economy. This innovation should be supported by the financial regulatory environment. The New Zealand Government now has the opportunity to develop regulation that puts the consumer first, allows the sector to grow, and adapts to future innovations.

Thank you for the opportunity to make this submission. We look forward to ongoing engagement with MBIE. Please do not hesitate to contact us if you require further input or clarification.

Yours sincerely



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