

## Restriction of Publication of Part Claimed

22 May 2019

Australian Competition and Consumer Commission  
23 Marcus Street  
CANBERRA ACT 2601

Sent electronically to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

**Attention:** Susie Black & David Wang

### Submission on the New Energy Tech Consumer Code [AA1000439]

Brighte Capital (**Brighte**) **encloses** a submission to the Australian Competition and Consumer Commission (**ACCC**) in relation to the application by the Clean Energy Council & others for authorisation of the New Energy Tech Consumer Code (**Consumer Code**).

Brighte is supportive of the responsible growth of the new energy technology sector. Over the last two and a half years, Brighte has assisted over [REDACTED] homeowners gain access to finance to pay for solar products through its financing products, including through its award winning "buy now pay later" product. We believe that the development of a voluntary industry code of conduct to maintain sound practices is a positive initiative to maintain standards in the new energy technology industry.

However, Brighte has serious concerns about the proposal to prohibit signatories to the Consumer Code from offering buy now pay later products as a financing option for consumers. Buy now pay later products are popular and lawful products which financiers such as Brighte (which is an Australian Credit Licence holder) are committed to ensuring are provided in a transparent and ethical manner.

Buy now pay later financing options have been shown to be beneficial to consumers and, further to this, well regulated through consumer protection legislation. Despite this, the Applicants propose to ban buy now pay later products from use as a financing option for new energy technology.

There is no reasonable justification for outlawing these products in the new energy technology sector. To do so would reduce consumer choice, has the potential to damage innovation and competition in the sector and the uptake of these important products, and would introduce a form of sector-specific regulation out of step with the position in the broader economy, with no corresponding public benefit.

The potential impact of the Consumer Code should not be underestimated. The Applicants forecast that over 580 providers will become signatories. In addition, while the Consumer Code is voluntary, there are a range of situations in which it may become effectively mandatory—by way of illustration, Solar Victoria has announced that it will only provide rebates to consumers who deal with retailers accredited under the Clean Energy Council Limited Code of Conduct for Solar Retailers. Brighte expects that if the Consumer Code is authorised, Solar Victoria and other Government agencies may impose similar requirements.

Consequently, Brighte urges the ACCC to consider carefully any proposal to impose sector-specific regulation on a lawful financing product, and not authorise those aspects of the Consumer Code that would prevent Brighte, and its competitors from offering lawful buy now pay later products as financing options for consumers.

Brighte welcomes the opportunity to discuss these submissions further with the ACCC. Please do not hesitate to contact me, or Ann Devine on 0477 009 533 should you wish to do so.

Yours sincerely,

A handwritten signature in blue ink that reads "KMcConnell". The signature is written in a cursive, slightly slanted style.

**Katherine McConnell**

CEO and Founder

## Restriction of Publication of Part Claimed

### AA1000439 – New Energy Tech Consumer Code – Submission

#### NEW ENERGY TECH CONSUMER CODE

##### PART A – INTRODUCTION

###### 1. BACKGROUND

- 1.1 Brighte Capital Pty Ltd (**Brighte**) welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission (**ACCC**) in relation to the application for authorisation of the New Energy Tech Consumer Code (**Consumer Code**).
- 1.2 Brighte operates an on-the-spot finance platform and marketplace for solar, batteries and home improvement products. Brighte provides a continuing credit facility called BrightePay—a "buy now pay later" (**BNPL**) product—to Australian home owners for the purpose of solar, batteries and home improvement products, including "new energy technology" (**NET**) products. BrightePay is exempt from the operation of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**).
- 1.3 Brighte has been an active participant in the early development of the Consumer Code and has previously made submissions to the Applicants about the draft Code. A copy of our previous submissions are **enclosed** for the ACCC's reference.

###### 2. ABOUT BRIGHTE AND BNPL PRODUCTS

- 2.1 Brighte agrees with the ACCC's strong support for alternative energy products, including NET products and services, and the importance of these products and services being sold in a responsible and transparent manner.<sup>1</sup> The continued uptake of NET products depends on competition driving efficiency both in terms of NET products and pricing, but also in terms of financing options. NET products carry expensive up-front costs which many ordinary households cannot meet without some form of finance.
- 2.2 Brighte provides consumers with financing options to assist with the purchase of solar and battery systems, including NET products and services. As part of this service, Brighte provides a matching service to help consumers find Brighte accredited vendors and payment plan options that remove the upfront cost of a purchase and allow the consumer to spread the cost over time. Brighte has an Australian credit licence which authorises it to engage in credit activities as a credit provider. We note that Brighte is not required to hold an Australian credit licence in relation to its product BrightePay described below.
- 2.3 Brighte provides a continuing credit facility called BrightePay to Australian home owners for the purpose of purchasing solar, batteries and home improvement products. BrightePay is a BNPL product that allows consumers to buy and receive goods and services immediately but pay for that purchase in instalments over time. Brighte offers BrightePay facilities with limits of up to \$30,000 for consumers and with terms ranging from 6 to 60 months. BrightePay is a continuing credit contract. We only charge our customers a \$1 a week account fee and a \$4.99 late payment fee which we cap at \$49.90 or 10 payments per year. BrightePay is not regulated by the National Credit Code (**NCC**) as this product meets the exception criteria set out in section 6(5) of that code.

## Restriction of Publication of Part Claimed

- 2.4 BNPL products are a popular financing option particularly within the NET sector and there has been increasing uptake of these services and vigorous competition in that market. To date, Brighte has assisted over [REDACTED] homeowners gain access to funding for solar products and has enabled the installation of [REDACTED] MW of residential solar by Australian homeowners, equivalent to powering the Sydney Opera House for [REDACTED] years. Even though Brighte has only

---

<sup>1</sup> ACCC, Retail Electricity Pricing Inquiry—Final Report, 'Restoring electricity affordability and Australia's competitive advantage', pgs 214-215.

been providing payment plans for 32 months, Brighte has already seen customers reusing their line of credit to make additional investments in their home.

### **Restriction of Publication of Part Claimed**

2.5 As at April 2019, [REDACTED] loans have been approved since Brighte began and we project that we will enter into approximately [REDACTED] within 2019 alone. Brighte forecasts that its customers will make approximately \$[REDACTED] m in annual household energy savings over the next 12 months using NET products purchased with assistance from Brighte.

### **3. SUMMARY**

3.1 The Consumer Code should facilitate the ongoing growth and uptake of NET products, particular solar and battery energy storage systems, by promoting fair competition between NET providers. However, as explained in these submissions, by imposing unnecessary restrictions on BNPL products, the Consumer Code threatens to undermine those objectives.

3.2 In summary, Brighte's submission is as follows:

- (a) Brighte supports the development of a voluntary industry code to improve practices in the NET sector. However, we believe that the Applicants have misunderstood BNPL products, and the benefits they provide to Australian homeowners in enabling NET uptake. We believe that BNPL products should remain accessible as an alternative financing option for NET.
- (b) Brighte's specific concern arises because paragraph 24(b) of Part B of the Consumer Code requires signatories to only offer a deferred payment arrangement if those deferred payment arrangements are regulated under the NCCPA. BNPL are not regulated under the NCCPA because they are exempt from the Act as previously noted. We understand the concern of the Applicants is that because BNPL products are not regulated under the NCCPA, that consumer protections do not exist for consumers who utilise BNPL products.
- (c) In our view, this concern is incorrect. BNPL products are regulated through alternative means, including the ASIC Act and the Australian Consumer Law as well as ASIC's new product intervention powers and consumers utilising BNPL products enjoy similar consumer protections as those products regulated by the NCCPA.
- (d) BNPL products have played a significant and important role in assisting consumers to purchase solar products. They are a lawful method of financing, offered by reputable businesses, including Brighte. They have been relied on by hundreds of thousands of consumers to purchase solar and other NET products. They offer attractive features for customers seeking deferred payment options, for example, increased availability at the point of sale, speed of application process and greater transparency in relation to fees and obligations, and who do not want to deal with the complexity of NCCPA credit products.
- (e) Prohibiting signatories from offering BNPL products threatens to eliminate this important finance channel from the market, particularly as Brighte anticipates the Consumer Code will become a key requirement for businesses wishing to participate in the NET sector. This threatens to reduce competition between NET providers and foreclose access to this important segment to BNPL providers. Brighte submits there are no material corresponding public benefits to offset this harm.
- (f) Brighte further submits that this heavy-handed approach is not necessary. To the extent specific concerns are identified, Brighte is more than happy to agree to implement measures to address them.
- (g) Imposing this sector-specific regulation would also be out of step with the broader regulatory environment. The Australian Securities and Investments Commission

(ASIC) has an ongoing role in examining the BNPL sector. Brighte submits that the ACCC should not allow the Applicants to cut-across ASIC's work by effectively imposing a prohibition in the NET sector that does not apply in the broader economy.

- (h) Accordingly, we would ask that the ACCC should not authorise the Consumer Code in its current form. Brighte would welcome the opportunity to work with the ACCC, and the Applicants, to address any specific concerns about BNPL products.

## **PART B – OUR SUBMISSIONS**

### **4. SUBMISSION STRUCTURE**

For the ACCC's convenience, we have divided our submission against the four questions posed by the ACCC in its request for submissions.

### **5. ISSUE ONE – In addition to any benefits to consumers or other industry participants, the extent to which being a signatory to the Consumer Code may convey a provider of 'new energy tech' products or services a competitive advantage**

5.1 The Consumer Code is likely to confer a material benefit on signatories, as explained below. Brighte expects these advantages will drive NET providers to sign-up to the Consumer Code, or else be unable to effectively compete.

5.2 The Consumer Code is intended to provide a strong signal to consumers that the signatories are responsible, ethical businesses that should be preferred over other providers. The Applicants forecast that there will be over 580 signatories, representing a significant segment of the industry. Brighte expects consumers will look for Consumer Code signatories when choosing a NET provider.

5.3 If the Consumer Code is authorised, then it is likely to become mandatory in some circumstances. For example, Solar Victoria has announced that it will only provide rebates to consumers who deal with retailers accredited under the Clean Energy Council Limited Code of Conduct for Solar Retailers. If this Consumer Code is authorised, then the restraint is also likely to extend to that scheme, and could also be extended to other State and Territory schemes who view this Consumer Code as an important consumer protection mechanism.

5.4 These factors are likely to provide real benefits to NET providers who become signatories over those that choose not to become signatories.

5.5 Consequently, reputable businesses such as Brighte and other financiers that support NET providers and consumers are likely to favour working with NET providers who are signatories. This may magnify the competitive advantage for signatories over time.

5.6 These factors should be taken into account when assessing the impact of the Consumer Code as a whole and, in particular, the impact of allowing the Consumer Code to include an effective prohibition on the use of BNPL products by signatories.

### **6. ISSUE TWO – The extent to which the Consumer Code would make it more difficult or costly for new entrants to commence supplying 'new energy tech' products and services**

6.1 Brighte wishes to address two particular aspects of the Consumer Code:

- (a) the requirement that any deferred payment arrangement is offered through a licensed credit provider (paragraph 24(a)); and
- (b) the requirement that the deferred payment arrangement is regulated by the NCCPA and NCC (paragraph 24(b)).

6.2 Brighte is the holder of an Australian Credit Licence and so would comply with paragraph 24(a). However, BNPL products are NCCPA exempt, and are therefore not regulated by the NCCPA. (As noted above BNPL products are subject to extensive regulation, including under unfair contract terms under the *Australian Securities and Investments Commission Act 2001* (Cth) and the Australian Consumer Law and will be subject to ASIC's new product intervention powers.)

- 6.3 As the Applicants concede, these requirements would prevent NET providers from partnering with, or offering, BNPL products. Brighte submits this would potentially make it more difficult and costly for new entrants to commence supplying NET products and services, as they will not be able to sign the Consumer Code and also offer popular, important and beneficial BNPL products.
- 6.4 The significance of BNPL products to consumers buying NET products should not be underestimated. BNPL products are popular with consumers, particularly those who do not want to deal with the complexity of traditional credit. Non-interest-bearing services, such as that provided by BrightePay, facilitate strong competition in both the NET sector and the financing sector.

### Restriction of Publication of Part Claimed

- 6.5 By way of illustration, over the last 2 and half years, Brighte has assisted over [REDACTED] homeowners to gain access to finance to pay for solar products through its financing products, including through its award winning BNPL product, BrightePay.
- 6.6 Brighte is confident that BrightePay provides significant value to consumers. In 2018, ASIC released its review into the BNPL industry. ASIC's review culminated in Report 600 released on 28 November 2018. Its over-arching finding was that it was not necessary for BNPL to be required to comply with the National Credit Act. ASIC also found that:
- (a) the BNPL industry was diverse and evolving;
  - (b) BNPL arrangements were commonly used and in 2017-18 over 2 million consumers had used a buy now pay later arrangement representing about 10% of the adult population;
  - (c) users found BNPL arrangements easy to use and convenient;
  - (d) 90% of users believed that BNPL arrangements helped them manage their spending;
  - (e) BNPL payment plans were suitable for customers that choose it as a payment option; and
  - (f) BNPL products had low default rates.
- 6.7 If the Consumer Code is authorised with an effective prohibition on BNPL products, existing and new entrants utilising BNPL options would be excluded from the market. This would make it more difficult for new entrants to participate in the market for NET products and services, and will change the level of competition between new entrants more generally.
- 6.8 Removing a lawful payment option such as NCCPA exempt BNPL products will reduce the uptake of NET products and services, and result in a cooling of competition between NET providers. This is because preventing an important financing option will effectively dampen the effect of competition by excluding consumers who would otherwise utilise NET products and services. Considering that increased uptake and fierce competition in the BNPL product market, this dampening effect will also limit innovation in BNPL products. Consequently, lessening of competition in the market for NET products and services is a real risk if the Consumer Code is approved in its current form.
7. **ISSUE THREE – The extent to which administration or enforcement of the Consumer Code (i.e. disciplinary action for non-compliance, expulsions or denied memberships) could restrict the ability of suppliers or potential suppliers of new energy tech products or services from competing in relevant markets**
- 7.1 If the Consumer Code contains the prohibition against BNPL products, the administration and enforcement of the Consumer Code would restrict the ability of NET providers, and

potential NET providers, from competing in relevant markets to the extent they wish to utilise or rely on BNPL products.

7.2 Any NET provider that decided it wished to offer a BNPL product would be in breach of the Consumer Code, and face expulsion. The Consumer Code is clearly intended to regulate the behaviour of NET providers and, as currently drafted, drive out BNPL providers from the sector. This would restrict the ability of NET providers to compete and damage competition, without a corresponding public benefit, as addressed in the following section.

7.3 It is of particular concern that the Consumer Code Administrator would seek to exclude lawful consumer finance products in circumstances where it admits it is not a specialist in consumer finance. If consumer finance is to be regulated as part of the administration of the Consumer Code, then a consumer finance expert should be appointed to support the Consumer Code Administrator's function, rather than imposing an arbitrary prohibition against BNPL products.

8. **ISSUE FOUR – Any other issues you consider relevant to the ACCC's assessment of the matter**

*Banning BNPL will harm competition*

8.1 Brighte submits that the ACCC needs to carefully consider the impact that prohibiting BNPL products in the Consumer Code may have on competition between NET providers and businesses supporting NET providers and consumers.

8.2 There are strong indications that prohibiting BNPL products would lessen competition in one or more markets with the Consumer Code restriction compared to the level of competition in the market(s) without the restriction, for the following reasons.

8.3 As explained in the response to issue one, the Consumer Code is likely to deliver significant competitive advantages to signatories. It is also likely to be effectively mandatory in a range of circumstances: Governmental solar schemes may make Consumer Code compliance a requirement for participation, and businesses supporting the sector may only be prepared to deal with Consumer Code signatories. The Consumer Code is therefore likely to be highly relevant to competition.

8.4 Competition has developed between suppliers of BNPL products and innovation and competition in relation to those products is different to competition in relation to other deferred payment options (for example, because merchants are called on to absorb the costs, and because of the consumer demand for these products).

8.5 The demand for NCCPA exempt BNPL products for customers seeking NET products (as distinct from other credit services) is material and growing. There are currently a range of customers who strongly prefer NCCPA exempt BNPL products over other deferred payment options and there are some customers who will not or cannot substitute other deferred payment options for NCCPA exempt BNPL products (for example, consumer groups who are not permitted to utilise traditional finance instruments as they are structured with specific interest payments.). The benefits of NCCPA exempt BNPL products for customers that are not found in other credit products include:

- (a) the availability of an interest-free finance option;
- (b) greater transparency in relation to fees and obligations—for example, the fortnightly fee is disclosed and fixed, and fees for late payments are clear and capped;
- (c) increased availability at the point of sale;
- (d) improved application and approval times; and



- (e) lower costs due to interest components and fees that do not exceed the low exemption thresholds in the NCCPA.
- 8.6 The popularity of BNPL products means that competition from NCCPA exempt BNPL products constrains the pricing and design of other deferred payment options, as credit providers are losing potential customers to those services. The competitive constraint generated by providers of NCCPA exempt BNPL products is greater than their market share because they are essentially maverick, vigorous, new entrants who are focussing on winning market share from incumbent providers. This is demonstrated by the significant growth in these products.
- 8.7 ASIC, in its Report 600: Review of buy now pay later arrangements, released on 28 November 2018 noted: "the number of consumers who used at least one buy now pay later arrangement has increased about five-fold from 400,000 consumers during the 2015-2016 financial year to over 2 million consumers during the 2017-2018 financial year." <sup>2</sup>.
- 8.8 If BNPL products cannot be offered by Consumer Code signatories, those NET providers and credit providers will compete less vigorously because they are no longer able to offer NCCPA exempt products, and will instead offer more expensive, less competitive, deferred payment arrangements in order to comply with the Consumer Code. Products like BrightePay may be eliminated from the market. There might even be some unlicensed providers who are unable to compete at all because they are no longer permitted to offer NCCPA exempt services, at least in relation to customers buying from signatories to the Consumer Code.
- 8.9 Consequently, removing NCCPA exempt BNPL products from the market would result in:
- (a) some lower cost deferred payment options being eliminated from the market;
  - (b) less innovation in deferred payment, as NCCPA exemptions exist to allow room for innovation (as demonstrated by the development of BNPL products);
  - (c) potentially some customers being unable (or unwilling) to access deferred payment options because the alternatives lack the features described above; and
  - (d) BNPL providers would be "foreclosed" from providing NET products (directly or in partnership with NET providers), and their foreclosure would mean less competitive pressure on other NET providers and other financiers.
- 8.10 The combined effects of the above will result in less vigorous competition between NET providers, potentially higher costs for consumers, and potentially no access to deferred payment options for a significant segment of consumers.
- No offsetting public benefits*
- 8.11 The Applicants contend that the requirement to use only licensed credit providers and regulated credit products will deliver "clear public benefit". In particular, Brighte disputes the claims at paragraph 22 of the application.
- 8.12 The Applicants suggest that BNPL products are not transparent. Brighte rejects this claim. Brighte provides consumers with:
- (a) a credit contract which contains transparent, easy to understand terms and that is compliant with unfair contract term legislation;
  - (b) clearly disclosed repayment amounts, terms and timing of repayments which is provided to the customer in the Payment Plan Summary; and
  - (c) clearly and transparently disclosed fees and charges.

---

<sup>2</sup> ASIC Report 600: Review of buy now pay later arrangements, November 2018, Executive Summary, Section 2.

- 8.13 We submit that the Applicants erroneously suggest that the costs of BNPL products are bundled into the cost of goods. This is simply not true. NET Providers independently determine the cost of goods and services and consumers are able to negotiate with NET providers.
- 8.14 The NCCPA exemption for BNPL products only applies where the cost of the goods are not inflated to provide for additional financing costs. The price of NET products is not increased where consumers choose to use BNPL rather than through another payment method.
- 8.15 Brighte also assesses a consumer's financial position prior to offering BNPL products to them, to ensure the BNPL product is suitable for that consumer and that consumer has the capacity to re-pay a BNPL payment arrangement. This care is reflected in the very low default rates experienced by Brighte.
- 8.16 The Applicants suggest that consumers using BNPL products have no access to external dispute resolution schemes. This is not accurate: Brighte maintains an accessible internal dispute resolution process for its customers and is also a member of the Australian Financial Complaints Authority. Brighte further provides hardship assistance to its customers in the rare instance where it is required.
- 8.17 In addition, BNPL products are subject to a range of consumer protections, including prohibitions against unfair contract terms under the *Australian Securities and Investments Commission Act 2001* (Cth), the Australian Consumer Law and ASIC's new product intervention powers.
- 8.18 Brighte submits that the stated public benefits do not arise from prohibiting BNPL products and, in any case, could be realised through less intrusive means.
- 8.19 The benefits of the Consumer Code can be realised without banning NCCPA exempt BNPL products. That is, we submit that prohibiting NCCPA exempt BNPL products is not necessary to deliver the public benefits introduced by the Consumer Code. In fact, banning NCCPA exempt BNPL products will deny consumers the benefits of those products (outlined below) and ultimately the benefits of NET products (as discussed above).
- 8.20 We submit that the ACCC should only authorise the Consumer Code in a form that allows its signatories to recommend NCCPA exempt BNPL products, consistent with its previous decision to authorise the Clean Energy Council Code of Conduct for Solar Retailers (Clean Energy Council Code).
- 8.21 The Clean Energy Council Code materially differs to the Consumer Code because, instead of prohibiting products that are not regulated under the NCCPA, it simply required signatories to:
- (a) make reasonable enquiries as to whether the arrangement is regulated by the NCCPA; and
  - (b) if the signatory believes that the arrangements are not regulated by the NCCPA, the signatory must include a provision in the contract which explicitly states the arrangement is not regulated under the NCCPA and, accordingly:
    - (i) the customer will not have access to the services of an external dispute resolution scheme that has been approved by the Australian Securities and Investments Commission;
    - (ii) the customer may not have the right to ask the provider for a hardship variation if the customer has trouble paying the periodic payments required under the arrangement; and
    - (iii) the provider may take action against the customer for non-payment without giving the customer an opportunity to remedy the default.

- 8.22 There is no reason why the more restrictive approach proposed by the Applicants should be preferred.

*ASIC is the more appropriate regulator of BNPL products*

- 8.23 In its current form, the Consumer Code, if authorised, will effectively facilitate sector specific regulation against a lawful payment option. Given NCCPA exempt BNPL products are a lawful method of financing, it would seem inappropriate for the ACCC to decide otherwise by making the decision about whether or not the NET sector should have access to an important method of financing. The Consumer Code, in its current form, does not simply propose a new condition on BNPL providers but introduces a new regulatory requirement amounting to a boycott of BNPL providers. This will not only constrain consumer choice of a popular financing option, but it may also be dangerous and anti-competitive for the ACCC to allow a group of signatories to the Consumer Code to limit usage of a lawful financing option with no grounds for why such a drastic measure is necessary. This will in turn have the effect of stifling innovation and competition in emerging markets.
- 8.24 ASIC recently considered BNPL products in a report released on 20 November 2018.<sup>3</sup> Brighte, and other reputable BNPL providers, intend to work with ASIC and Government to ensure consumers are properly protected. The Applicants need not arrange their own boycott of these lawful products and should not be authorised to do so by the ACCC.
- 8.25 Further, the Consumer Code will effectively impose sector specific regulation against lawful payments in isolation to a broader approach in the economy at large, usually reserved for sector specific bodies, such as the ASIC. The ACCC has also previously warned against imposing sector-specific regulations.
- 8.26 It is our submission that to the extent any regulations are required, this is a matter for ASIC and not the ACCC, and that to authorise the Consumer Code would be embarking on an experiment in the ACCC imposing sector-specific regulation that clearly falls within the terms of reference of the regulator responsible for that sector.

**9. CONCLUSION**

- 9.1 In summary, the Consumer Code effectively imposes a ban or boycott on BNPL providers and as a result places a significant restriction on the ability of NET providers to compete. By removing an important platform for consumer choice which enables access to that market, the Consumer Code will effectively decrease competition between NET providers (as discussed above). This effect would ultimately result in reduced uptake of NET products and services by consumers contrary to ACCC's concerns regarding the energy market.<sup>4</sup>
- 9.2 The purported benefits of the Consumer Code can be realised without banning NCCPA exempt BNPL products. That is, prohibiting NCCPA exempt BNPL products is not necessary to deliver the public benefits introduced by the Consumer Code. In fact, banning NCCPA exempt BNPL products will deny consumers the benefits of those services and ultimately the benefits of NET products.
- 9.3 Brighte is very keen to work with the ACCC and the Applicants to identify alternative means to ensuring consumers are protected without prohibiting BNPL products.
- 9.4 We submit that the ACCC should only authorise the Consumer Code in a form that allows its signatories to recommend NCCPA exempt BNPL products, consistent with its previous decision to authorise the Clean Energy Council Code of Conduct for Solar Retailers (Clean

---

<sup>3</sup> ASIC, Report 600, 'Review of buy now pay later arrangements' (November 2018).

<sup>4</sup> ACCC, Retail Electricity Pricing Inquiry—Final Report, 'Restoring electricity affordability and Australia's competitive advantage'.

Energy Council Code). The ACCC should not, in effect, authorize sector-specific regulation on BNPL products.

4 March 2019

## **DISTRIBUTED ENERGY RESOURCES DRAFT CODE OF PRACTICE SUBMISSION**

### **OVERVIEW**

1. We refer to Brighte's previous submission about the Behind the Meter Distributed Energy Resources Provider Draft Code of Conduct dated 6 February 2019.
2. We welcome the opportunity to make a further submission in relation to the Distributed Energy Resources Draft Code of Practice (**the Draft Code**) before it is submitted to the ACCC.
3. We confirm that the matters raised in this submission are matters not previously considered by Brighte and therefore are eligible for consideration by the Behind the Meter Working Group (**BTMWG** or **Working Group**).
4. We appreciate the amendments to the Draft Code made since our last submission. However, Brighte remains concerned that the current drafting creates a restricted renewables finance market that will not permit equitable finance options for all consumers, particularly minority groups in Australia. It is our opinion that unwarranted constraints on consumers selecting their choice of finance will work at odds with the policy objectives of the COAG Energy Council.
5. We confirm Brighte's consent for the BTMWG to disclose this submission as a public document for the public record.
6. We confirm that Brighte is accredited as a licenced credit provider and a holder of an Australian Credit Licence number 508217.
7. We provided information about Brighte and the BrightePay buy now pay later product in our previous submission. We do not propose to restate that information, except where it is relevant to the content of this submission.

### **RECOMMENDATION**

8. We support the work that the BTMWG is doing to develop the Distributed Energy Resources Draft Code of Practice. We appreciate the opportunity to make a second submission about the proposed standards contained in it.
9. It is our view that any industry code, such as the Draft Code, should only propose standards about consumers choice of finance and payment options that are consistent with Government bodies charged with regulation of the finance industry (i.e. ASIC and APRA) and meet the recommendations from government or regulatory enquiries. The recommendations herein comply with that principle.
10. Recent comprehensive reviews did not recommend that buy now pay later products should be brought under the regulation of the National Consumer Credit Protection Act 2001 (**National Credit Act**).

11. Our submission proposes amendments to the sections of the Draft Code related to payment and finance to include buy now pay later finance options offered by providers with stringent lending assessment criteria in place including suitability assessments and credit bureau checks as well as internal and external dispute resolution processes in place.
12. We recommend that the sections be amended as outlined in sections 60 to 65 inclusive.
13. We welcome continued engagement with the Working Group and should members of the BTMWG wish to further understand our business model, processes or credit assessment procedures, we would be pleased to host an engagement session.

## CODE REACH AND ENFORCEMENT

14. We refer to section 27 of the Explanatory Notes – Evolution of Draft DER Code – V9.0, which provides information about the BTMWG’s approach to the draft Code’s reach and enforcement. We further note that the provision of goods and services under the Draft Code are capital in nature, rather than consumable, and are purchased by mature individual consumers who are typically experienced in managing credit (i.e. home loans) or businesses or community groups with their respective oversight committees.
15. Section 27 notes that some of the feedback received by the Working Group proposed standards of consumer protection was beyond common standards in other sectors.
16. We note that the Working Group also took the view that:

“a voluntary code of conduct in what is a fledgling industry needs to balance the need for encouraging take-up by signatories with the aim of raising standards. This would mean that in some areas, it is not reasonable to expect the Code to be ‘out in front’ of community standards.”
17. Our view is that approach outlined in section 27 should be applied to the types of finance and payment options that providers of DERs can offer to customers under the draft Code. As you will be aware, financing is a critical means to enable Australian households to purchase clean energy technologies where they cannot afford the full purchase amount upfront.
18. Brighte acknowledges that instances of predatory behaviour were identified in recent Senate Economics References Committee Report. We believe it is important to differentiate that some service providers engaged in predatory behaviour and they happened to be unregulated; they did not engage in predatory behaviour because they were unregulated. We further note that these service providers will not be capable of operating in financing aspects covered by the Draft Code.
19. Legislation, policy makers and consumer groups should ensure that they are not placing unnecessary and unproven roadblocks or limitations on the uptake of solar systems including limiting finance options for homeowners wanting to utilise solar technology.
20. It is incumbent on policy makers and consumer groups to support the widest segment of the Australian consumer market to make clean energy affordable and to avoid creating unfair advantages of some financing products (such as interest-bearing loans) over other forms of finance (such as buy now pay later) products. Not to do so risks excluding a large segment of consumers from to access clean energy products.
21. Buy now pay later is a legitimate payment model. This has been confirmed by two comprehensive recent reviews of the buy now pay later industry.

22. ASIC found that “the number of consumers who used at least one buy now pay later arrangement has increased about five-fold from 400,000 consumers during the 2015-2016 financial year to over 2 million consumers during the 2017-2018 financial year.”<sup>1</sup>
23. ASIC also found that “the number of buy now pay later transactions in each month has grown from over \$50,000 during the month of April 2016 to \$1.9 million transactions in June 2018.”<sup>2</sup>
24. The Senate Economic References Committee noted in its recent report that the “National Online Retailers Association (NORA) sees these schemes as an improvement on the traditional ‘layby’ model. They offer huge benefits to the industry, particularly through the reduction or absorption of Card Not Present Fraud... The industry sees such innovation as crucial in delivering greater financial control and easing cost-of-living pressures for consumers over the long term”.<sup>3</sup>
25. The current draft Code sections related to Payment and Finance prevent Code signatories from offering legitimate types of finance and payment options to their customers.
26. This approach is unwarranted and reduces competition by limiting the payment options consumers can choose to invest in solar products as we note in section 29 below.
27. It also unfairly applies higher standards to the buy now pay later industry than that recommended by the Australian Securities and Investments Commission (**ASIC**) and the Senate Economic References Committee following their recent reviews of the industry.

## ANTI-COMPETITIVE CONDUCT

28. We are concerned that the Draft Code may be perceived as encouraging anti-competitive conduct and exclusive dealing conduct, both of which are prohibited under the Competition and Consumer Act 2010 (the Act).
29. The Act prohibits contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market. The Code could be viewed as substantially lessening competition in the DER industry by forcing providers to only recommend finance regulated under the National Consumer Credit Act (that arguably may have higher rates for finance) to the detriment of the consumer<sup>4</sup>. We are also concerned that the Code will be compel DER providers to engage in exclusive dealing behaviour i.e. by imposing a condition on DER providers that their customers can only acquire certain types of finance which meet the definition under the Code.<sup>5</sup>
30. Our view is that the effect of the limitation within the Code to the use of “licensed” credit providers will have a real effect on the competition in the overall market for finance and payment products used to finance DER products in that:
  - (a) the limitation may substantially restrict the availability and access to DER product for a large segment of consumers;
  - (b) the refusal to allow the use of buy now pay later products would substantially restrict the accessibility of that type of product to a large segment of consumers; and

---

<sup>1</sup> ASIC Report 600: Review of buy now pay later arrangements, November 2018, Executive Summary, section 2.

<sup>2</sup> ASIC Report 600: Review of buy now pay later arrangements, November 2018, Summary of Findings, section 25.

<sup>3</sup> Senate Economic References Committee Report into credit and financial products targeted at Australians at risk of financial hardship, February 2019, section 5.8.

<sup>4</sup> Section 45, Competition and Consumer Act 2010

<sup>5</sup> Section 47(6), Competition and Consumer Act 2010

- (c) a large segment of consumers will be severely restricted in their ability to buy a product or its substitutes because the business has imposed restrictions on finance options as a condition of supply.

31. Brighte is also aware that there are minority consumer groups that are not permitted to utilise traditional finance instruments as they are structured with specific interest payments. These communities are able to utilise lease style financing arrangements that are characterised by a known fixed payment for an asset where that asset is unencumbered and wholly owned by the consumer at the end of the fixed term. Brighte supports providing consumers choice to select finance products that meet their needs.

## REVIEWS OF THE BUY NOW PAY LATER INDUSTRY

32. Brighte asserts that the current Draft Code imposes inappropriate restrictions on buy now pay later providers.

33. These restrictions are not required by legislation or recommended by recent and substantial inquiries into the buy now pay later industry.

34. Neither the:

- the ASIC Report 600 into Buy Now Pay Later Arrangements in November 2018 (**ASIC Report 600**); nor
- the Senate Economics References Committee Report into Credit and financial products targeted at Australians at risk of financial hardship in February 2019 (**Senate Economics References Committee Report**);

recommended that buy now pay later contracts should be regulated under the National Credit Act or require the credit provider to hold an Australian Credit Licence.

35. The parliament and regulators are best equipped and qualified to determine the appropriate type and level of regulation to be applied to products and services.

36. It is our submission that the draft Code should not exclude buy now pay later products as a valid payment types because they are not required to be regulated by the National Credit Act when neither ASIC nor the Senate Economics References committee recommended that they be following their recent reviews.

## ASIC REPORT 600 (NOVEMBER 2018)

37. As we noted in our previous submission, Brighte was one of the six providers included in ASIC's review into the buy now pay later industry conducted in 2018.

38. The aim of the review was to enable ASIC to develop a broad understanding of the industry, to identify potential risks for consumers in utilising buy now pay later products.

39. ASIC's review found that the BNPL Industry is diverse and evolving. It indicated that BNPL arrangements are used by many younger customers.

40. This is in direct contrast to Brighte's customers who are much older than the average buy now pay later customer. They are mature homeowners who are experienced in the use and management of credit.

41. It should be noted that our customers are different to the typical users of BNPL arrangements in the following important ways:

- Our customers are always homeowners;





- Over 86% of our customers are aged 35+ years;
  - More than 94% of our customers are using Brighte so they can invest in solar and batteries for their home; and
  - Our customers make a considered purchase to invest in solar and use the BrightePay payment plan as an affordable way to do so.
42. To obtain credit with Brighte, applicants must satisfy our strict eligibility criteria.
  43. Our customers are required to provide identification details as well as income and expense details. On this point, Brighte was mentioned as the only provider in the ASIC Report that examined the income and existing debts held by consumers before providing their services.
  44. We conduct a serviceability assessment that includes external verification and third-party data checks including land title, DVS and credit bureau. We then make an assessment of the customers overall suitability for the product before approving or declining the application.
  45. 92% of our customer achieve a credit score of excellent, very good, good or average (bureau categories). We have less than 0.9% of instances where customers are two or more payments in arrears.
  46. We know that we are providing a necessary and valued service to our customers, who choose to use buy now pay later to fund their investment in solar and battery products. Our customers are strong advocates of Brighte. **Annexure A** contains comments from some of our customers about the reasons they chose BrightePay to fund their solar purchase. It supports why this product continues to be required in the clean energy industry.
  47. ASIC's review culminated in Report 600 released in November 2018 (**ASIC Report 600**). It stated that it had not formed the view that it was necessary for buy now pay later providers to be required to comply with the National Credit Act. ASIC will continue to monitor the industry.
  48. Instead ASIC considered that its proposed product intervention power should be extended to all credit facilities regulated under the ASIC Act. This would allow ASIC to act quickly and effectively to address the causes of problems if it identified a significant detriment to consumers that cannot be resolved through voluntary action.
  49. ASIC noted that in using its proposed product intervention power, it would look for interventions that represented the most targeted and appropriate regulatory solutions to address identified consumer detriment.
  50. Brighte supports ASIC's recommendation to extend its proposed product intervention power to all credit facilities regulated under the ASIC Act, including BrightePay.

#### **SENATE ECONOMICS REFERENCES COMMITTEE REPORT (FEBRUARY 2019)**

51. The Senate Economics References Committee's report into the credit and financial products targeted at Australians at risk of financial hardship was released on 22 February 2019.
52. The Committee noted that throughout the course of its inquiry it had been conscious that the financial products it examined are not all alike. Further, the business models and practices of providers differ considerably. It noted that the worst case studies presented to the inquiry concerned marginal credit products such as payday loans and consumer leases.
53. While the main focus of the Committee's recommendations was payday lenders, debt consolidation services and providers of consumer leases, some findings and recommendations were made about the buy now pay later industry.
54. The Committee noted that buy now pay later companies are able to use modern technology to provide a service that is easy to use and fast. It referred to the algorithms used by buy now pay

later providers to investigate consumers' financial circumstances and test their eligibility for funds.

55. The Committee referred to ASIC's acknowledgement that it was possible "for a credit provider to use technology to obtain information about a consumer, whether that's bank account transaction information or other information that's available electronically, and feed that into an algorithm to make a lending decision, so long as the information is about that consumer and is relevant to the lending decision and the credit provider takes reasonable steps to obtain the relevant information."<sup>6</sup>
56. Following extensive review and investigation, the Committee was satisfied that the providers of buy now pay later contracts did not require any additional regulation and should not be regulated under National Credit Act.
57. The Committee recommended that the government consider in consultation with ASIC, consumers and industry, what regulatory framework would be appropriate for the buy now pay later sector. Brighte supports this recommendation and will participate in any industry consultation about changes to the regulatory environment covering BNPL providers.
58. The Committee also recommended that the buy now pay later sector develop an industry code of practice. Brighte is engaging with other BNPL providers to discuss the development an industry code.
59. The Committee recommended extending ASIC's proposed new product intervention power to cover buy now pay later products. As noted above, this is the same recommendation made by ASIC as part of its recent review into the BNPL industry. We are supportive of this recommendation.

## PAYMENT AND FINANCE SECTIONS IN THE DRAFT CODE

60. We recommend that the following sections be redrafted as follows. Explanations for the reasons for our recommendations are below:
61. Section B.1(m) should be redrafted as follows:
  - (m) *clearly set out:*
    - (i) *the cost of the DER product and system or services if that cost is to be paid upfront; and*
    - (ii) *the cost of the DER product and system if that cost was not was not paid upfront (for example if the cost was to be paid in instalments or through finance).*

### Explanation

- we are concerned with the phrase "inflated price" in the original section B.1(m). The ordinary meaning of the word "inflated" in relation to price is that a price is higher than it should be or higher than people think is reasonable. It does not provide a test for what could be considered an "inflated" price. This term is, in our view, subjective and ambiguous therefore we consider that it is inappropriate to include in an Industry Code.
- we understand the intent of the section is to ensure transparency about the cost of DER product and system or services, whether it is paid for upfront or not. We believe the revised wording is clear, unambiguous and reflects this intent.

---

<sup>6</sup> Senate Economic References Committee Report into credit and financial products targeted at Australians at risk of financial hardship, February 2019, section 5.10.

62. Section B.24(a) should be redrafted as follows:

- (d) *We may offer you a DER product or system with a structured payment option as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this payment option includes an interest component and/or additional payment-related fees we will ensure that this is structured as a credit contract or consumer lease through:*
- i. a credit provider that holds an Australian Credit License (whether ourselves or a third party); or*
  - ii. where the credit provider is exempt from the requirement to hold an Australian Credit License (for example because they provide interest free finance) it is a credit provider that:*
    - gives appropriate consideration to consumers personal financial situations before agreeing to provide finance to the consumer; and*
    - provide consumers with access to internal and external dispute resolution mechanisms; and*
    - has procedures for dealing with hardship requests.*

**Explanation:**

- as noted above, we do not consider it appropriate to limit the finance options for the customer to only those types of finance that will add additional financing cost (interest) to the customer;
- it is the responsibility of each industry participant to ensure consumers have the greatest choice available to select the most appropriate for their circumstances;
- also note our views in relation to the use of the term “inflated price” above.

63. Section B.24 (c)(iii) should be deleted and replace with:

*“the cost of the DER product and system or services if that cost is to be paid upfront in comparison to the cost of the DER product and system if that cost was to be paid in instalments or through finance”.*

**Explanation**

- we understand the intent of the section is to ensure transparency in comparison pricing;
- we have proposed this alternative wording to bring this section in line with the line with wording proposed B.1(m) while maintaining the intent of the section; and
- we reiterate our concerns with the use of the term “inflated price”.

64. Section B.24 (c)(iv) should be deleted and replaced with:

*“a statement of all fees and charges applicable to the credit contract or lease;”*

**Explanation**

- as noted above, our view is that it is not appropriate to limit finance to those options that are regulated by the National Credit Code;
- we understand that the intent of the section is to ensure the customer is provided with clear disclosure of all fees and charges and therefore we have redrafted this section accordingly.

65. B.26 should be redrafted as follows:

*If you are a Residential Customer and we offer you an alternative to full payment on delivery, such as progressive instalments, that:*

- b. does not include an interest component or additional payment-related fees; or*
- c. the Administrator is satisfied is a Power Purchase Agreement*

*In either of these cases we will:*

- d. ensure reasonable inquiries are made of your personal financial situation to ensure that you are able to meet your obligations under your instalment contract before agreeing that finance is to be provided to you;*
- e. provide you with information to access to internal and external dispute resolution mechanisms; and*
- f. ensure that if you notify us that you are experiencing financial hardship that we will assist you including by making you aware of the hardship policy of your credit provider and/or any relevant government assistance schemes that may be available to you.*

**Explanation:**

- we reiterate our concerns with the use of “inflated” price;
- it may be the case that the supplier is not providing the finance, and therefore the re-drafted section acknowledges this point; and
- we do not think it is appropriate for the Code to be prescriptive in the way hardship should be managed. It may be the case that a financier or supplier may, instead of a payment plan, choose to waive all or part of the debt.

**CONCLUSION**

- 66. Brighte recognises that consumer protection is our overarching obligation and we advocate providing consumers the broadest choice of finance options to select the most appropriate option for their circumstances.
- 67. We believe that every Australian family, irrespective of their cultural background, deserves access to a sustainable home and our goal is to empower consumers to purchase goods for that purpose.
- 68. To limit finance options for this customer segment to credit contracts regulated under the National Credit Act would reduce competition, be unfair and detrimental to the solar and battery industry and would work at odds with the COAG Energy Council policy objectives.
- 69. We make clean energy solutions more affordable to Australians who would not otherwise afford it. With our support, vendors are better equipped to help customers invest in energy resource products, systems and services including solar and battery storage technologies and to move towards a clean energy future for Australia.
- 70. Buy now pay later products like BrightePay are a preferred and legitimate payment option for many people over and above more expensive or complicated options for finance (for example credit cards, personal loans and accessing home loan redraw facilities).



71. The benefits of the buy now pay later model is also that it is suitable for buyers of solar and other energy efficient products who cannot afford to pay cash or wish not to pay cash.
72. BrightePay also allows households to budget and manage finances without concerns of interest rate rises.
73. Neither of the two recent reviews of the buy now pay later industry recommended that buy now pay later products should be regulated under the National Credit Act.
74. Brighte customers have made a considered decision to use our finance product to purchase distributed energy resource products. It is not an impulse-driven purchase.
75. We reiterate our previous submission about the importance of ensuring that consumers are protected and yet still have access to innovative products like Brighte's buy now pay later product, which removes the upfront barriers and allows consumers to access clean energy solutions.

Yours sincerely,

**Katherine McConnell**  
CEO and Founder

**Ann Devine**  
Chief Risk Officer



Level 6, 56 Pitt St, Sydney, NSW 2000, Australia  
**M:** +61 417 412 482 | **E:** [katherine@brighte.com.au](mailto:katherine@brighte.com.au) | **PH:** 1-300-BRIGHTE

## ANNEXURE A – CUSTOMER FEEDBACK

Customer	Comments
42+ year old customer from Victoria purchasing solar panels	<i>Honest approach to us. No hidden catches etc . And good contact thru to the install process</i>
53+ year old customer from Queensland, purchasing a solar panel package.	<i>Easy application. \$0 Deposit. No interest. And I will more than likely get finance for the battery when the government rebates come in . Thanks you for finance.</i>
42+ year old from NSW purchasing solar panels.	<i>A finance system that is not greedy and supports/facilitates sustainability upgrades</i>
41+ year old customer from Queensland purchasing solar panels	<i>The easy platforms work through. The friendly staff. Very professional and a pleasure to do business, with. I also will be do more to my house with Brighte.</i>
53 year old customer from Western Australian purchasing solar panels	<i>We are extremely happy with the easy process for applying for the loan. We were able to have the solar panels much sooner, rather than later. I have already made a recommendation to a family member. Thank you SO much.</i>
42 + year old from New South Wales, purchasing Solar & Battery Combo	<i>As it was a payment plan and not a low interest loan it made complete sense to go for the financing. Just makes cash flow simple and easy. This was almost the deciding option, why pay an electricity bill when I can invest in property and be energy efficient.</i>
53+ year old customer from New South Wales purchasing solar panels	<i>I had been looking for a deal where you did not have to pay a substantial amount up front. The deal you gave us was great and we have already recommended you</i>

Customer	Comments
42+ year old customer from Western Australia purchasing solar panels	<i>Easy payment plan and no interest very happy great service and reminders before payment due awesome</i>
41+ year old customer purchasing solar panels.	<i>It was an uncomplicated process fast approval phone staff were friendly and helpful worked with me to make a day that suited my work pay days for my repayments very happy</i>
53+ year old customer from New South Wales purchasing solar panels	<i>Friendly service and payment plan</i>
53+ year old customer from New South Wales purchasing solar panels	<i>I liked the speed of the approval</i>
41+ year old customer from Queensland purchasing solar panels	<i>I have had a very good experience with brighte. Customer service is amazing and i like that. Would definitely recommend to friends on fact i already have.</i>
53+ year old customer from New South Wales purchasing solar panels	<i>In my case it was very easy to apply and very quick to receive approval. In my following conversations your staff were helpful and up to date with previous calls.</i>
51+ year old customer from New South Wales purchasing solar panels	<i>Easy, no drama, apply, accept, set, forget..</i>
53 + year old customer from Queensland purchasing a solar panel package.	<i>Essentially the terms of finance were clearly explained. Excellent coordination between Brighte and the supplier of goods and services.</i>
53+ year old customer from Victoria purchasing solar panels	<i>Very easy process and very cost effective solution for installing solar.</i>



**Brighte Capital Pty Ltd**  
ABN 74 609 165 906  
Level 6, 56 Pitt St  
Sydney NSW 2000

Phone: 1300-274448 (BRIGHTE)  
Email: [info@brighte.com.au](mailto:info@brighte.com.au)  
Web: [brighte.com.au](http://brighte.com.au)

6 February 2019

## BEHIND THE METER DISTRIBUTED ENERGY RESOURCES PROVIDER CODE SUBMISSION

### OVERVIEW

1. The COAG Energy Council has requested industry, consumer groups and other stakeholders to develop an industry-wide Code of Conduct for sellers of distributed energy resource products, systems and services including solar and battery storage technologies, and as such the Behind the Meter Working Group (**BTMWG**) has prepared a draft Code for comment.
2. We acknowledge the important work of the BTMWG on the draft Code and welcome the opportunity to make a submission in relation to the draft.
3. ~~We trust the BTMWG will treat this submission as confidential and that this submission will not be disclosed to other parties without Brighte's consent.~~

### ABOUT BRIGHTE

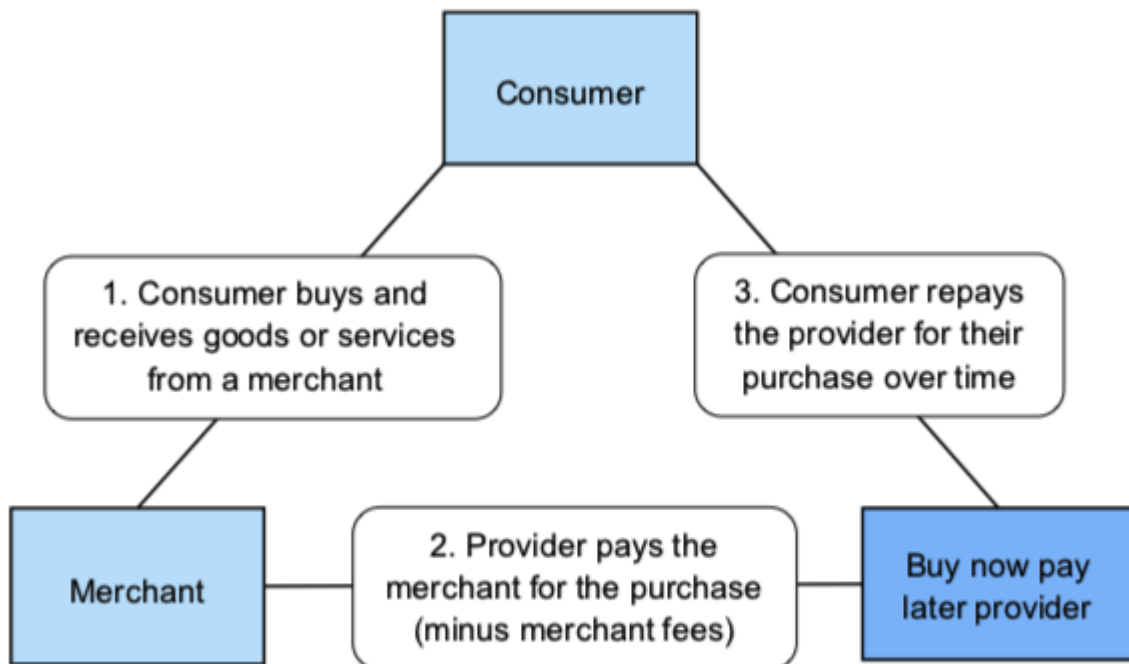
4. Brighte is an on-the-spot finance platform and marketplace for solar, batteries and home improvement products. We provide consumers with tools and resources to assist with purchasing solar and batteries, a matching service to find Brighte accredited vendors and payment plan options that remove the upfront cost and allow the consumer to spread their purchase amounts over time.
5. Brighte provides a continuing credit facility called **BrightePay** to Australian home owners for the purpose of solar, batteries and home improvement products. BrightePay is a "Buy Now Pay Later" product which is part of a fast growing and dynamic non-traditional credit industry. We believe we provide a very specific solution for a very specific problem.
6. We believe that every Australian family deserves access to a sustainable home and our goal is to make it affordable for and empower consumers to purchase goods for that purpose. We operate at the point of sale and work with hundreds of accredited vendors around the country. Our mandate is to make access to credit for solar, batteries and home improvements easy, accessible and flexible.
7. In essence, we make clean energy solutions more affordable to Australians who would not otherwise afford it. With our support, vendors are better equipped to help customers invest in energy resource products, systems and services including solar and battery storage technologies and to move towards a clean energy future for Australia.



*What Does Buy Now Pay Later Mean*

8. At Brighte we offer a buy now pay later product called BrightePay. A buy now pay later arrangement such as BrightePay is an arrangement which allows consumers to buy and receive goods and services immediately but pay for that purchase in instalments over time.
9. A Brighte buy now pay later arrangement involves three separate transaction:
  - (a) a transaction between the consumer and Brighte for the provision of the payment plan;
  - (b) a transaction between the consumer and the vendor for the provision of goods and services; and
  - (c) a transaction between the vendor and Brighte for the provision of sales and marketing services. This allows the vendor to access lead generation services and marketing tools to increase their sales conversions.
10. There are multiple ways for a customer to apply for BrightePay:
  - (a) an accredited vendor can assist a customer to make an application via the vendor's own device using the Brighte mobile app or Brighte vendor web portal;
  - (b) a customer can apply via their own device using the Brighte mobile app or web portal;
  - (c) a customer can make an application by calling the Brighte Customer Service team.

**Figure 1: How a buy now pay later arrangement works**



**Note:** This figure illustrates that when a consumer uses a buy now pay later arrangement to buy goods or services, the merchant is paid by the provider of the arrangement. The provider then collects repayments from the consumer to recover the upfront payment over time. Consumers can receive the goods or services immediately, well before the purchase price has been fully repaid.

Table 1. (extract from page 19 figure 1 ASIC Report 600: Buy Now Pay Later)

11. The BrightePay application process involves collection and near instant verification of many data points including many of those collected from the customer. Our customers are required to provide identification details as well as income and expense details. On receipt of the customer's application for a payment plan, we conduct a serviceability assessment. This includes external verification and third-party data checks including land title, DVS and credit bureau. We then make an assessment of the customers overall suitability for the product before approving or declining the application.
12. On installation of the product by the vendor, we ask the customer to confirm that the goods have been installed to the customers satisfaction before we pay the vendor. The customer's payment plan commences after we receive this confirmation from the customer.
13. At any point prior to customer's final confirmation of installation, the customer can withdraw their application for finance without incurring any fees.
14. We offer BrightePay facilities with limits up to \$30,000 for consumers and with terms ranging from 6 to 60 months.
15. BrightePay is not regulated by the National Credit Code as this product meets the exception criteria set out in section 6(5) of the Code. It is a continuing credit contract and it only includes charges for credit that amount to an establishment fee and an account keeping fee that is fixed.
16. We note that in 2018, the Australian Securities & Investments Commission (**ASIC**) released its review into the buy now pay later industry. The aim of the review was to develop a broad understanding of the industry, to identify potential risks for consumers in utilising buy now pay later products and to make recommendations as to whether these products should be brought under the regulation of the *National Consumer Credit Protection Act 2001* (**National Credit Act**).
16. Brighte was one of the six providers that were included in ASIC's review.
17. ASIC's review culminated in Report 600 released in November 2018 (**ASIC Report 600**). Its over-arching finding was that it was not necessary for buy now pay later products to be required to comply with the National Credit Act.
18. We note further that Report 600 found that:
  - (a) the buy now pay later industry was diverse and evolving;
  - (b) buy now pay later arrangements were commonly used and in 2017-18 over 2 million consumers had used a buy now pay later arrangement representing about 10% of the adult population;
  - (c) users found buy now pay later arrangements easy to use and convenient;
  - (d) 90% of users believed that buy now pay later arrangements helped them manage their spending;
  - (e) buy now pay later payment plans were suitable for customers that choose it as a payment option;

- (f) that buy now pay later products had low default rates; and
- 19. We also note that Brighte was mentioned as the only provider in the Report that examined the income and existing debts held by consumers before providing their services.
- 20. The Review can be found here: <https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>.

#### *Brighte's Customers*

- 21. To obtain credit with Brighte, applicants must satisfy our strict eligibility criteria which includes Australian residency, over 18 years old, must own or be purchasing their own home, be employed or self-employed, be working 25+ hours a week and have a good credit history.
- 22. Our applicants must buy approved products from an accredited Brighte vendor.
- 23. A review of our customer profile shows that over 86% of our customers are aged 35 years+ and that more than 94% of our customers are using Brighte so they can invest in solar and batteries for their home.
- 24. Our customers make a considered decision to invest in solar solutions and choose buy now pay later as a payment option for many reasons including its convenience at the point of sale.

#### *Brighte's Accredited Vendors*

- 23. We partner with solar, battery and other installers of home improvement products. We call them our vendors.
- 24. To become a Brighte vendor, a provider must be accredited by Brighte. Our accreditation process involves strict vendor due diligence. This includes checking the vendor's reputation (through researching customer review forums and other methods), business registration details, credit checks on the vendor entity and individual directors, business history and experience, use of reputable equipment and memberships to bodies such as the Clean Energy Council are considered. It is important to us that we work only with reputable vendors so our customers are protected. As such we do not accredit vendors that do not meet our accreditation criteria and note that we refuse more than 30% of vendors who apply to become Brighte partners for failing to meet our criteria.
- 25. Once accredited, our vendors undertake training, agree to our Vendor Code of Conduct and enter into an agreement with Brighte which involves specific obligations such as attending to customer complaints in a prompt manner and adherence to laws.
- 26. Brighte has in place a vendor monitoring program that includes the use of data analysis, direct consumer feedback, customer reviews (ie NPS) and proactive monitoring. We revisit all accreditations on an annual basis to ensure the vendor's business continues to meet our accreditation requirements. We dis-accredited vendors that we have found not to adhere to our strict standards of behaviour.



27. From conversations that we have had with our vendors, we know that we are providing a valued service to the solar and battery market. Our vendors have told us that they need a flexible, fast and affordable payment option at the point of sale as many of their customers are unable to pay the purchase price of the goods upfront. Our vendors are strong advocates of Brighte and at Annexure A you will find some comments from our accredited vendors as to reasons why customers choose buy now pay later to fund their solar purchases and why this service continues to be required in the clean energy industry.

#### *BrightePay consumer fees*

28. Our fees and charges are always clear and transparent to our customers. At all times during a quote and application, we clearly outline our fees, terms and conditions and lending criteria. We believe in transparency and using plain English contracts with our customers.
29. We charge our customers a \$1 a week account fee and a \$4.99 late payment fee which we cap at \$49.90 or 10 payments per year.
30. As BrightePay is not regulated under the National Credit Code we do not charge a customer any interest or fees above \$200 in the first year and \$125 in subsequent years.

#### *Complaints Management*

31. Brighte has an Internal Dispute Resolution function in line with Regulatory Guide 165 and is also a member of the External Dispute Resolution Scheme the Australian Financial Complaints Authority (otherwise known as AFCA). We have clear Complaints Handling and Hardship policies and procedures.
32. In instances where a consumer has raised concerns regarding an installation or connection to the grid, Brighte will actively communicate with the vendor and the customer to ensure the matter is resolved amicably. In the instance where a customer complains about a vendor's conduct or the products purchased, Brighte investigates the matter and depending on the circumstances, has options open to it under its agreement with the vendor.
33. Brighte encourages flexibility and fairness in its approach to collections. Brighte acknowledges and understands those who are vulnerable and experiencing financial hardship. Brighte's flexible approach includes actively working with customers to find amicable solutions, taking into consideration a customer's personal circumstance in a respectful and fair manner.
34. Brighte has not been required to bring any collection proceedings or write off a debt and our default rates are less than 1%.

#### **OUR RESPONSE**

35. In our response we have specifically sought to address Explanatory Memorandum Consultation Issue 5.3 also being Consultation Draft Question 3 which provides:

*The Code requires a product or system structured payment plan to be through a licensed credit provider (ie where the consumer is not required to make payment in full upon installation). This means that the consumer has the benefit of the National Credit Code protections including interest rate requirements, fee disclosures, hardship provisions and external dispute resolution access. Do these benefits outweigh the restrictions for industry?*

36. Consultation Draft Question 3 also has a nexus to Consultation Draft Section A.3 Payment and Finance which states:

*We will only work with Credit Providers that have an Australian Financial Services License (AFSL)*

37. We seek to address these two statements together and will term this (**the Regulated Finance Question**).

38. In response to the Regulated Finance Question, we have made the following assumptions:

- (a) “*licensed credit provider*” means either an entity which holds an Australian Credit License and/or a holder of an Australian Financial Services License (**Licensed Credit Providers**); and
- (b) that these licensees offer financial products regulated under the NCCP (**Regulated Products**).

39. We are concerned that to limit payment options to Regulated Products offered by Licensed Credit Providers will be detrimental to a large cohort of society for the following reasons:

- (a) **limits options**: it unfairly reduces finance options available to customers wanting to purchase solar related products;
- (b) **limits affordability**: decreases the affordability of solar related products;
- (c) **negative impact**: negative impact on the solar market and the environment;
- (d) **limits innovation**: fails to embrace innovative technology as a means to obtain solar related products;
- (e) **undermines legitimacy**: implies that as buy now pay later is not a product that is regulated by the National Credit Code, that it is not a legitimate payment option.

#### *Limits Options*

40. Our view is that to require sellers to only offer products regulated by the National Credit Code will have a negative impact on the number of people who can access affordable energy. It will also unfairly reduce finance options available to customers who want to purchase solar and battery storage related products.

41. It will negatively impact:

- (a) individuals and business owners: economically through lack of access to affordable energy;
- (b) the community and the environment: through less use of renewables; continued reliance on existing higher cost and carbon producing sources of energy; and
- (c) implies that only providers of the National Credit Code regulated products provide fee disclosures, access to internal and external dispute resolution mechanisms and hardship assistance.

42. Evidence shows that buy now pay later is a preferred and legitimate payment option for many people over and above more expensive or complicated options for finance (for example credit cards, personal loans and accessing home loan redraw facilities). We have been told by many of our over 10,000 customers that they chose Brighte because:
- (a) of the ease of the vendor referral and application process to a buy now pay later product compared to a regulated product: "*simplicity of process and flexibility of repayments*" - Simon W
  - (b) clear and transparent pricing and payment terms. "*honest approach to us. No hidden catches etc. And good contact thru to the install process*" - Matthew K
  - (c) certainty of payment amount. - "*very easy to deal with in the first place. Interest free small payment plan makes shopping and life easy!*" - Zahirul M
  - (d) not having to dip into savings or home loan redraw, thus reducing financial safety net. "*A handy alternative when the better half won't listen to reason and use the mortgage like everyone else. I have already recommended you to a friend.*" - Ian M
43. Typical characteristics of Brighte's target market are:
- (a) homeowners who prefer not to, or do not have the means of making a large upfront payment for solar, battery and home improvement products;
  - (b) homeowners with a mortgage/redraw which they wish to preserve for unexpected expenses;
  - (c) homeowners who are looking to reduce their cost of living;
  - (d) home owners who are looking to make a positive impact on climate change through their choice of energy source; abd
  - (e) homeowners who have paid off their mortgage and wish to save their credit card for day to day expenses.
44. In essence, our customers have made a considered decision to use our finance product to purchase behind the meter products and therefore is not an impulse-driven purchase.
45. To limit finance options for this customer segment to Regulated Products, in our view would be unfair and detrimental to the solar and battery industry.

#### *Limits Affordability*

46. As we have previously noted BrightePay provides an affordable way for home owners to pay for solar and behind the meter goods. We noted above that Brighte has in place strict eligibility criteria including identification and credit checks to ensure that our customers are able to afford and service any credit provided by us to them.
47. Section 20 of ASIC's Report 600 noted that buy now pay later arrangements "*can be cheaper for consumers because consumers are generally not charged interest and that there are limits on the fees that buy now pay later providers can charge.*
48. BrightePay also allows households to budget and manage finances without concerns of interest rate rises.

49. The benefits of the buy now pay later model is also that it is suitable for buyers of solar and other energy efficient products who cannot afford to pay cash or wish not to pay cash.

#### *Negative Impact on Solar Market*

50. It is estimated that on top of the existing 2 million homes with solar panel systems, that another 2-3 million homes would be suitable for solar panels.
51. Unlike almost any other purchase that can be made in the consumer market, there is profound evidence on the return on investment of a residential rooftop solar system. Whilst exceptions may exist, there is undeniably a large cohort of homeowners whom may not be eligible for a traditional regulated loan product.
52. We believe it is the social responsibility of our nation to ensure that where a proven positive social impact can be made, then we should ensure that legislation, policies and consumer groups are accelerating making residential rooftop solar systems affordable and achievable.
53. Legislation, policy makers and consumer groups should ensure that they are not placing unnecessary and unproven roadblocks or limitations on the uptake of solar systems including limiting finance options for homeowners wanting to utilise solar technology.

#### *Limits Innovation*

54. Brighte's buy now pay later product allows solar vendors to facilitate an application from the customer. Brighte then undertakes a rigorous and full credit assessment on the consumer and interacts directly with them for review and clarification of any points in the application.
55. BrightePay is offered through a variety of digital mediums enabling the application to be quick and easy. The affordable and streamlined in-home finance solution is well suited to a homeowner looking for an easy on the spot finance option for solar and batteries.
56. In contrast, a product that is regulated under the National Credit Code such as a personal loan can be prohibitive to a purchase decision by a customer as it may not be easily and quickly accessible in the home during the solar and battery consultation process. Financing small amounts of solar may require consideration of approval for small amounts sub \$5,000-\$10,000. A long and lengthy application process that is suited to a larger home loan application may not be as relevant. This is particularly considering this is not an impulsive purchase and the applicant is always a homeowner.
57. We note that purchasing a residential solar system is an already complicated process. The cost of a solar system is a significant investment with a return on investment in many cases being 4-5 years. As such purchasing a system using a finance facility such as BrightePay can, in many cases, offer a minimal cash flow impact on a household budget such as by offsetting reduced utility energy bills.

#### *Undermines Legitimacy*

58. Buy now pay later is a legitimate payment model.

59. We understand and acknowledge consumer protection as our overarching obligation.
60. While the National Credit Code does not apply to BrightePay, BrightePay is a credit facility under Division 2 of Part 2 of the Australian Securities and Investments Act (**the ASIC Act**) and therefore Brighte, as a provider of a credit facility required to comply with the ASIC Act. Specifically, Brighte, in providing Brighte Pay to consumers, is prohibited from engaging in misleading, deceptive or unconscionable conduct.
61. Brighte is also required to comply with the Australian Consumer Law in offering BrightePay to customers. Our vendors are also required to comply and wherever possible we remind them of these obligations.
62. The solar industry is complex and we are aware that there are operators that are not providing appropriate services to consumers. Bearing this in mind, we conduct upfront and ongoing monitoring of vendor performance to ensure we work only with reputable businesses.
63. We also note we have IDR and EDR complaint handling processes and a hardship policy and procedure in place.
64. We have a stringent accreditation and training program for our vendors including how to use the BrightePay product, we provide advertising guidelines to our vendors to ensure that misleading statements are not made. Vendors must obtain Brighte's approval before an advertisement about BrightePay can be made by the vendor.
65. As we have shown, the buy now pay later model is a legitimate model that best serves its customers, its vendors and the community.

## CONCLUSION

66. We thank you for the opportunity to provide a submission to the Draft Code.
67. We agree in the importance of balancing consumer protection with market efficiency and the promotion of innovation. It is important to ensure consumers are protected and yet still have access to innovative products like Brighte's buy now pay later product which removes the upfront barriers and allows consumers to access clean energy solutions.
68. We recommend that Consultation Draft Section A.3 Payment and Finance be amended to include buy now pay later finance options offered by providers with stringent lending assessment criteria in place including suitability assessments and credit bureau checks as well as internal and external dispute resolution processes in place.
69. We strongly support the work that the BTMWG is doing to develop a Code which will provide a much needed industry Code of Conduct. Our submission highlights that a balance can be struck such that an innovative outcome can be provided, consumers can be protected and clean energy can be made accessible to Australian households.





70. As business we have detailed experience in the industry and would welcome the opportunity to share this with the BTMWG and other parties involved in the drafting of the Code.

Yours sincerely,

*Katherine McConnell*

**Katherine McConnell**

CEO and Founder



Level 6, 56 Pitt St, Sydney, NSW 2000, Australia

**M:** +61 417 412 482 | **E:** [katherine@brighte.com.au](mailto:katherine@brighte.com.au) | **PH:** 1-300-BRIGHTE



**Brighte Capital Pty Ltd**  
 ABN 74 609 165 906  
 Level 6, 56 Pitt St  
 Sydney NSW 2000

Phone: 1300-274448 (BRIGHTE)  
 Email: info@brighte.com.au  
 Web: brighte.com.au

## ANNEXURE A

For the purposes of this submission, we asked some of our largest accredited vendors questions around customer preference in relation to finance options. Their comments are below.

No	Vendor name	What percent of your customers use cash to pay for their solar purchase?	Since you began offering 0% interest payment plans what percent of your customers have used it for their solar purchase?	What percent of your customers ask you about using a 0% payment plan?	What are the top 2 reasons a customer chooses to use BrightePay to pay for their solar purchase?
1	Vendor A	21-40%	61-80%	61-80%	<i>Can't afford to pay with cash or don't want to pay with cash, 0% interest"</i>
2	Vendor B	1-20%	61-80%	1-20%	<i>Can't afford to pay with cash or don't want to pay with cash, Easy application process; Fast decision about their application, Repayment by instalments</i>
3	Vendor C	21-40%	41-60%	81-100%	<i>Can't afford to pay with cash or don't want to pay with cash, 0% interest, Repayment by instalments, Most customers do not have cash available for a purchase of \$5K-\$8k yet they pay more per week to power companies than the system will cost on payment plan these are struggling families who are hardest hit by high energy prices , with the least amount of cash available other than basics.</i>
4	Vendor D	1-20%	81-100%	1-20%	<i>Can't afford to pay with cash or don't want to pay with cash, Fast decision about their application</i>
5	Vendor E	21-40%	81-100%	61-80%	<i>Easy application process; 0% interest</i>
6	Vendor F	1-20%	81-100%	81-100%	<i>Can't afford to pay with cash or don't want to pay with cash, 0% interest</i>