Submission on Buy Now Pay Later: Draft Credit Contracts and Consumer Finance Amendment Regulations 2022

Your name and organisation

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Organisation (if applicable)	Good Shepherd NZ

Good Shepherd NZ is a charitable non-government organisation that was established to address the critical, contemporary issues facing women, girls and whānau. It is focussed on building financial security and resilience for women, girls and their whānau; identifying and addressing social issues where they intersect with its financial and economic wellbeing work; and advocating for changes in policies and practices to reduce and remove barriers to financial inclusion and economic participation.

Good Shepherd NZ operates a community microfinance programme (Good Loans) that offers no interest loans of up to $15,000 - to support people living on limited incomes with unmanageable debt and to help them access essential items or services through fair and affordable credit as an alternative to high-cost lending. It is also piloting a programme to address the financial and economic impact of family violence, which includes access to no interest loans for clients needing that form of support.

Responses

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?
	We do not support the draft wording in its current form. The proposed wording would capture Good Shepherd NZ's microfinance programme – Good Loans – and other community-based microfinance programmes including Ngā Tāngata Microfinance Trust, and bring them into the realm of consumer credit contracts, which they have not been in the past. This counteracts the purported aim of the regulations to 'protect consumers from financial hardship, while enabling continued access to low-cost credit' and the purported aim of the definition to 'avoid capturing other forms of lending where there may be less risk of financial harm'. Good Loans are provided as a fair and affordable alternative to high-cost lending. The provision of low-cost microfinance has been identified as an important part of the government's holistic approach to recent Consumer Credit reforms.

	No interest Good Loans are available to people on limited incomes to purchase essential goods and services, and to consolidate unmanageable, high-cost debt as part of a DEBTsolve programme. Good Loans also provides specialist no interest loans to support people overcome the financial impact of family violence. A major component of the DEBTsolve programme is working with clients who have unmanageable debts caused by inappropriate and unaffordable BNPL arrangements. Good Loans are provided in partnership with BNZ and with funding from Ministry of Social Development's 'Building Financial Capability' fund. These loans are provided on a non-profit basis and at zero cost to the debtor or the third-party supplier, including the complete absence of late or default fees. The increased level of administration and liability that would be imposed by being captured in this definition would be unreasonable, and likely cause this form of fair and affordable lending to cease. We are also concerned that the definition only captures third-party lenders, leaving room for retailers to develop their own forms of BNPL lending that are not captured by this legislation. We would support an expansion of the definition to include contracts that attract costs to the debtor or the third-party supplier at any stage of the contract, including where penalties and late or default fees are charged. We believe an expansion of this nature would serve to more accurately exclude those organisations that do not impose costs on debtors or third-party suppliers, and to capture new innovations in the financial sector appropriately.
2	Do you have any comment on the proposed threshold of $600? Should the threshold be higher than $600? Lower? Why?
	We do not support the proposed threshold of $600, and believe all BNPL lending should be subject to full affordability assessments. We believe a threshold approach counteracts the purported aim to 'reduce financial hardship while retaining the benefits'. BNPL arrangements over $600 are not where the most severe financial hardship is caused. People buying items for under $600 are more likely not to have alternative options such as cash or credit card, are more likely to be on low or irregular incomes, and more vulnerable to hardship. This is compounded by the range of retailers and essential services now offering BNPL. Substantial hardship is regularly caused by people having multiple active accounts with multiple providers and finding themselves unable to manage repayments. A full affordability assessment (including the existence of other open BNPL accounts) would prevent this harm. Good Loans serves clients who are on low incomes and experiencing financial challenges or hardship, and approach us to pay for essentials e.g. car repairs, dental work, devices for school. Currently, almost half of these people are already making payments on BNPL. Almost two-thirds of those that have BNPL have active credit arrangements with more than one BNPL facility. A threshold of $600 will not reduce the harm for this cohort, which we understand to be the intention of the CCCFA amendments in recent years. In addition, fair and affordable community lending for essential items becomes unaffordable because of the unregulated BNPL lending. We also see people perpetrating family violence coercing their partners into taking on BNPL contracts, to purchase items that do not benefit the debtor. A threshold of $600 means that people who borrow under $600 can be coerced into lending even when there is no ability to

	repay.
3	What do you consider the financial impact of a $600 threshold would be?
	The $600 threshold would continue the harm seen from BNPL arrangements, particularly for people on limited incomes taking out small BNPL loans, where repayments will often default or cause further hardship. It will still lead to the following impact, created by multiple BNPL facilities, as described by our client: *"The travel costs, appointments and being on a benefit meant that struggling to survive financially was immense. This meant that all over this time, I made payments as I could to my car finance, but also because of what I needed to get through this time, I thought that I could survive my finances by using "Afterpay" and "LayBuy" - but no way did I meet all payments, I was sinking. I thought if I spread payments over weeks, that I would be able to manage.* *Laybuy and Buy now pay later options is not the answer for anyone struggling to cope financially. Keeping track of payments was a nightmare….* *I entered into a hardship arrangement with Laybuy and managed to dig my way out of that living on the edge, but then came the threats from the finance company. I still then had Afterpay to deal with. With this reality I turned to MSD and Good Shepherd."* The threshold approach will lead to increased financial costs for social services and government agencies that provide support to people who find themselves in this situation. Currently, of the people that approach Good Shepherd NZ for support with essential costs and unmanageable debt, people with active BNPL facilities have higher levels of debt to MSD than those people not using BNPL.
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)?
	We do not support a threshold approach for the reasons outlined elsewhere in this submission. From what we see in our Good Loans and DEBTsolve services, BNPL arrangements under $600 are often unaffordable and so do require the same affordability assessment as those over $600 (there is no reason for this distinction).
5	Should regulations 4AC–4AN apply to BNPL? Why, or why not?
	We support the full affordability assessment requirements of the Credit Contract and Consumer Finance Act regulations being applied to all Buy Now Pay Later loans. Full application would prevent the known harm that can be caused by a single loan, as well as prevent the significant harm that can be caused by the culmination of repayments to multiple BNPL facilities. We do not support a 'principles-based approach', as this approach proved to be inadequate when tried with the previous credit law regime and could lead to inconsistent consumer protections.
6	What would the impact be of applying regulations 4AC–4AN on BNPL lenders and consumers?
	Applying these regulations in full would give consumers greater understanding of their

	consumer rights and the impact of delayed payments for goods and services, particularly in relation to essential items where delayed payments directly leads to financial hardship in a short space of time. It would also enable clear and consistent guidance for lenders on how to lend responsibly. It would also help consumers understand the impact of cumulative and/or multiple payments on their household budgets, and their impact on enabling consumers to access fair and affordable lending. This greater understanding will ensure consumers have more awareness of the implications of their decisions on their financial situation, allowing them to make genuinely informed choices.
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?
	We do not support this approach.
8	Do you have any comments on the drafting of regulations 18I(3)(c)?
	We recommend that BNPL lenders be required to disclose details of payment amounts, due dates and fees for late payment for all loans.
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?
	We do not see any reason for BNPL arrangements to be exempt from requirements on other lending currently covered by the CCCFA, unless those requirements are completely irrelevant to the BNPL arrangements and there is no risk of harm to consumers. The changes made to the CCCFA in recent years were made in response to significant harm created for the most vulnerable and financially excluded consumers, and the intent of these changes must be upheld.
10	Do you have any other comments or suggestions for the drafting of the regulations?
	The current drafting does not include an explicit prevention of multiple BNPL lenders extending credit simultaneously without checking if the credit will be unaffordable. This issue is currently causing debt spirals. We also recommend a mechanism be put in place for affordability assessments for further lending on credit limits established before the implementation of these new regulations i.e. accounts which are already open. There are issues with the way in which some BNPL lenders extend unsolicited increases to total credit limits which can lead to substantial hardship, and inability to access fair and affordable lending like Good Loans. This gap should also be specifically addressed.
11	Do you have any comments on when the regulations should commence? Please provide reasons for your answer.
	We have been responding to the impact of debt spirals created by unregulated BNPL lending for more than two years now, and support implementation of regulations as soon as possible

to prevent further harm.

Other comments

We are concerned that the $600 threshold has only been considered from a commercial perspective and not a social or ethical one. Excluding people borrowing less than $600 ensures the most vulnerable New Zealanders, who have very few alternatives to purchase essential items, have none of the protections provided to people who will be borrowing more than $600.

The convenience and value of BNPL for middle-income New Zealanders, who have alternative credit options such as mortgages, personal loans and credit cards, is based on a business model that is subsidised by people in hardship continuing to pay significant default fees.

The harm that is caused by unmanageable debt was the reason affordability assessments were strengthened by Government in recent years, and these regulations should be extended to BNPL and other new forms of credit where harm can be caused by financial penalties being imposed on consumers.