



Australian Finance Industry Association Limited
ABN 13 000 493 907
L11 130 Pitt Street Sydney NSW 2000
02 9231 5877 www.afia.asn.au

Kaitlin Hanrahan
Senior Analyst
Adjudication, Merger and Authorisation Review
Australian Competition & Consumer Commission

26 September 2019

By email: [REDACTED]
cc [REDACTED]

Dear Ms Hanrahan

New Energy Tech Consumer Code (NETCC) – Draft Determination

The Australian Finance Industry Association [AFIA] appreciated the extension provided to enable us to lodge this additional submission on the application for ACCC authorisation of the New Energy Tech Consumer Code [NETC Code].

The key issue for AFIA remains draft Clause 24 – Finance - relating to finance options available to consumers to acquire the new energy tech supplied by the Code-signatories.

We believe that the clause should reflect a balance between addressing identified consumer risk in a way that enables a competitive market with flow on benefits for consumers in finance product choice. As presently drafted, Clause 24 does not achieve this balance and as a result would:

- Prevent customers from choosing the product that they think is the most effective, convenient and appropriate for their situation;
- Reduce innovation in deferred payment products; and
- Reduce competition

For this reason, AFIA proposes an alternate revision of Clause 24 designed to achieve the balance with the flow on benefits to the consumers.

The industry insights provided builds from our original submission (dated 29 August 2019).

Applicants Clause 24 Proposed Revision

For ease of reference we have extracted below the revision proposed to Clause 24 proposed by the Applicants in their letter to the ACCC (dated 6 September 2019): ...

b) the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC") or complies with a regulator-approved Code of Conduct or industry code that delivers substantively equivalent consumer protections to those contained in the NCCPA.

AFIA Response

AFIA acknowledges the attempt by the Applicants to enable consumers to benefit from a market where alternate finance options, including buy now pay later [BNPL], could be available to acquire new energy tech as an alternate to cash.

However, AFIA submits that the revision would result in a compliance obligation that imposes a much higher compliance obligation on BNPL providers that is not proportionate to the consumer risk identified by the Applicants in the 6 September letter.

Consequently, the public interest from a competitive market sought to be achieved is significantly devalued, if not removed, by a solution that is not proportionate to the risk sought to be addressed with the flow-ons for consumers of either higher price or lack of availability.

The key issue is the obligation for 'regulator-approval' of a BNPL Code. We understand the intention is for ASIC to be the regulator from which approval would need to be sought.

AFIA Clause 24 Proposed Revision

We propose that clause b be amended as follows:

b) the deferred payment arrangement is:

- i) regulated by the NCCPA and the National Consumer Credit Code ("NCC"); or
- ii) offered by a credit provider, whether licensed under the NCCPA or not, that subscribes to and maintains continuing compliance with a relevant Code of Conduct or industry code that delivers substantively equivalent consumer protections to those contained in the NCCPA relating to an up-front assessment of the consumer's financial circumstances, dispute resolution and financial hardship management.

We have suggested some additional minor changes to clause 24 – Annexure 1 provides the full amended clause

Public Interest Benefit Analysis to Support AFIA Revision

As noted in earlier emails – the development of the proposed industry BNPL Code is following ASIC's RG183. For example, key to this is a commitment by AFIA and its BNPL members is a Code that will be supported by a robust governance framework and independent oversight.

ASIC as a key external stakeholder will be consulted through its development.

The Consumer Advocates (including CALC and the Financial Rights Legal Centre) are another set of key external stakeholders that will also be consulted and, in addition to ASIC's RG183, this consultation will also take into account the consumer advocate expectations regarding review of codes: <http://consumersfederation.org.au/wp-content/uploads/2018/05/Guidelines-Codes-EDR-Schemes.pdf> .

The objective is to enable these key external stakeholders to provide insights to shape the final form of the BNPL Code and the Code to be finalised and implemented at the earliest opportunity with the flow-on benefits to consumers.

Given the time/resources involved with the review by ASIC of the ABA Banking Code of Practice that saw finalisation and implementation delayed, our intention, at this time, is to have a BNPL Code finalised in a way that meets ASIC's expectations as detailed in RG183 and implemented at the earliest time for the benefit of customers rather than potentially delay to seek ASIC approval of the Code.

As a consequence, our suggested revision proposes removal of the concept of a regulator-approved Code on the basis that the proposed revision (and taking into account the proposed consultation process to support the BNPL Code development) will achieve the consumer protection objective sought (as referred to in the letter of 6 September) at the earliest opportunity minimising delay with the flow-on benefits to consumers.

Conclusion + Next steps

AFIA Members' are committed to working with the ACCC on its authorisation decision for the NETCC as currently drafted and we would welcome the opportunity to discuss the contents of this submission further.

If you have any questions, please contact me at [REDACTED] or Karl Turner, Executive Director, Policy and Risk Management at [REDACTED] or both via [REDACTED]

Kind regards

A large grey rectangular box redacting the signature of Helen Gordon.

Helen Gordon
Chief Executive Officer

Annexure 1

Proposed revised Clause 24 in full

We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 2.m)), we will ensure that:

- a) this payment arrangement is offered through a credit provider (whether ourselves or a third party) licenced under the National Consumer Credit Protection Act 2009 (Cth) ("NCCPA") and the deferred payment arrangement is regulated by the NCCPA and the National Credit Code ("NCC"); or
- b) the payment arrangement is offered by a credit provider, whether licensed under the NCCPA or not, that subscribes to and maintains continuing compliance with a relevant Code of Conduct or an industry code that delivers substantively equivalent consumer protections to those contained in the NCCPA relating to an up-front assessment of the consumer's financial circumstances, dispute resolution and financial hardship management.
- c) the term of the deferred payment arrangement or lease is no longer than the expected life of the product or system
- d) ensure that you receive the following clear and accurate information:
 - i. the name of the credit provider to whom you will be contracted for the arrangement
 - ii. a clear statement that the deferred payment arrangement is a voluntary finance option
 - iii. the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
 - iv. the disclosures required under the NCC if the deferred payment arrangement is regulated by the NCCPA and other clear and transparent information, including in relation to fees and charges
 - v. whether at the conclusion of the deferred payment arrangement
 - you own any elements of the New Energy Tech or
 - you have any entitlement to any ongoing services or pricing and/or
 - you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs and
 - vi. a statement that questions and complaints about the payment arrangement should be directed to the credit provider with whom you will be contracted and that if a complaint cannot be resolved with the credit provider you may take your complaint to the Australian Financial Complaints Authority for resolution.