

Submission

21st December 2022

Consumer Credit Unit
Financial System Division
Treasury
Langton Crescent
Parkes ACT 2600

Re: Regulating Buy Now, Pay Later in Australia

The Australian Communications Consumer Action Network (ACCAN) thanks the Treasury for the opportunity to provide feedback on Regulating Buy Now, Pay Later (BNPL) in Australia.

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

In partnership with the Public Interest Advocacy Centre (PIAC), ACCAN recently undertook research into payment harms in the telecommunications and energy sector.¹ This research identified that BNPL services and similar credit products are leading to consumer harm and financial hardship for many vulnerable consumers and informs this submission.

ACCAN endorses and supports the joint consumer submission to this consultation led by Financial Rights Legal Centre (FRLC). FRLC's submission details the extent to which BNPL services can contribute to consumer harm and clearly sets out the need for further BNPL regulation.

ACCAN agrees with FRLC that BNPL services are fundamentally credit and therefore should be regulated under the *National Consumer Credit Protection Act 2009* (Cth) (the Act), in keeping with Option 3 of the Treasury Options Paper. Noting our endorsement of FRLC's submission, our comments are focused on the regulation of telecommunications debt which are offered on a similar basis to BNPL services.

Telecommunications debt functions by splitting the upfront cost of a device and requiring consumers to make recurrent payments. Although there is variation in the models used in the telecommunications industry, which may vary in size of the loan, fees charged and timeframes for repayment, telecommunications debt is fundamentally offered as credit. As credit, telecommunications debt should be regulated in the same way as equivalent credit products under the Act and the *National Credit Code*.

Telecommunications debts, like BNPL services are not subject to the Act or *National Credit Code* as they do not impose a charge for providing finance and therefore do not meet the definition of

¹ Action Market Research 2022. *Paying to Pay: Consumer Harms in the Telco and Energy Sectors*, forthcoming.

credit.² Accordingly, the regulatory framework does not provide consumers that use telecommunications finance equivalent protections to those available for other forms of consumer credit.

The limited regulation of telecommunications debts is contributing to the risk of financial hardship faced by vulnerable consumers. The impacts of inadequate credit assessment and financial hardship arrangements can be material for vulnerable consumers, who often face the prospect and reality of disconnection.³

Mis-selling of telecommunications products, enabled by inadequate credit assessment requirements has resulted in material harm being experienced by consumers. While we have welcomed actions by the Australian Competition and Consumer Commission (ACCC) to address misconduct through the imposition of penalties for unconscionable conduct,⁴ we consider that avoiding harm in the first instance through stronger regulation should be preferred. Accordingly, we support measures that would bring the regulation of telecommunications debt into alignment with broader consumer credit regulation.

ACCAN supports the Treasury examining the opportunity to align consumer protections for credit products, BNPL services and telecommunications debts as part of the current review. Telecommunications debts like BNPL services can cause material harm to vulnerable consumers when providers do not take appropriate steps to assess the financial status of consumers.

We thank the Treasury for the opportunity to provide this submission and look forward to further engagement with the Treasury on the topic of BNPL regulation. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at Con.Gouskos@accan.org.au.

Your sincerely,

Con Gouskos
Policy Officer

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.

² National Credit Code s. 5(1).

³ Australian Communications and Media Authority 2021. *Customer Financial Hardship in the Telco Industry, State of play report 2019-20*. Available at: <https://www.acma.gov.au/publications/2021-02/report/customer-financial-hardship-telco-industry-state-play-report-2019-20>; The report notes that 4080 residential financial hardship customers were disconnected in the 2019-20 financial year.

⁴ Australian Competition and Consumer Commission 2021. *Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers*. Available at: <https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers>.