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02 February 2023

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Submission: Inquiry into the extent and nature of poverty in Australia

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to share our submission to the Inquiry into the extent and nature of poverty in Australia referred to the Senate Community Affairs References Committee.

This submission is focused on Terms of Reference (a) the rates and drivers of poverty in Australia.

Who we represent

Consumer Action's financial counsellors and lawyers advise and assist people experiencing financial hardship and poverty on a daily basis. The data Consumer Action collects, as well as the reflections of our staff, indicate a large client base struggling with debts and the cost of living in Australia. In 2022, there were 6,494 contacts to our financial counsellors via the National Debt Helpline (**NDH**) which represents 60% of callers from Victoria and, more recently, people from Queensland contacting the Helpline through the online chat. Our callers are largely recipients of income support payments, and only 24% of people who contacted our service in 2022 cited paid employment as their main source of income. In depth analysis of Consumer Acton clients with energy affordability and debt issues indicated that the average income of an energy caller in 2022 was a mere $967 per fortnight, placing the majority of these callers around or below the poverty line.[1] Our data clearly demonstrates the strong causal relationship between Centrelink payments and financial hardship.

The Poverty Premium

Not only are our clients likely to be experiencing poverty, but the nature of our service and advocacy work provides insight into the nature and structure of consumer markets and how they systemically disadvantage low-income individuals and households. Default fees, premiums, and engagement barriers all create market conditions where people experiencing financial hardship and insecurity are often forced to pay more for basic services than others. We refer to this as the 'poverty premium'. This premium both drives and exacerbates poverty by trapping people in financial difficulty and charging them more for services they are already struggling, or unable, to afford. There are extensive examples of the poverty premium in action, and for the purposes of this submission we will focus on the following drivers of poverty:

[1] Australian Council of Social Service, *Poverty in Australia 2020: Part 1 Overview*, p. 11, https://povertyandinequality.acoss.org.au/wp-content/uploads/2020/02/Poverty-in-Australia-2020_Part-1_Overview.pdf.

- Energy prices
- Telecommunications
- Insurance premiums and pricing discrimination
- Banking fees
- Credit and the debt trap, including payday loans and Buy Now Pay Later

Raise the financial safety net

The financial social safety net in Australia is not adequately providing the security and wellbeing for the most financially vulnerable in this country, and there is a pressing need for immediate and permanent increases to social security payments. The recent modest increase in JobSeeker payment rates is not sufficient to keep pace with the rising cost of living. Our call data highlights that people relying on JobSeeker and other Centrelink payments to support themselves and their families are struggling acutely with covering expenses for even their most basic needs. We support the recommendations of Raise the Rate to increase JobSeeker payment rates and supplements for single parents and people living with disability/illness.[2]

We also recommend increased funding to other crisis and support services that provide direct financial assistance to people in poverty. This includes the no interest loan scheme (**NILS**) program and the national rollout of flexible support packages for family violence victims, to provide immediate and tailored support for people experiencing poverty and vulnerability.

About Consumer Action

Consumer Action Law Centre is an independent, not-for-profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

[2] Raise the Rate, *About the campaign*, https://raisetherate.org.au/about/.

Brooke’s Story:

A series of unfortunate events and very few options

My name is Brooke, I'm the proud first-time mum of my baby boy. My partner and I, due to a series of unfortunate events, have found ourselves in an unthinkable situation that has left us with very little options.

Neither of us are comfortable with asking for help and are extremely sad that we are now in a position where we have no choice.

My baby is just over 5 months old, and the sad reality is that not one day since he has been born have we been able relax due to financial worry.

My partner took time off work that was unpaid, due to no sick leave/ annual leave, when my baby was air flown via ambulance to the hospital at 8 days old due to a medical emergency. As a result, our rent and most other bills started to go into arrears as we had no income for two weeks while he was in hospital.

I was on a full-time fixed term employment contract that ended just before he was born and the financial commitments my partner and I have required two household wages to cover.

I started using Afterpay when I was working full-time, so the commitment to Afterpay when it first started was okay. When [we] fell down to one income and were not able to access Centrelink, it was the only option I could turn to because I needed to stay home and look after my baby. I was exclusively breastfeeding my baby and was barely able to eat a decent meal every day. I started eating vegemite sandwiches and ate toast at night because our cash flow was so bad, I couldn’t even feed my child properly through breastmilk, because I couldn’t even feed myself properly.

Centrelink have not been much help as they have advised I do not qualify for any payments as my partner’s income is factored into the assessment.

This is a totally new experience for me. I'm a first-time Mum and was told I couldn’t have children; the pregnancy itself was unexpected. So, having my own income and being financially stable for the last ten plus years, this is a totally foreign thing for me. I don’t know what do…I’m too terrified to think about the future. We both have car payments, Buy now pay later debts, credit card debts, rent, utilities, phone bills, internet bills plus cost of living (e.g., fuel) expenses that we just cannot afford on my partner’s wage.

We contacted the National Debt Helpline for assistance regarding our debt, as it is all just not affordable in our current situation. They have offered great advice & support, would recommend anyone in a similar situation to do the same.

To make matters worse my partner was made redundant at work the week before Christmas and is not starting his new job ‘til February.

There have been days when I have eaten just a cup of rice and toast whilst breastfeeding; it has made me feel like a terrible mum, as he won't take a bottle for feed.

My baby was an incredible miracle after being advised I couldn't have children; I feel so blessed to have my little angel and want nothing more than the best for him.

Energy Prices

Low-income groups can often be on 'standing' or poor energy offers because they face barriers to engaging with the market. People experiencing vulnerability are likely to have low energy literacy and trust in their retailers. They are also less likely to engage with the market and shop around for better offers. Research from St Vincent de Paul found that gas customers in Victoria on the worst standing offer would be paying $2,310-$2,405 (depending on the gas zone) more than they could be on the best market offer.[3]

People are being exploited on price on the basis of their limited capacity to engage with the energy (and particularly the gas) market, which is exacerbating the already high proportion of their income that people experiencing poverty are having to spend on their energy bills.

The Victorian Default Offer (**VDO**) has guaranteed a fair price for electricity for Victorian customers; however, there is no such intervention for gas. Consumer Action has been advocating for a VDO for gas in Victoria.

Our financial counsellors often hear from callers who are so overwhelmed by their situation that they feel unable to contact their retailers. They have been discouraged by poor experiences in the past and do not have the confidence to make contact again and try to access a better offer and/or hardship assistance.

This is exacerbated when retailers do not comply with the regulatory requirements to support people with payment difficulty. For example, retailers are required to facilitate access to concessions such as the Utility Relief Grant (under which eligible customers can receive up to $650 for each energy utility)[4], but we often hear from people who have not been told about the concessions available by their retailer. Retailers can also sometimes put barriers in place for people seeking assistance. We regularly make complaints to regulators about this conduct, which has resulted in compliance action.[5]

Case Study - Marian

Marian (name changed) called the National Debt Helpline in February 2022. She has been recovering from physical health problems and surgery, as well as experiencing complex mental health challenges. Her sole income is Centrelink. Marian reported that she had been struggling with her energy retailer for two years – ever since she became a customer.

Marian told the financial counsellor that she had written to and phoned her energy retailer on several occasions to request a hardship assistance form but never received one. She also indicated that one was not available on their website. Marian said that her retailer advised her she needed to speak to the hardship team, but she was never transferred when asked and did not receive any calls back. She said that her retailer had never discussed the Utility Relief Grant Scheme or the Payment Difficulty Framework with her.

Dealing with the retailer eventually became too stressful for Marian's mental health and she stopped paying the energy bill. She told the NDH that her bill was $500 at that point, but that her retailer then added an additional $400 as a fine. Marian said she then received a final notice and has had someone knocking on her door from the retailer.

The financial counsellor discussed Marian's options with respect to the Payment Difficulty Framework and applying for the Utility Relief Grant. She was referred to a local financial counselling service for ongoing assistance with her energy and credit card debt.

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[3] St Vincent de Paul Society, *Victoria Energy Prices July 2022: An update report on the Victorian Tariff-Tracking Project*, p. 20, https://www.vinnies.org.au/icms_docs/334017_Victorian_Energy_Prices_July_2022.pdf.
[4] Department of Families, Fairness and Housing, *Utility Relief Grant Scheme*, https://services.dffh.vic.gov.au/utility-relief-grant-scheme.
[5] 'Repeat offender Alinta Energy fined $380,000 for failing to help Victorians in dire need', 25 January 2022, https://consumeraction.org.au/repeat-offender-alinta-energy-fined-380000-for-failing-to-help-victorians-in-dire-need/.

RECOMMENDATION 1. Consider intervention in the energy market (similar to the VDO), at the national level, to prevent price exploitation of customers who are not engaging with the market.

Telecommunications

Phone and internet service is essential for all Australians, but price structures unduly burden people experiencing vulnerability, who are often charged more for the same services than less vulnerable people pay.

The poverty premium results in low-income customers being targeted and sold telecommunications products that they cannot afford and that end up costing them more than what higher-income customers are paying. Phone and internet service is essential for socioeconomic participation and inclusion, and when people are disconnected from these services it becomes extremely difficult if not impossible to meet other needs.[6]

The recent move to direct debit (upfront payment) by the major telcos has resulted in an increase of contacts to the National Debt Helpline and our legal advice lines about people having their essential telecommunications services cut off, despite their financial hardship. We, and other consumer advocacy organisations, have assisted numerous people living in poverty or experiencing significant financial disadvantage who have been told by major telecommunications providers that they cannot access any payment plan after moving over to upfront service plans (a move that is required by the telecommunications provider). Some report being denied a payment extension, while others have told us they have been given only one month, one week, or even two days to pay the outstanding bill in full or they will be completely disconnected.

The industry-drafted Telecommunications Consumer Protection Code (**TCP Code**) permits telcos to restrict a person's service as part of its response to financial hardship as a means to '*keeping the Customer connected*'[7], which is nonsensical. This restriction of an essential service can be disastrous in the age where a phone connection has become essential for everyday life. Disconnection cuts off a person's access to data and ability to call any number other than emergency services (000) and their telecommunications provider—meaning they cannot contact medical offices, school, work, Centrelink, or family. Mobile phone plans often appear unaffordable for people

Case Study – Charlotte

Charlotte (name changed) contacted the National Debt Helpline in late 2020 after she had been unexpectedly cut off by her telco, with $250 in arrears owing.

Charlotte is a victim survivor of family violence. She experienced homelessness earlier in the year due to the family violence she experienced and was living on her own with income from Centrelink at the time of contacting the National Debt Helpline.

Charlotte told us that due to her service being cut, it was hard to get into contact with her telco. When she attempted, she was sent into a self-service option, unable to speak to someone.

Charlotte was experiencing financial hardship but said that no repayment plan or hardship was offered. In order to get reconnected, she had to pay over the phone – she used the money she had planned to use for rent. She then had to borrow money from her friends to cover her rent payment, which was also in arrears.

Our financial counsellor discussed support options and the Telecommunications Industry Ombudsman with Charlotte.

experiencing poverty due to the financial commitment it requires, and pre-paid data is seen as a solution for people

[6] Financial & Consumer Rights Council, *Rank the Telco Report*, p. 3, https://accan.org.au/files/Grants/Rank%20the%20Telco%20Report.pdf.
[7] Communications Alliance, TCP Code C628:2019 Incorporating Variation no. 1/2022; (July 2019) 7.2.2(a).

experiencing financial insecurity. However, pre-paid mobile data can be more expensive per unit over a 12-month period than mobile data on a plan with some telecommunications providers. Telstra, Australia's largest provider and the only provider in many rural areas of Australia, has a higher unit cost for its pre-paid data offering than for plan data.[8]

Product	**Data**	**Price**	**12-month cost** (per GB)
Telstra Upfront Mobile Plan Basic	40GB per month	$58 per month	$1.45
Pre-Paid SIM	30GB (first 3 recharges) 10GB (4th recharge)	$30	$1.63
Pre-Paid SIM	40GB (first 3 recharges) 20GB (4th recharge)	$40	$2.06

Recharges for pre-paid SIM cards expire after 28 days, so there are 13 recharges required per year for uninterrupted service.

The current telecommunications regulatory framework is based largely on industry self-regulation with weak enforcement tools, based on the premise that competition within the market will sufficiently incentivise industry to meet community expectations.[9] For example, the telecommunications regulator, the Australian Communications Media Authority, can only 'direct a telecommunications provider to comply' with the TCP Code after a breach is found to have occurred in the first instance, regardless of the extent of consumer harm caused, because Code compliance is 'voluntary' until a direction is issued.[10] Penalties can only be utilised if a telecommunications provider then is found to breach the direction to comply with the Code, not for the breach of the Code itself.

The contention that competition is protecting telecommunications consumers has been comprehensively disproved in relation to core matters, including fairness in selling practices, hardship responses and dispute resolution,[11] all of which increase the financial burden on consumers, and particularly those experiencing poverty. Without appropriate regulation of this essential service, people in poverty will continue to be burdened by poverty premiums for this essential service.

RECOMMENDATION 2. Amend the *Telecommunications Act 1997* (Cth) (the Telecommunications Act) to facilitate directly enforceable regulation of the telecommunications industry, particularly for matters related to consumer protection.

RECOMMENDATION 3. Until legislative change is accomplished, the Minister for Communication should use her powers to direct the ACMA to determine a directly enforceable and mandatory standard for telecommunications consumer safeguards, especially in relation to responsible selling, financial hardship and disconnections of service.

[8] Telstra, *SIM Only Plans from Telstra*, https://www.telstra.com.au/mobile-phones/sim-only-plans & *Pre-Paid Plans and Pre-Paid SIM Cards*, https://www.telstra.com.au/mobile-phones/prepaid-mobiles/offers-and-rates.

[9] *Telecommunications Act 1997* (Cth) ss 3 – 4. .

[10] *Telecommunications Act 1997* (Cth) ss 5; 121(1).

[11] See: e.g. Telecommunications Industry Ombudsman (TIO), *Helping telco consumers sign up to the right phone and internet products* (Report, May 2021) available at: https://www.tio.com.au/reports/helping-telco-consumers-sign-right-phone-and-internet-products; e.g. TIO, *Responding to consumers in financial hardship* (Report, September 2021) available at: https://www.tio.com.au/reports/responding-consumers-financial-hardship; e.g. TIO, *Investigating complaints about essential mobile services* (Report, July 2022); e.g. https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers;

Insurance premiums

Comprehensive insurance for our important assets like home, contents and vehicles is essential to ensuring financial resilience and that Australians are able to recover from shocks and disasters, but people on low incomes are more likely to be uninsured or underinsured.[12] People experiencing poverty are less able to recover or mitigate their losses if insurance cover or an individual claim is denied, however they may be also at higher risk of refusals and exclusions.

One example of the barriers to obtaining cover is that some insurers for motor vehicles refuse to provide cover to people who have ever declared bankruptcy or recently entered a Part IX debt agreement, even if the policy is fully paid upfront. We consider this approach to be rooted in historical and unjustified assumptions about people who have struggled to pay their debts, and it can severely restrict the ability of people already experiencing financial hardship to obtain insurance.

Insurers' product disclosure documents are so long largely because of the lists of exclusions in policies, commonly including damage resulting from faulty construction, floods, and regular wear and tear.[13] Low-income and geographic location can contribute to such excluded events occurring in/to someone's home and their claim being subsequently denied, and neither are within the control of the person who has suffered the loss. The complexity in interpreting and applying these exclusions can also mean people buy insurance assuming they are covered for a particular event, but this is incorrect and their coverage for the risk they are most concerned about is illusory. People experiencing poverty are also more likely to have low value insurance policies, with products such as consumer credit insurance[14] and funeral insurance[15] targeting people experiencing vulnerability and financial instability.

One of the main drivers of the poverty premium in insurance is a shift away from a pooling of risk across many different people towards more granular pricing based on an individual's specific risk factors. This has been increasingly possible by advances in technology and increasing amounts of data that can be used by insurers. People experiencing poverty and living in low-income areas may be seen as higher risk due to the very reason they need the insurance in the first place—they face higher risk of losses and do not have the resources to recover them. As a result, those who need insurance the most are often priced out or left out, leaving them unable to access the protection insurance provides. The rise in extreme weather events is only accelerating this—people in regional areas will disproportionately carry the greater burden of risk these events bring (and therefore greater home insurance premium increases), and people on lower incomes make up a larger portion of the population living in these areas.[16]

The insurance market also regularly discriminates between new and renewing customers. Research by Professor Allan Fels found that customers in New South Wales who switched providers at renewal could save $1,200 per year.[17] While premiums almost always increase each year, 60-70% of customers automatically renew their insurance when it comes due.[18] As discussed with respect to energy, people experiencing vulnerability are less likely to engage in the market and shop around at the time of renewal, resulting in them continuing to pay more for their insurance products than they strictly need to.

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[12] South Australian Council of Social Service, *Protecting the Basics: Insurance access for people on low incomes at risk from climate emergencies*, https://www.sacoss.org.au/sites/default/files/Embargoed_SACOSS%20Insurance%20Final%20report.pdf.

[13] Financial Rights Legal Centre, *What can I do if my home and/or contents insurance claim is refused?*, https://insurancelaw.org.au/factsheets/what-can-i-do-if-my-home-andor-contents-insurance-claim-is-refused-factsheet/.

[14] Australian Securities and Investments Commission (ASIC), *Consumer credit insurance: Poor value products and harmful sales practices*, p. 13, https://download.asic.gov.au/media/5201456/rep622-published-11-july-2019-1.pdf.

[15] Redfern Legal Centre, *Explainer: Everything you need to know about funeral insurance, low-income insurance and financial hardship programs*, https://rlc.org.au/news-and-media/news/explainer-everything-you-need-know-about-funeral-insurance-low-income-insurance-and-financial-hardship-programs.

[16] ACOSS and UNSW Sydney, *Inequality in Australia 2018*, https://www.acoss.org.au/wp-content/uploads/2018/07/Inequality-in-Australia-2018.pdf, page 17.

[17] Sydney Morning Herald, *Big savings if you don't automatically renew insurance premiums*, https://www.smh.com.au/money/insurance/big-savings-if-you-don-t-automatically-renew-insurance-premiums-20211112-p598fg.html.

[18] Ibid.

Case Study – Paul

Paul (name changed) owns his own home in close proximity to a waterway and was affected by the flooding in Victoria in October of 2022. He was impacted by a similar flood event in 2011 which took a significant financial toll.

The report by the building company contracted by the state government was "damning", in Paul's words. Paul told us he had already removed several walls due to flood damage and mould issues and noticed water damage in his kitchen. He described the house as "liveable" but said that the report had indicated he would have to "pull the whole house apart" to repair the damage. Paul told us the scope of works required a rebuild and would not have been covered by government payments. Paul said he called his insurer and was told he was not covered for flood damage and could only claim contents insurance. He believes that if he did demolish the house according to the report, there would be no money left to finance rebuilding and he will be left with his house unfinished.

Paul took out his current insurance policy when he purchased his home five years ago, and believed he was covered for flood insurance. He told us his bank suggested the insurer at the time of document signing and did not offer him the opportunity to take out his own insurance or make him aware that he was not covered for flood damage. Paul feels that he was coerced into a policy with no flood cover by his bank, whom he trusted had his best interests in mind when they insisted that he sign on with his insurer. Paul told us that the lack of flood cover was never highlighted or mentioned to him. He thinks this issue is not only affecting him and said that the issue of flood insurance has "divided the town" in terms of who is covered and who is not.

RECOMMENDATION 4. Establish a federal insurance pricing monitor or resource the ACCC to undertake such functions on an ongoing basis.

Banking overdraft and default fees

Overdraft and default fees imposed by banks are more likely to be charged to people experiencing poverty as they have lower balances in their bank accounts. While banks do offer accounts with no or low fees (including overdraft fees), we can't be assured that the people eligible are accessing these accounts due to limited reporting by the banks. Overdraft fees exacerbate poverty by charging people in financial hardship more money as a penalty for having little to none to begin with.

Bank	Overdraft fee
Commonwealth Bank of Australia	$15 per day plus 14.90% interest applied for each day the account remains in overdraft[19]
Westpac	$15 per day plus debit interest applied for each day the account remains in overdraft[20]
ANZ	None for accounts overdrawn by less than $50 $6 per day for a maximum of 10 days per month for accounts overdrawn by more than $50[21]

[19] Commonwealth Bank of Australia, *Everyday Account rates & fees*, https://www.commbank.com.au/banking/everyday-account-smart-access/rates-fees.html#terms.
[20] Westpac, *Minimise and Avoid Bank Accounts Fees*, https://www.westpac.com.au/personal-banking/bank-accounts/manage/avoid-and-minimise-fees/.
[21] ANZ, *Overdrawing your personal transaction account*, p. 2, https://www.anz.com/aus/promo/text-alerts/overdrawn_fees.pdf.

National Australia Bank	$35 charged every six months plus 12.77% interest applied for each day the account remains in overdraft (for accounts overdrawn by less than $5,000)[22]

In 2022, there were 91 contacts to the NDH where the financial counsellor noted an account in overdraft. Callers often owed thousands of dollars in overdraft amounts and fees and were lost as to how they could possibly repay them in addition to managing other debts and expenses. People experiencing poverty are struggling with a difficult and distressing situation that is only made worse by charges such as overdraft fees that punish them for their financial hardship and only drive up their debt and expense levels.

The issue of the financial impact of informal overdraft, dishonour fees and default interest were examined by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The Final Report set out the following concerns:

- While a fee charged for an informal overdraft can be small, with repeated overdrawing, fees mount up.
- Some customers did not know that they had been offered, and made use of, an informal overdraft.[23]

With respect to dishonour fees, the report found "some bank customers in remote and very remote areas may enter into arrangement with retailers and others that require periodic payments. The person to whom the payment is to be made will often have the customer give a direct debit authority to the bank. If the account on which the customer has given the authority has insufficient funds the debit will be dishonoured, and the bank will charge the customer a dishonour fee."[24]

In response, the Australian Banking Association amended its Code of Banking Practice including that for basic, low fee and no fee accounts for eligible customers, there should be no informal overdrafts and no dishonour or overdrawn fees. The Australian Competition and Consumer Commission authorised this change but required reporting including on the number of informal overdrafts that occur without customer agreement.[25] Unfortunately, this reporting has been weakened over time and there is no transparency about the extent to which low-income customers are being charged default of overdraft fees because they are not being offered a fee-free account.

RECOMMENDATION 5. Require banks to proactively examine whether any account holder who incurs overdraft fees twice in 12 months may be eligible for a basic bank account, and automatically change customers onto basic bank accounts if eligibility can be confirmed.

RECOMMENDATION 6. Require banks to report on the number of customers on basic (or no fee) bank accounts, and specifically on the number of customers they transfer each quarter onto basic bank accounts from fee charging accounts.

RECOMMENDATION 7. Banks should commit to refund any overdraft fees that are charged to account holders whose banking history indicates they are experiencing poverty.

Credit and the debt trap – predatory lending models

Small/ medium amount credit contracts and consumer leases are high interest credit that people typically turn to when they are desperate, and do not consider themselves to have many other options. For this reason, the majority of people who use these products are on lower incomes and are experiencing some level of financial vulnerability or hardship. These credit products charge people experiencing poverty more for consumer credit than higher

[22] National Australia Bank, *NAB Personal Overdraft*, https://www.nab.com.au/personal/accounts/transaction-accounts/personal-overdrafts.
[23] Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, page 91-92.
[24] Ibid, p. 261.
[25] ACCC, Authorisation of ABA Code of Banking Practice, https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/the-australian-banking-association

income earners. While high-income earners can access a home loan at less than 5% per annum[26], payday loans taken out by people experiencing financial hardship can come with effective interest rates of 200% per annum. The exorbitant fees charged with payday loans and consumer leases mean they are virtually never a good deal for consumers. The last thing people on low incomes need is a significant portion of their income being cannibalised by the high fees associated with these credit products, which almost always leave financially vulnerable people worse off and exacerbates financial exclusion.

Harm caused by these products is most pronounced when creditors provide the borrower with multiple loans which they cannot afford, and which are approved without effectively assessing whether repayments are affordable. When vulnerable consumers are given multiple loans that they cannot afford, repayments gradually take up an increasing and unreasonable proportion of their income, which leads to a debt spiral that is difficult, and often impossible, to get out of. Lenders are able to target low-income people with credit products that cost those with the least ability to pay more than they could ever afford in the first instance.

In June this year, provisions in the *Financial Sector Reform Act 2022* (**FSR Act**) will come into effect that will significantly reduce the risk that small amount credit contracts and consumer leases will push people into debt spirals. However, it is essential that the Australian Securities and Investments Commission (**ASIC**) continues to monitor the broader credit market to identify possible avoidance tactics, particularly the risk that lenders may upsell people to medium amount credit contracts.

There are also an increasing number of other lending models on the market designed to exploit loopholes in the *National Consumer Credit Protection Act 2009* (**NCCPA**), which mean they are not subject to vital consumer protections. We understand Treasury is due to consult on this issue in the near future—the best way to fix this is to close the short-term credit and continuing credit contract loopholes that exist in the NCCPA[27] (discussed further below in relation to buy now pay later).

Even once the FSR Act comes into effect, consumer lease providers will still have access to the Centrepay payment system, that allows them to deduct payments for their leases directly from Centrelink, before the amounts hit their customers' accounts. Consumer leases are the only form of credit product permitted on the Centrepay system, and we continue to hold serious concerns about this. Even with the FSR Act reforms, these products will still be an extremely expensive way to obtain household goods, and rarely represent good value to consumers. Paying for them via Centrepay reduces the control users have over their finances and puts the payments before essentials like food.

The issues with the Centrepay system are not limited to consumer leases, and while it can be a useful budgeting tool, it needs better safeguards to ensure it actually benefits its users, rather than allowing poor value goods and services to cannibalise their modest incomes before it even hits their bank accounts.

RECOMMENDATION 8. The Parliament should pass legislation that effectively closes the short-term credit and continuing credit contract loopholes that exist in the NCCPA.

RECOMMENDATION 9. Commission an independent review of the Centrepay system, to determine whether it has sufficient safeguards to ensure it benefits its users, and whether all the currently permitted products are appropriate.

Buy Now Pay Later

BNPL debts are regularly reported by callers to the NDH. Callers report that the products are easy to sign up to and appear helpful at first but can quickly spiral out of the realm of affordability and push people further into payment

[26] Commonwealth Bank of Australia, *Home loans*, https://www.commbank.com.au/home-loans.html.
[27] NCCPA, Schedule 1 (National Credit Code), ss 6(1) and 6(5).

difficulty and poverty. BNPL models avoid the consumer protection provisions in the NCCPA (particularly obligations around affordability assessments), meaning that the business model effectively exploits people experiencing poverty and vulnerability. These products desperately need to be regulated as credit products to protect Australians most in need.

Buy Now Pay Later (**BNPL**) is an instalment credit product where people receive the goods at the time of the transaction but pay off the balance over a period of several weeks. The BNPL model does not charge interest and can be a very attractive option for people experiencing financial hardship and struggling to cover the cost of anything from clothing to groceries. In June 2022, there were 7 million active BNPL customer accounts in Australia, and we are increasingly seeing the severity of damage being done by these incredibly popular products.

While there is no interest associated with BNPL, late fees and account charges can add up to exacerbate financial stress. A customer who has incurred these fees will likely be paying significantly more in effective interest than they would on a regular credit card, with Afterpay's effective interest rate being 28.25% compared to the 22% applied to a typical credit card, and other BNPL businesses charging even more.[28] We also see customers overcommitting themselves with BNPL, opening multiple accounts and forgoing essentials or taking on additional debt to be able to meet repayments.

RECOMMENDATION 10. Implementation of strong anti-avoidance provisions to stop companies from designing credit products structured to get around consumer protection laws in the NCCPA.

Thank you again for the opportunity to provide comments on the extent and nature of poverty in Australia and the drivers of poverty in consumer markets. Please contact Tania Clarke on (03) 9670 5088 or at tania@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

Tania Clarke
Director of Policy & Campaigns
CONSUMER ACTION LAW CENTRE

[28] Financial Counselling Australia, *New research shows Buy Now Pay Later is not a free or low-cost option compared to traditional credit cards*, https://www.financialcounsellingaustralia.org.au/new-research-shows-buy-now-pay-later-is-not-a-free-or-low-cost-option-compared-to-traditional-credit-cards/.