

## **Buy Now Pay Later: Draft Credit Contracts and Consumer Finance Amendment Regulations 2022 Ministry of Business Innovation and Employment**

**10 March 2023**

### **Summary**

1. Buy now pay later (BNPL) products are a form of credit – in our view all credit products should be regulated under the Credit Contracts and Consumer Finance Act 2003 (CCCFA). We support the current amendments proposed to regulate BNPL under the CCCFA. However, we do not support the amendments proposed to include section 18I to allow exemptions for BNPL contracts from affordability assessments. The whanau that The Salvation Army support are predominantly households which depend on welfare or are employed in low-income jobs – the threshold of \$600 proposed in our view will continue to create financial hardships for the whanau that we serve. Applying affordability assessments to all BNPL contracts will mitigate future financial hardships for many of the whanau we support but also benefit the financial sustainability of BNPL services. We highlight in this submission as we have in previous submissions that there are benefits to BNPL services particularly in contrast to alternative credit options such as pay day lenders and mobile trading trucks therefore safeguards such as affordability assessments are required for all BNPL contracts.

### **Background of The Salvation Army:**

2. The mission of The Salvation Army Te Ope Whakaora is to care for people, transform lives, and reform society by God's power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for one hundred and forty years. It provides a wide range of practical social, community, and faith-based services, particularly for those facing various forms of hardship and vulnerability.
3. The Salvation Army employs almost 2,000 people in New Zealand, and the combined services support around 150,000 people annually. In the year to June 2022, these services included providing around 83,000 food parcels to families and individuals, providing some 2,300 people with short-or long-term housing, over 4,000 families and individuals supported with social work or counselling, around 3,500 families and individuals helped with budgeting, court and prison chaplains helped 3,300 people and around 6,600 people supported to deal with alcohol, drug or gambling addictions.
4. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The SPPU works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's Aotearoa New Zealand Fiji Tonga, and Samoa Territory.

### **Responses to the Consultation paper:**

**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?**

- a. We recommend “third party” be removed from the BNPL definition. Currently the BNPL market is predominantly run by third parties however retailers have started to develop their own BNPL type services. For example, Bed, Bath and Beyond have created their own BNPL option called Welcome Pay<sup>1</sup>. Under the proposed definition retailers who develop their own BNPL services will not be captured under the current proposed definition.
- b. We recommend the inclusion of “advance” to the BNPL definition. While the current market is predominantly credit for the purchase of goods and services – international BNPL services such as fupay<sup>2</sup> provide cash advances and advances for bill payments. The current definition in our view will not capture services such as Fupay if it entered the New Zealand BNPL market.
- c. We recommend that BNPL services that do not charge interest rates, credit fees and late payment fees are excluded from BNPL definition.

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

- a. The whanau we are currently supporting particularly with financial mentoring are primarily beneficiaries or are employed in low-income jobs in our experience. The \$600 threshold approach will continue to perpetuate levels of financial hardship for our whanau. The accessibility of BNPL services has meant many of those we support through financial mentoring utilise BNPL for essentials but also non-essentials which leaves them in financial hardship.

*“Many of our those we support through FM use BNPL – they often have 10-12 ongoing BNPL purchases they are paying for. Most of those who have defaulted on their BNPL payments owe on average less than \$200.” – Financial Mentor*

Our whanau are defaulting on much less than \$600 – the inclusion of the threshold proposed will not provide any such safeguards for those that we support. The Salvation Army does not support the threshold approach proposed.

- b. In addition, we would also highlight under the proposed section 18I (2) that the total credit limit includes unpaid balances under all BNPL contracts. In our view given the recent volatility of the BNPL sector with many BNPL services leaving and entering the BNPL market in New Zealand - practically this would be difficult.
- c. We support an affordability assessment approach to all BNPL contracts. We recommend that there are no exceptions as proposed in section 18I
  - i. An affordability assessment in our view would capture the financial position of BNPL consumers and therefore mitigate any financial hardships for consumers that are not able to meet repayment schedules.
  - ii. Financial mentors during their budgeting sessions with clients continue to encourage and highlight the benefits of saving and differentiating essential and non-essential purchases. In our view these skills benefit many of those

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<sup>1</sup> <https://www.retaildive.com/news/bed-bath-beyond-launches-buy-now-pay-later-rewards-program/626054/#:~:text=Welcome%20Pay%20%E2%80%94%20a%20buy%20now,the%20retailer's%20apps%20and%20websites.>

<sup>2</sup> <https://www.fupay.com.au/>

we support in their long-term financial positions. The ease and accessibility of BNPL services in contrast however provides instant gratification and deferred payments prevents saving. Affordability assessments provide a level of friction in BNPL services which we highlighted in our original BNPL submission<sup>3</sup> that we think is essential to safeguard vulnerable consumers such as those that the Salvation Army support.

- iii. One of the challenges we highlighted in this space previously is the increase in BNPL services and the utilisation of multiple BNPL services by consumers. An affordability assessment would be able to capture the number of BNPL services that consumers are utilising. In addition, affordability assessments would also be able to capture the number of purchases being made using a BNPL service.

**3. What do you consider the financial impact of a \$600 threshold would be?**

Refer to Question 2

**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)?**

Refer to Question 2

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

The Salvation Army supports applying the full affordability assessment for BNPL consumers. As mentioned in response to Question 2 in our view affordability assessments safeguards many of the families that we support from financial hardship.

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

As mentioned in our response to question 2, this would safeguard the whanau we support. We also highlight the challenges that BNPL services have been facing in remaining financially feasible in New Zealand recently<sup>4</sup>. Although our submission predominantly highlights the financial hardship created by BNPL service we acknowledge that there is a place for BNPL products. Many of our clients would utilise BNPL services to access essential needs such as children’s clothing and household goods which they would usually not have the finance to purchase. It is impulse purchases and non-essential purchases which in our view creates the majority of the financial hardship we see with our financial mentoring services. Ensuring the BNPL sector is also protected and remains financially viable to be able to offer safer credit compared to pay day lenders and loan shark is important. In our view applying regulations 4AC-4AN to BNPL services will safeguard consumers and lenders.

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<sup>3</sup> <https://www.salvationarmy.org.nz/article/submission-buy-now-pay-later-consultation-bnpl>

<sup>4</sup> <https://www.stuff.co.nz/business/money/131287426/buy-now-pay-later-lenders-crack-down-on-who-they-lend-to-as-providers-search-for-profitability>

**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?**

The Salvation Army strongly recommends the application of regulations 4AC–4AN to BNPL. The Australian Finance Industry Association (AFIA) issued a 'Buy Now Pay Later Code of Practice' (Industry Code), but it was not enforceable under the law. Furthermore, industry code is also optional for BNPL providers. In our view a lending code for the BNPL sector as shown in Australia is not enough to regulate BNPL services nor safeguarding vulnerable consumers.

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

TSA supports regulation 18I(3)(c) – many of the whanau we support who use BNPL are not aware of the full costs of BNPL and therefore understanding the costs up front is important. We would recommend that 18I(3)(c)(i) would include the **full amount** due to the lender including previous purchases. In our experiences many of our clients would make additional BNPL purchases and are not aware of previous purchases they have made.

**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?**

In our view we believe if BNPL is defined accurately to capture any lending products currently in the market and future products as discussed in question one, and that do not pose financial hardship for our whanau in clause 4 then there would be no requirement to exempt BNPL from other CCCFA requirements.

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

We recommend that in regulations for retailers who utilise BNPL services, responsible advertising as outlined in the CCCFA for credit products would apply to these retailers. We also highlight that for many of our clients BNPL services are utilised for the purchase for essential goods such as food particularly meat from Mad Butcher. We are concerned that food/alcohol retailers that utilise BNPL products disproportionately impacts New Zealanders who are already living in poverty. We highlighted in our previous submission that we are concerned with the uptake of BNPL service for retailers who provide fast moving goods as these retailers have grown exponentially internationally. However, in our view these retailers would directly impact vulnerable consumers. We recommend that alcohol off-licences are restricted from using BNPL services, particularly using BNPL's in-store payment options. In our view this would mitigate the increasing levels of alcohol harm.

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

We believe these regulations should be implemented as soon as practical to do so. Given the current challenges around costs of living we have seen more whanau turn to BNPL to meet basic needs such as clothing and food. In our view, implementing these changes as soon as practical would provide protections to mitigate further financial hardships for our whanau.