

30 August 2019



Sent by email to: adjudication@accc.gov.au
[Dear Madam/Sir](#)

Level 2, 789 Toorak Road
Hawthorn East 3123
1300 338 496

Subject: AA1000439 - New Energy Tech Consumer Code – Submission

We refer to the ACCC Draft Determination released on 1 August 2019 (Ref: AA1000439-1) in relation to the application for authorisation lodged by the Clean Energy Council, the Australian Energy Council, the Smart Energy Council and Energy Consumers Australia (together **the Applicants**) on 30 April 2019 (the **Draft Determination**).

Payright appreciates the opportunity to provide the following submissions in response to the Draft Determination and thanks the ACCC for the extension it has provided for Payright to respond.

Payright makes this submission as a provider of Buy Now Pay Later (**BNPL**) finance in relation to new energy products and services (**New Energy Tech**), specifically in the solar sector. Payright is directly affected by the proposal in the New Energy Tech Consumer Code (the **Code**) at section 24 which provides that any payment arrangements offered in connection with New Energy Tech as an alternative to upfront payment be offered through a credit provider licensed under the *National Consumer Credit Protection Act (2009) (Cth)* (**NCCPA**) and that the deferred payment arrangement be regulated by the NCCPA and the National Consumer Code (**NCC**).

A. Executive Summary

Whilst Payright overall supports the intent of the Code in increasing consumer protection, Payright has serious concerns about the proposed requirement in the Code to limit the provision of finance for New Energy Tech products offered by signatories to the Code to licensed credit providers and regulated finance products.

Payright's primary concern is that these proposed requirements would have the result of limiting BNPL lenders from providing affordable, transparent and sought-after finance to consumers who are seeking to purchase New Energy Tech products. It further limits the choice afforded to such consumers to more expensive forms of finance such as personal loans, credit cards and home loans which attract a much higher consumer cost in the form of interest on repayments and in the case of home loans a much longer loan term and underlying security risk. It is also surplus to existing legislative and regulatory requirements which have been reviewed and considered recently by both ASIC and a Senate Economics References Committee, neither of whom determined the need for BNPL lenders or their finance product to be licensed under the NCCPA or NCC.

Payright currently operates under an established exemption from the requirement to be licensed under NCCPA and NCC and this exemption allows Payright to offer an affordable



and sought after BNPL financing to customers seeking to purchase New Energy Tech products, namely solar products, and spread the cost of that finance over an agreed loan term with fixed repayment amounts and fixed low costs capped at \$200 in the first year of the loan and \$125 each year thereafter.

This established exemption allows Payright to provide affordable finance to its consumers. The financial cost of applying for and obtaining a licence under the NCCPA coupled with the ongoing operational and compliance costs associated with maintaining this licence are significant. One of the impacts of incurring these increased operational and compliance costs is that NCC regulated finance products offered by licensed credit providers are provided at substantially higher cost to the consumer when compared to the exempt, fixed fee, BNPL loan products offered by Payright.

In addition, despite being exempt from the requirements of the NCCPA and NCC, Payright is committed providing its customers with many of the consumer protections contained within the NCCPA and NCC, including those referred to in paragraph 4.16 of the Draft Determination. These include:

- providing consumers with clear, fair and not-misleading information about the Payright credit offer;
- limiting the impact of any financial hardship associated with providing Payright finance to consumers who cannot afford to repay through the application of responsible lending assessment criteria; and
- assuring consumers of their ability to take any complaint or dispute about Payright to an external dispute resolution scheme.

Payright currently provides all applicants with clear and transparent disclosure about the credit offer, including the loan amount, loan term, all fees and charges, repayment amount and frequency (inclusive and exclusive of costs) and consequences of failure to repay. This information is provided prior to a loan being provided and is again provided to customers once the loan is settled. Payright also has an established credit assessment and responsible lending practice which assesses consumer's ability to repay and is designed to limit the risk of customers being placed in financial pressure as a result of a Payright loan. Payright is also a financial member of the Australian Financial Complaints Authority (**AFCA**) and as such consumers are entitled (and are informed of this entitlement) to take any complaint to AFCA as a provider of external dispute resolution (**EDR**).

Payright therefore submits that the consumer protection aims of the Code can be achieved with an amendment to the proposed section 24 which removes the requirement for financiers of New Energy Tech products and the finance products themselves to be licensed

and regulated under the NCCPA and NCC. Further, the consumer protection benefits that are said to be delivered by the Code are already present in the current products, services and practices offered by Payright. The very real consequence of the limitation proposed by the current drafting of section 24 is a loss of competition provided by BNPL providers such as Payright who offer an affordable, transparent and sought-after finance to consumers. Consumers will have no option but to seek more expensive forms of regulated credit from regulated credit providers if they wish to finance the cost of a New Energy Tech product. Payright considers that this could create the additional downstream impact of inhibiting the acquisition of these important New Energy Tech products by consumers and removing the opportunity to reduce energy consumption and realise the associated cost saving benefits over time.

B. About Payright

Payright, is a privately-owned Australian Buy Now Pay Later (BNPL) lender, founded in 2016 with the vision of changing the way customers pay for their products and services. Payright provides quick and easy payment plans to customers that are always interest free. Like other BNPL products, Payright payment plans are more affordable for customers than more traditional forms of consumer lending as they spread the cost of purchases over time without ever charging interest.

Payright payment plans are applied for and approved either in-store, with the Merchant on-site or on-line using a Payright portal accessed via the customer's smartphone, tablet or personal computer. Payright charges its Merchants a Merchant Service Fee (MSF) for each transaction which is based on a fixed percentage of the loan amount. Payright also charges customers certain fees and charges such as an account establishment fee when the account is first established and other ongoing fees such as account keeping and payment processing fees. These fees are all clearly disclosed to the consumer by Payright during the application process and before the consumer accepts the loan terms and conditions. Customers are also provided with copies of all loan documentation, including fees and charges after the loan is settled.

Since inception, Payright has attracted a diverse range of merchant industries including home improvement, education, photography, , retail, dental and health & beauty.

Within the broader home improvement sector, the solar installation market is a priority growth segment for Payright. In 2019 alone Payright has attracted and accredited a significant volume of solar merchants through targeted and priority business development activities. This merchant acquisition activity has resulted in a consistent month-on-month volume increases in Payright loan applications and approvals to customers purchasing solar products throughout 2019. The significant growth Payright has experienced in relation to

solar products clearly demonstrates the underlying consumer demand and popularity of NCCPA and NCC exempt BNPL products and is consistent with the broader growth trend noted by ASIC in its Report 600 which stated a five-fold increase in the numbers of consumers using BNPL arrangements between the 2015/16 and 2017/18 financial years.¹

C. Payright Regulatory Requirements

Payright currently operates under a specific exemption in section 6(5) of the NCC. The exemption provides that the NCC does not apply to:

“the provision of credit under a continuing credit contract if the only charge that is or may be made for providing the credit is a periodic or other fixed charge that does not vary according to the amount of credit provided. However the [NCC] applies if the charge is of a nature prescribed by the regulations for the purposes of this subsection or of the charge exceeds the maximum charged (if any) so prescribed.”

Regulation 51 of the *National Consumer Credit Protection Regulations 2010 (Cth) (NCCP Regulations)* prescribe that the maximum charge in relation to a continuing credit contract for the purposes of s6(5) of the NCC is \$200 for the first 12 months of the contract and \$125 for any subsequent 12 months.

This fee cap is reiterated to customers in Payright’s Customer Terms & Conditions which are available on our website.

In compliance with Payright’s operation under this NCC exemption, Payright does not currently hold and is not required to hold an Australian Credit Licence.

ASIC in its Report 600 and the Senate Economics References Committee have both conducted extensive reviews into the BNPL sector. Neither of these reviews resulted in a recommendation to remove the existing exemption and require BNPL products and credit providers to be licensed under the NCCPA.

Like other BNPL lenders, Payright’s products are regulated as financial products under the *Australian Security and Investments Commissions Act 2001 (Cth) (ASIC Act)* which requires Payright to comply with the prohibitions on misleading and deceptive conduct, false and misleading statements and representations, unconscionable conduct, unfair contracts, bait advertising, referral selling and harassment. These provisions in the ASIC Act ensure that the interests of consumers are protected in the provision of BNPL finance

¹ ASIC Report 600 released on 28 November 2018 stated “ 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.”

In addition to the consumer protections provided in the ASIC Act, with the passing of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Cth), Payright must also comply with ASIC's new design and distribution obligations when they take effect in April 2021. These obligations will require Payright to determine the consumer target market for its product and take reasonable steps to distribute its products consistently with this determination. These obligations strengthen the regulatory framework in which BNPL providers such as Payright operate to further mitigate the risk of consumer detriment.

ASIC's new product intervention power also currently applies to Payright and the BNPL sector such that ASIC has the authority to act swiftly and effectively to address any instances of perceived or actual consumer detriment resulting from the provision of BNPL finance to consumers.

Payright is also subject to certain provisions relating to linked credit providers contained in Schedule 2 to the *Consumer and Competition Act 2010* (Cth) in the Australian Consumer Law (**ACL**).²

Payright is a financial member of the Australian Financial Complaints Authority (**AFCA**) and as such all Payright's customers have the option of referring any complaint to AFCA for EDR. In reviewing any complaint AFCA will³ consider the relevant legal principles, applicable industry codes or guidance, good industry practice and previous AFCA or FOS determinations. Accordingly, Payright is committed to ensuring its products, services and practices comply with, not only all applicable legal obligations but also industry codes and guidance and industry practice, with particular focus on customer fairness and transparency in all its dealings with customers.

Payright is also regulated by AUSTRAC as a reporting entity that makes or carries on a loan business and allowing a borrower to conduct transactions in relation to that loan. Payright is required to have a compliant Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) Program and comply with the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (**AML Act**).

Payright is also regulated by the Office of the Information Commissioner (**OAIC**) as an APP entity and to comply with the Australian Privacy Principles and the Privacy Act 1988 (Cth) (**Privacy Act**).

² Schedule 2 to the Competition and Consumer Act 2010 (Cth) – ACL ss 278 – 287.

³ AFCA Complaint Resolution Scheme Rules (1 November 2018 edition), Rule A.14

Considered collectively, the current and future regulatory framework (as described above) that applies to Payright and the BNPL sector is designed with the purpose of and is effective in addressing any real or perceived consumer detriment. Payright submits that the proposed restrictions in the Code are therefore not required or in fact desirable to protect consumers in the context of a demonstrated consumer demand for BNPL financing of solar products.

D. Payright's commitment to appropriate consumer protections

Despite Payright being exempt from the requirement to hold an Australian Credit Licence and comply with the provisions of the NCCPA and NCC, Payright is committed to applying equivalent standards to its current business practices, loan products and disclosure documentation and to providing its customers with appropriate, transparent, clear and timely information about the loan product.

Customers are also informed about Payright's responsible lending practices and the ability to have any complaint heard and responded to professionally and courteously through Internal Dispute Resolution (**IDR**). Customers are always entitled to escalate their complaint to AFCA for External Dispute Resolution (**EDR**).

D.1 Customer disclosure documentation and information about the credit offer

Payright Customer Terms & Conditions have been reviewed by Payright's internal and external lawyers for compliance with applicable laws, including Privacy Act, unfair contract terms, ACL, compliance with the exemption to the NCC and general principles of fairness and transparency.

In addition to the Payright Customer Terms & Conditions, all customers are provided with a breakdown of the loan amount, loan term, and the applicable fees and charges and the regular repayment amounts inclusive and exclusive of costs. This information is provided to customers in the form of a Repayment Schedule and is provided to the consumer during the application process. This information is conveyed to applicants via SMS and email to their nominated phone and email addresses and applicants are asked to accept these before proceeding with the application for finance. Merchants are also obligated under the terms of a Merchant Agreement with Payright and trained by Payright as part of their accreditation process, to explain these key features of the loan to customers and direct the customer to read their SMS and email disclosure documents. Merchants undergo extensive training relating to Payright's products and processes before being accredited with Payright and authorised to introduce customers to Payright for a finance application. Payright monitors Merchants compliance with these obligations and should Payright become aware, through a customer complaint for example, that a particular Merchant has not followed

Payright's procedures, these Merchants are retrained and may have their accreditation revoked until Payright is satisfied that the appropriate procedures are being adhered to by the Merchant.

Once a loan has been approved and activated customers receive a welcome email from Payright which also contains links to the Payright Customer Terms & Conditions and a Credit and Disclosure Statement. This Credit and Disclosure Statement clearly sets out, the name of the credit provider, Payright's contact details, the total loan amount and how this loan amount is calculated, the timing, amount and total number of repayments and repayment frequency, all establishment and ongoing fees and charges and event based fees and charges that may apply such as default fees. Consequences of failing to meet the repayment obligations are also explained, including information for customers who experience unforeseen financial hardship and a link to our Hardship Policy on our website. This Statement also provides customers with AFCA's details should they wish to escalate a complaint to AFCA for EDR.

Payright's website contains Payright's Terms & Conditions, our Privacy Policy, information for customers experiencing Financial Hardship and Responsible Lending statements and these are available [here](#) for further reference.

D.2 Suitable Responsible Lending assessment

It is in both Payright's and its customer's best interests to have an appropriate and transparent responsible lending practice that is clear, fair and not misleading and also closely aligned to the expectations of customers and regulators under the NCC.

As such, Payright aims to ensure that its customers are not placed in undue financial hardship as a result of a Payright loan. Payright assesses its applications for credit carefully and responsibly. We conduct a credit check on each applicant and in addition, request income and affordability information to assess whether the applicant can afford the plan without undue financial pressure. Payright has developed its own proprietary credit assessment matrix and internal underwriting and decisioning scorecard that considers an applicant's capacity to pay (affordability) and stability. Payright's credit score matrix parameters are routinely updated and evolved to adapt to changing market conditions and improved insights into customer behaviour and affordability projections.

Payright's automated credit assessment process applies the above-mentioned credit assessment matrix to the information obtained from the customer at application and from the results of the credit checks and ID verification checks to assess affordability. In the case of larger loan amounts required to purchase solar products which typically range from

\$10,000 - \$20,000 Payright can and may also request bank statements data to verify income and further assess the affordability of the plan for the customer before approving the loan.

Customers also have their ID verified electronically or by the Merchant using documentary ID verification procedures, both to AUSTRAC safe harbour standards. Employed customers are also required to provide employment information to enable Payright to verify income.

Importantly the loan amount is linked to the cost of the purchase from the participating merchant. Typically the loan size is the cost of the goods or service supplied by the merchant, in this case New Energy Tech in the form of solar panel products minus a deposit provided by the customer which ranges from 10% to 50% of the purchase price plus an establishment fee which is a maximum of \$89.90.

Whilst it is impossible for any credit provider to eliminate the risk of their customers experiencing financial hardship during the term of the loan, the very low default and arrears rates of Payright's solar customers suggests the suitability of our responsible lending practices and the affordability of our product for our customers.

In addition to its current practices, Payright is committed to a process of continuous improvement in relation to our responsible lending procedures for the benefit of both consumers and Payright in line with NCC responsible lending considerations, regulatory commentary and best practice.

D.3 Customer access to clear, fair and appropriate internal and external dispute resolution

Payright has recently reviewed its IDR and EDR policies and procedures and its Financial Hardship policy and procedures. Payright's complaint management and hardship policies and procedures align to the requirements of the NCC and the Privacy Act, ASIC Act, *Corporations Act 2001* (Cth) (**Corporations Act**) and the relevant provisions of the ACL.

Payright's complaint and collections procedures also consider ASIC Regulatory Guides, ACCC Debt Collection Guidelines, AFCA terms of reference, operational guides and rules and the Australian and New Zealand Guidelines for complaint management in organisations (**AS/NZS 10002:2014**).

Payright's IDR policy is available on our website and Payright's customers are advised of their right to take their complaint to AFCA as part of the onboarding process through the welcome email and the Credit & Disclosure Statement and whenever a written response to an IDR matter is provided.

E. Payright submissions in relation to the proposed finance arrangements permitted under the Consumer Code

The Consumer Code proposes at section 24 to limit the provision of consumer finance associated with New Energy Tech products to those providers who are regulated under the NCCPA and the NCC as the Applicants contend that consumers have been harmed by taking up unaffordable and unregulated finance from BNPL lenders. As outlined above, Payright does not currently hold an Australian Credit Licence and further is exempt from regulation under the NCCPA and NCC, the proposed requirements at section 24(a) and (b) of the Code will have the effect of limiting Payright's ability to continue to offer affordable finance to consumers seeking to purchase New Energy Tech products such as solar products.

Whilst Payright agrees that the provisions of the NCCPA and NCC contain protections for consumers including the requirement to provide relevant product information disclosures, take appropriate steps to assess a consumer's ability to pay and provide access to external dispute resolution, Payright submits that its current business practices, and indeed the stated aims of the proposed Code in relation to these consumer protection practices can be achieved without the costly compliance costs associated with obtaining and maintaining a credit licence and providing an NCCPA and NCC regulated finance product.

Conversely, the proposed restrictions in the Code have a market limiting effect of excluding BNPL lenders from financing the New Energy Tech products for consumers actively seeking a low cost and affordable alternative to more expensive finance options including high interest personal loans and credit cards or secured home loans.

In addition, as explained above, Payright and the BNPL sector is currently subject to separate and proportionate regulation that provides appropriate consumer protection to our customers without the need for BNPL products and providers to be regulated under the NCCPA and NCC.

By limiting the financiers and finance products under the Code to those licensed under the NCCPA and NCC, this would preclude current and future customers from the benefits of affordable financing for New Energy Tech products, including solar installations currently provided to our growing customer base.

Accordingly Payright submits that the described intent of the Code in relation to improved consumer protection can be achieved without the proposed requirements of paragraphs (a) and (b) of section 24 which ban NCCPA exempt BNPL products. Payright welcomes the opportunity to work with its regulators, including the ACCC, and other BNPL providers to identify and develop alternative means to ensure consumers are sufficiently protected without unfairly prohibiting BNPL products.

E.1 Feasibility and desirability of amendments to the Consumer Code to allow Payright and other BNPL arrangements to be offered.

In response to paragraph 4.21 of the Draft Determination, Payright submits that the aims of the Consumer Code in relation to consumer protection, specifically in relation to information and disclosure, responsible lending and access to EDR can be readily and efficiently achieved without the need for all BNPL lenders and their products to be regulated and licensed under the NCCPA and NCC. As described above Payright currently has clear fair and transparent loan documentation and consumer disclosure, responsible lending assessment practices and provides consumers with ready access to IDR and EDR through AFCA. Payright considers that its current policies, procedures and practices, in addition to the described regulatory framework, provide effective and appropriate consumer protection. Further the significant and prohibitive cost of obtaining and maintaining a credit licence and providing an NCC regulated product specifically for New Energy Tech products are not necessary and disproportionate to address any perceived consumer detriment.

In addition to the existing regulatory framework and Payright's robust information disclosure and consumer service practices, Payright values and is committed to the practice continuous improvement. We welcome the opportunity to further evolve and improve our processes, procedures and documentation to ensure we meet the standard of care expected by our customers and regulators including ASIC and the ACCC. We are aware of initiatives from other BNPL lenders such as Brighte and Flexigroup to adopt a BNPL Code of Conduct and Payright supports the stated objectives and coverage areas of this work.

E.2 Reduced Consumer Choice for Finance Arrangements

As noted in paragraph 4.14 and 4.44 of the Draft Determination, BNPL arrangements are excluded as a financing option for the purchase of New Energy Tech Products and services provided by signatories to the Consumer Code. Like other BNPL providers, Payright would also be prohibited from continuing to provide their finance products to customers of its growing solar merchant base. As stated above, the solar installation market is a priority growth segment for Payright with numbers of solar merchants and customers purchasing solar products using Payright finance steadily and significantly growing throughout 2019. This growth demonstrates the genuine consumer demand and popularity of NCCPA and NCC exempt BNPL products generally and more specifically the BNPL financing of New Energy Tech.

Payright submits that this exclusion would be substantially detrimental to consumers who are increasingly looking to BNPL lenders to provide this type of affordable and alternative means of finance not traditionally offered by large banks and ADIs or other finance providers.

Further, by restricting financing options available to Code subscribers, consumers will be forced to look to these higher cost, high interest charging personal loans and credit cards or draw on equity established against residential property to finance their solar installations.

As sought by the ACCC in paragraph 4.49 of the Draft Determination, Payright considers it both feasible and desirable to amend the provisions of the Code contained in section 24 (a) and (b) to remove the requirement that financiers of New Energy Tech products, specifically solar products, and the finance products themselves, be regulated under the NCCPA and NCC.

By reason of the robust regulatory landscape in which Payright and other BNPL lenders operate and coupled with Payright's current business practices and commitment to continuous improvement to achieve appropriate and consistent consumer protections, Payright considers the existing protections adequate and sufficiently similar to those available to consumers under the NCCPA and NCC.

Payright is pleased to discuss any element of this submission in more detail. Please contact me or Saara Mistry, Payright General Counsel, on [REDACTED] or by email to [REDACTED] should you have any further questions or require any additional information.

Sincerely

Piers Redward



Joint CEO and Co Founder

