

**NOTICE OF LODGMENT**  
**AUSTRALIAN COMPETITION TRIBUNAL**

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

**Lodgment and Details**

Document Lodged: Second Statement of Taras Mysak

File Number: ACT1 of 2019

File Title: Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

DEPUTY REGISTRAR

Dated: 20/05/2020 10:51 PM

**Important information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT1 of 2019

Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

**FLEXIGROUP LIMITED**

Applicant

### **SECOND STATEMENT OF TARAS MYSAK**

1. I prepared a statement in these proceedings which I signed on 24 April 2020 (**First Statement**). This statement is supplementary to my First Statement.
2. Exhibited to me at the time of signing this statement and marked '**Exhibit TM-3**' is a bundle of documents and a further bundle of documents marked '**Confidential Exhibit TM-4**' which contain information that is commercially sensitive and confidential to flexigroup. Each of those documents is numbered with a unique document ID. When I refer to a document in this statement, I set out the document's name and document ID, and the document hyperlinked to **Exhibit TM-3** or **Confidential Exhibit TM-4**.

#### **Paragraph 35 of my First Statement**

3. In paragraph 35 of my First Statement I estimated that humm has financed approximately 9% of all solar installations in Australia since 1 January 2010. I calculated that percentage figure using the following figures:
  - (a) a figure of 210,000 for the number of all solar installations financed by humm in Australia. I sourced this figure from flexigroup's internal records of solar installations from 1 January 2010, being the period in which flexigroup has offered the product called humm for solar products.
  - (b) a figure of 2.3 million solar installations in Australia since 1 January 2010. I sourced this figure from the Clean Energy Regulator's website (<http://www.cleanenergyregulator.gov.au/RET/Forms-and->

[resources/Postcode-data-for-small-scale-installations#Installation-numbers-for-smallscale-systems-by-stateterritory](#)) which contains figures for small scale installations by installation year for solar PV panel systems for each calendar year since 2001. A copy of the relevant Clean Energy Regulator webpage containing this data which I reviewed for the purposes of preparing my First Statement appears at **Tab 1 of Exhibit TM-3 [FXL.001.006.0039]**.

#### **Paragraph 50 of my First Statement**

4. In paragraph 50 of my First Statement, I described flexigroup's Merchant Compliance Action Process which is the process used by flexigroup to investigate a dispute or complaint that involves a merchant, and the process under which a merchant's contract with flexigroup may be suspended and/or terminated.
5. **Tab 1 of Confidential Exhibit TM-4 [FXL.001.006.0104]** sets out the following information in connection with merchants that sold NET products using humm and were suspended or terminated by flexigroup in the period between 1 May 2018 and 30 April 2020:
  - (a) the date and the nature of the complaint(s) which led to the suspension or termination;
  - (b) whether the merchant's contract with flexigroup was suspended, terminated or both; and
  - (c) the date of any suspension or termination.
6. Examples of flexigroup's correspondence with several of those merchants appears at **Tab 2 of Confidential Exhibit TM-4 [FXL.001.006.0042], [FXL.001.006.0043], [FXL.001.006.0045], [FXL.001.006.0047], [FXL.001.006.0048], [FXL.001.006.0050], [FXL.001.006.0052], [FXL.001.006.0055], [FXL.001.006.0058], [FXL.001.006.0061], [FXL.001.006.0063], [FXL.001.006.0066], [FXL.001.006.0069], [FXL.001.006.0071], [FXL.001.006.0074], [FXL.001.006.0077], [FXL.001.006.0079], [FXL.001.006.0081], [FXL.001.006.0083], [FXL.001.006.0085], [FXL.001.006.0088], [FXL.001.006.0090], [FXL.001.006.0092], [FXL.001.006.0096], [FXL.001.006.0098], [FXL.001.006.0100], [FXL.001.006.0102] and [FXL.001.006.0103]**. Due to changes in systems and record-keeping processes over time, as well as difficulties accessing the files of staff who have left flexigroup, flexigroup is unable to produce further records of relevant correspondence with those merchants at this time.

7. A total of 370 merchants were able to offer the humm service in the solar industry in the period 1 April 2019 to 31 March 2020. 20 of those merchants were suspended and/or terminated in that period. These merchants form part of the greater than 10,000 unique store locations that were able to offer the humm service in that period.

#### **Paragraph 55 of my First Statement**

8. In paragraph 55 of my First Statement I described the role of unsolicited sales within the solar industry, and that door-to-door sales was a very minor component of all sales that flexigroup sees within the solar industry with humm. By door to door sales I mean sales where the merchant used door knocking as the first point of contact.
9. Since my First Statement, at my request members of flexigroup's sales and merchant service team telephoned flexigroup's largest solar industry merchants and asked each of those merchants a number of questions including if they undertook door to-door sales as the first point of contact for lead generation in 2019 in the connection with the sale of solar products, and if so, the percentage of sales of solar products that were made by way of door to door sales. Based on those responses, as I am informed by members of flexigroup's sales and merchant service team, I estimate that 7 out of the top 10 merchants who sell solar products using humm do not engage in or have less than 5% of total sales initiated by door-to-door sales.
10. flexigroup described the role of door-to-door sales in its submission to the Senate Inquiry into credit and financial services targeted at Australians at risk of financial hardship. A copy of the submission that flexigroup made to the Senate Inquiry dated 8 February 2019 appears at **Tab 2 of Exhibit TM-3 [FXL.001.006.0029]**.

#### **Paragraph 68 of my First Statement**

11. In paragraph 68 of my First Statement I noted that AFIA originally proposed that the BNPL Industry Code would become operation by 1 July 2020. On 18 May 2020 AFIA published a media release providing an update on the BNPL Code of Practice public consultation process. A copy of the AFIA media release is appears at **Tab 3 of Exhibit TM-3 [FXL.001.006.0035]**. I understand from that media release that AFIA has now completed its public consultation process and now intends to launch the BNPL Code on 1 January 2021. flexigroup remains committed to supporting the BNPL Industry Code, and will be a signatory to the Code when it is launched.

12. AFIA has indicated to flexigroup that ASIC has deferred any feedback on the AFIA BNPL Code but remain a key stakeholder. A copy of the email where AFIA indicated ASIC's position to flexigroup appears at **Tab 3 of Confidential Exhibit TM-4 [FXL.001.006.0037]**.
13. I have read the Draft AFIA BNPL Code and AFIA's Draft Terms of Reference for the Code Compliance Committee for Buy Now Pay Later Providers (**AFIA CCC Terms of Reference**). The Draft AFIA BNPL Code appeared at **Tab 12 of Exhibit TM-1 [FXL.001.002.0066]** to my First Statement dated 24 April 2020. The Draft AFIA CCC Terms of Reference appear at **Tab 4 of Exhibit TM-3 [FXL.001.006.0001]**.
14. As I understand the AFIA BNPL Code and AFIA CCC Terms of Reference, they require signatories to put in place the following measures to protect the interests of consumers using BNPL finance arrangements to purchase NET:
  - (a) Assess customers to ensure their products or services will be suitable for them prior to providing it. As part of this assessment signatories will be required to take into account customers' characteristics based on the common aspects of their objectives, their financial situation and needs, and have processes in place to identify customers who may have a higher likelihood of vulnerability;
  - (b) Use the information provided to them and only provide their products or services to customers who they assess have the ability to pay for the product or service over time;
  - (c) Provide customers with access to internal complaints handling, so complaints are resolved quickly and fairly, and if they cannot be resolved, can be taken to the Australian Financial Complaints Authority;
  - (d) Ensure there are safeguards so their products and services remain suitable for customers including by capping fees and keeping them fair, adjusting consumer's future spending limits based on their repayment history, proactively providing Financial Hardship assistance, and not providing any additional products or services, or increase the amount of current services, to customers in arrears.

## Reply to Consumer Action Law Centre

15. I have read the following paragraphs of the following statements filed by the Consumer Action Law Centre:
- (a) paragraphs 8 to 19 of the Affidavit of Jane Foley dated 29 April 2020, in relation to Massive Solar Pty Limited and Green Power Gen;
  - (b) paragraphs 16 to 27 of the Affidavit of Sue Ann-Thompson dated 1 May 2020, in relation to the case of Ms Stephens;
  - (c) the following paragraphs the Affidavit of Elisa Jane Bolzonello dated 4 May 2020:
    - (i) paragraphs 11 to 30, in relation to the merchant Fair Value Solar (Vic);
    - (ii) paragraphs 51 to 67, in relation to the merchant Sunboost Solar (NSW);
    - (iii) paragraphs 82 to 90, in relation to the merchant Solar Secure (NSW);
    - (iv) paragraphs 91 to 100, in relation to Arse Solar (QLD);
    - (v) paragraphs 101 to 121, in relation to Instyle Solar (QLD);
  - (d) paragraphs 76 to 86 of the Affidavit of Katherine Eliza Louise Ross dated 4 May 2020, in relation to Hello Solar (QLD); and
  - (e) paragraphs 12 to 59 of the Affidavit of Karl Roland Shami dated 5 May 2020, in relation to SunEnergy.
16. At my request members of flexigroup's legal and compliance team have reviewed flexigroup's records of its relationship with each of the merchants identified above, to ascertain whether flexigroup has any record of non-compliance with humm's policies listed at paragraph 22 of my First Statement and the Retailer Agreement I referred to in paragraph 18 of my First Statement. A summary of the results of these inquiries of flexigroup's records prepared by a member of flexigroup's legal and compliance team appears at **Tab 4 of Confidential Exhibit TM-4 [FXL.001.006.0123]**.

### Reply to paragraphs 8 to 19 of Ms Foley's Statement

17. I have read the statement of Jane Foley of Financial Rights Legal Centre (**FRCL**) dated 29 April 2020.
18. Paragraphs 8 to 19 of the Statement describe the conduct of a sales representative of Massive Solar Pty Ltd (the **Representative**) in attending a home.
19. The conduct of the Representative of Massive Solar Pty Ltd described in paragraphs 8 to 19 of Ms Foley's statement does not accord with the policies and guidelines for merchants set by flexigroup. I understand flexigroup suspended and then subsequently terminated each of Massive Solar Pty Ltd and Green Power Gen as a flexigroup merchant.

### Reply to paragraphs 16 to 27 of Ms Thompson's statement

20. I have read paragraphs 16 to 27 of the Statement of Sue Ann-Thompson dated 1 May 2020. Those paragraphs describe:
  - (a) the offer of settlement made by Certegy Ezi-Pay Pty Ltd (**Certegy**) in relation to Ms Stephens' dispute with Green Power Gen and Certegy on 7 December 2018;
  - (b) the counteroffer made by Ms Stephens on 13 December 2018;
  - (c) Certegy acceptance of the counteroffer on 30 January 2019; and
  - (d) Certegy's payment of \$143.60 to Ms Stephens on or about 1 April 2019.
21. I am informed, by Tim Graham, General Counsel, Legal Operational Risk & Compliance of flexigroup, that the length of time it took for Ms Stephens to be paid her refund was longer than the amount of time it ordinarily takes flexigroup to pay an amount to a customer to pay a refund. At this time the finance function within flexigroup was transitioning from its legacy site by site approach to a group-based approach based in Sydney. During the period of the transition challenges were identified in ensuring that all administrative and processing tasks were appropriately resourced. The payment of the refund to Ms Stephens is one. In this instance, the delay was due to administrative issues associated with processing the refund amount of \$143.40. As a result, flexigroup created new roles and added duties to existing roles with specific responsibilities to perform these operational tasks, to ensure this issue does not re-occur.

**Reply to paragraphs 91 to 121 and paragraph 145(b) of Ms Bolzonello's statement**

22. Paragraph 91 to 100 describes a call with Arise Solar. Arise Solar are a merchant of flexigroup. At paragraph 98 of the statement Ms Bolzonello states "I asked [the sales representative] whether there were finance options to pay for the solar panels. [The sales representative] provided me the following information, after I further enquired about (i) whether the finance options included interest and (ii) how much the fees were: ... (f) "I should easily be able to obtain finance if I earn or receive some sort of income even [if] it is a pension." As I said in paragraph 30 of my First Statement, humm's standard lending criteria set out in the humm Credit Contract is that the customer is in full time employment, or in permanent part time employment for more than 25 hours/week, or on age or veteran's pensions and merchants are trained to check that the customer meets the criteria.
23. Paragraphs 101 to 121 of Ms Bolzonello's statement describe an interaction with a representative of Instyle Solar. Instyle Solar has been a flexigroup merchant since 5 August 2014. Instyle Solar has financed over \$16 million in sales of solar products in the past 12 months and over \$20 million in sales of solar products over the 12 months prior. flexigroup does not have any records of any material non-compliance by Instyle Solar with flexigroup's contract terms as outlined in an example humm Retailer Agreement for solar merchants which appears at **Tab 4 of Exhibit TM-1 at [FXL.001.002.0267]** of my First Statement. flexigroup's compliance register records for it's solar merchants for the period between 1 May 2018 and 30 April 2020 appear at **Tab 1 of Confidential Exhibit TM-4 at [FXL.001.006.0104]**.
24. Paragraph 145(b) of Ms Bolzonello's statement notes that the Solar Gain representative stated that Solar Gain used to use "Certegey Finance" but that the total price to the consumer was more expensive so they stopped providing this option.
25. Paragraph 42 of my First Statement states that flexigroup's contracts with merchants provide that the merchant must not on charge to the customer the merchant service fees the merchant pays to flexigroup.



26. Additionally, clause 2.1 of the humm Retailer Agreement for solar merchants states:

*"2.1 You must not:*

*a) set or charge a Purchase Price for goods and/or services using a Payment Plan Product that is higher than the price that would be, or is charged, if another payment method was used;*

*b) give or offer a discount or rebate because a Customer does not use the Payment Plan Product to pay for goods and/or services; and*

*c) charge fees for using a Payment Plan Product to pay for goods and/or services"*

27. A copy of an example humm Retailer Agreement for solar merchants appears at **Tab 4 of Exhibit TM-1 at [FXL.001.002.0267]** of my First Statement.

**Reply to paragraphs 12 to 59 of Mr Shami's statement**

28. I have read paragraphs 12 to 59 of the statement of Karl Roland Shami of Maurice Blackburn dated 5 May 2020. The statement provides a summary of information provided by different solar panel providers in the course of telephone calls and email correspondence with Mr Shami who was purporting to express interest in purchasing a solar system.

29. Paragraph 42 of my First Statement states that flexigroup's contracts with merchants provide that the merchant must not on charge to the customer the merchant service fees the merchant pays to flexigroup.

30. The example humm Retailer Agreement for solar merchants which I refer to above states:

*"2.1 You must not:*

*a) set or charge a Purchase Price for goods and/or services using a Payment Plan Product that is higher than the price that would be, or is charged, if another payment method was used;*

*b) give or offer a discount or rebate because a Customer does not use the Payment Plan Product to pay for goods and/or services; and*

**IN THE AUSTRALIAN COMPETITION TRIBUNAL**

**FLEXIGROUP LIMITED**

**ACT 1 of 2019**

Re: Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

**EXHIBIT CERTIFICATE**

This is the exhibit marked "**Exhibit TM-3**" to the second statement of **Taras Mysak** dated **20 May 2020**.

**Exhibit TM-3**

Filed on behalf of flexigroup Limited  
Prepared by Kirsten Webb  
Clayton Utz

Tel (02) 9353 4609

Email [kwebb@claytonutz.com](mailto:kwebb@claytonutz.com)

**Address for service** 1 Bligh Street  
Sydney NSW 2000  
Australia

Fax (02) 8220 6700

Ref 608/80206357

*c) charge fees for using a Payment Plan Product to pay for goods and/or services"*

31. flexigroup has suspended and/or terminated 7 merchants in the period since 1 May 2018 to 30 April 2020 for seeking to pass the merchant service fee on to a customer as set out in **Tab 1 of Confidential Exhibit TM-4 [FXL.001.006.0104]**.

**Reply to paragraph 21 of Mr Foggo's statement**

32. I have read paragraph 21 of the statement of Daniel Robert Foggo of RateSetter dated 8 May 2020 (**Mr Foggo's statement**).
33. In paragraph 21 of Mr Foggo's statement he says that he has never received feedback from a NET Supplier to the effect that the supplier's ability to sell NET products is limited by the time required to obtain RateSetter's conditional approval for its green loans, or by uncertainty about the amount of repayments before conditional approval is granted.
34. In the telephone calls referred to in paragraph 9 members of flexigroup's sales and merchant service team also asked each merchant how the merchant thought the merchant's customers would react if they had to provide information supporting income and expenses whether electronic or in paper when applying for humm finance. I am informed by members of flexigroup's service team and believe that the majority of those merchants stated that sales would be likely to drop, with an estimated drop in sales of solar products ranging from 10% to 50%.



Dated: 20 May 2020

Signed:  Taras Mysak

---

**Exhibit TM-3: Index****RE: ACT 1 of 2019 - Application by flexigroup Limited**

<b>Tab</b>	<b>Document Description</b>	<b>Document ID</b>
1.	Clean Energy Regulator webpage containing source data	<a href="#">FXL.001.006.0039</a>
2.	flexigroup submission to Senate Committee, 8 February 2019	<a href="#">FXL.001.006.0029</a>
3.	AFIA media release re BNPL Code, 18 May 2020	<a href="#">FXL.001.006.0035</a>
4.	Draft AFIA Terms of Reference for the Code Compliance Committee for Buy Now Pay Later Providers	<a href="#">FXL.001.006.0001</a>



# **AFIA**

## **TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE**

### **FOR BUY NOW PAY LATER PROVIDERS**

**AFIA BUY NOW PAY LATER PROVIDERS GROUP**

---

**AUSTRALIAN FINANCE INDUSTRY ASSOCIATION**



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### 1. INTRODUCTION

#### Establishment

- 1.1 The Code Compliance Committee (**CCC**) is a committee of the Board established under the provisions of the Constitution.

#### Review

- 1.2 These Terms of Reference will be subject to review by the Board at any time.

### 2. DEFINITIONS AND INTERPRETATION

#### Definitions

- 2.1 Unless the context indicates or requires otherwise:

**AFIA** means Australian Finance Industry Association Limited ACN 000 493 907 (including any Division) and includes any Subsidiary it might have from time to time.

**Administrator** has the meaning given to that term in clause 7.2.

**Alleged Breach** has the meaning given to that term in clause 10.1.

**Board** means the board of Directors of AFIA from time to time, acting as a board.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the place where the relevant act is to be performed.

**By-Laws** means a Protocol approved by the Board and setting out details for the operation and administration of an AFIA Group/Committee.

**Chief Executive Officer** means the chief executive officer of AFIA from time to time.

**Code** means a Code of Practice, Code of Lending Practice or Code of Conduct applicable to AFIA, a Division or a Group which has been approved by the Board and for which the CCC has been given administrative and compliance responsibility.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

**Code Compliant Member** has the meaning given to that term in the relevant Code.

**Confidential Information** has the meaning given to that term in clause 11.1.

**Constitution** means the constitution of AFIA, as amended from time to time.

**Division** means a designated division of AFIA.

**Group** means a designated division of a Division.

**Member** means a member of AFIA.

**Protocol** has the same meaning as in the Constitution and in this context refers to the Rules, By-Laws or other document dealing with the structure or administration of a Division, Group/Committee or other subdivision of AFIA.

**Rules** means a Protocol approved by the Board and setting out details for the operation and administration of an AFIA Division.

**Sanction** means a sanction or requirement authorised to be imposed by the relevant Code or other relevant Protocol.

Terms used in these Terms of Reference which are not defined in it but which are defined in the Constitution will have the same meaning as there defined.

Terms used in these Terms of Reference which are not defined in the Constitution but are defined in the *Corporations Act 2001 (Cth)*, will have the same meaning as there defined.

### Interpretation

2.2 Unless the context indicates or requires otherwise, in these Terms of Reference:

- (a) headings are for convenience only and do not affect the interpretation of these Terms of Reference;
- (b) reference to the singular includes the plural and vice versa;
- (c) reference to a person includes a corporation and vice versa;



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (d) reference to a body, a committee or a position of, or in relation to, AFIA, or to an official document relating to AFIA, means that body, committee, position or document from time to time;
- (e) any term which is defined in the descriptions of the parties, the recitals or elsewhere in these Terms of Reference will have that defined meaning;
- (f) where any word or phrase is defined in these Terms of Reference, any other grammatical form of that word or phrase will have a corresponding meaning;
- (g) reference to an annexure or an appendix, or to a part, article or other subdivision, is to an annexure or appendix, or to a part, article or other subdivision, of these Terms of Reference;
- (h) reference to a statute, ordinance, code or other law includes any amendment to it, any replacement of it and any statute, ordinance, code or other law intended to operate in conjunction with it and, in each instance, includes every regulation, rule and other instrument;
- (i) reference to "month" is to a calendar month;
- (j) all monetary amounts are in Australian dollars;
- (k) "including" and similar expressions are not words of limitation; and
- (l) reference to a function includes a reference to a power, authority and duty.

### 3. PURPOSE AND AUTHORITY

#### Purpose

- 3.1 The purpose of the CCC is to be an independent committee, approved by the Board to administer, and enforce compliance by Code Compliant Members with, Codes allocated by the Board to the CCC for such purpose.





## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### Authority

- 3.2 The CCC is authorised to investigate any activities within its Terms of Reference and, in carrying out its administrative, compliance and investigative roles, is authorised to take such actions as are within its powers and to recommend to the Board appropriate further actions.
- 3.3 The CCC will have unrestricted access to relevant records to carry out its task and will have the right to seek such additional information and explanations as (acting reasonably) it considers appropriate in the circumstances.

### Guiding Principles

- 3.4 The CCC will:
- (a) Act in a fair and effective manner with integrity and impartiality;
  - (b) Be transparent and accountable;
  - (c) Communicate with stakeholders and provide findings in the AFIA Annual Review; and
  - (d) Promote the Code and its work.

### Professional Advice

- 3.5 The CCC is authorised to obtain outside legal, financial, industry or other independent professional advice or information at AFIA's expense and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary to carry out its task.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### 4. COMPOSITION OF CCC

#### Number and Structure

- 4.1 The CCC will consist of [three] (3) members (each a **CCC Member**) appointed by the Board. Each CCC Member must be an independent person with relevant experience at a senior level in finance, retail or the community in Australia.
- 4.2 The Chief Executive Officer and the Chairperson of the Board will jointly select one (1) of the CCC Members appointed in accordance with clause 4.1 to be the independent chairperson of the CCC (**CCC Chair**).
- 4.3 In clause 4.1, 'independent' means a person who is not currently, and has not within the previous 12 months:
- (a) been a member of the Board;
  - (b) been an employee or officer of a Code Compliant Member; or
  - (c) worked in the Buy Now Pay Later sector of the financial services industry in Australia.

#### Term

- 4.4 Each CCC Member (including the CCC Chair) will hold office for a three-year term. A person who was, or is currently, a CCC Member is eligible for re-appointment to the CCC.

#### Roles

- 4.5 The CCC Chair will do all things necessary to ensure the duties and responsibilities of the CCC are effectively discharged.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### 5. CCC MEMBERS - TERMINATION AND RESIGNATION

#### Resignation

5.1 A CCC Officer may resign from the office during his/her term by giving the Board at least one months' notice in writing.

#### Termination

5.2 The Board may, at any time, terminate the appointment of a CCC Member:

- (a) immediately by giving the CCC Member notice in writing (with a copy of the notice of termination to the Chief Executive Officer) if the CCC Member acts in a manner which is in breach of his/her obligations as set out in these Terms of Reference or the document appointing him/her; or
- (b) by giving the CCC Member at least seven days' notice in writing (with a copy of the notice of termination to the Chief Executive Officer).

#### Vacation

5.3 The office of a CCC Member will be automatically vacated if he/she becomes:

- (a) a member of the Board;
- (b) an employee or an officer of a Code Compliant Member;
- (c) a bankrupt under the Bankruptcy Act or makes an arrangement or composition with his/her creditors; or
- (d) of unsound mind.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### 6. CASUAL VACANCIES AND ALTERNATE MEMBERS

#### Casual Vacancies

6.1 A person may be appointed by the Board to fill a casual vacancy for a CCC Member.

A person appointed to fill a casual vacancy:

- (a) must satisfy the independence and experience requirements of clause 4.1 as if the appointment was an ordinary appointment for that position; and
- (b) will hold office until the term of casual vacancy ceases or the period during which their predecessor CCC Member would have held office expires, whichever occurs first.

#### Alternate CCC Members

6.2 A CCC Member may nominate an alternate to attend a meeting of the CCC which the CCC Member is unable to attend due to illness, absence from Australia, the existence of a material personal interest or conflict or other significant circumstances, provided that:

- (a) the CCC Member has made reasonable enquiries to satisfy himself/herself that the person he/she proposes to nominate as an alternate does not have a material personal interest or conflict in relation to a matter that is to be considered at the relevant CCC meeting; and
- (b) the CCC Member's nomination of his/her alternate is approved in writing by each of the other CCC Members and the Chief Executive Officer prior to the CCC meeting which the alternate is to attend having regard to, amongst other things, the independence requirements of clause 4.1.

6.3 A person appointed as an alternate may exercise all the powers of their appointer (other than the power to appoint an alternate), and is subject to all the requirements applying to the office of their appointer, at the meeting which they attend at which their appointer is not present.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### 7. FUNCTIONS AND RESPONSIBILITIES

#### Functions

- 7.1 The CCC is responsible for the independent administration and enforcement of each Code and, in doing so, has the following functions and responsibilities:
- (a) consider (and, when applicable, approve) applications by Members which are not Code Compliant Members to become Code Compliant Members;
  - (b) establish and maintain an up-to-date register of Code Compliant Members;
  - (c) receive information and compliance reports from Code Compliant Members, to enable the CCC to monitor and report on each Code Compliant Member's adherence to the relevant Code(s) to standards determined by the CCC from time to time;
  - (d) receive reports of alleged breaches of a Code and, at its discretion, investigate such reports;
  - (e) make determinations in relation to reports of alleged breaches investigated by it;
  - (f) recommend action to remedy a breach, alleged breach or potential breach of a Code, taking into account any measures related to any such breach that have been agreed with, or imposed on, a Code Compliant Member by any Relevant Regulatory Body;
  - (g) oversee and monitor the implementation of any recommendation or any agreed measures imposed by it;
  - (h) impose, at its discretion, Sanctions for a breach of the Code that is not corrected by the Code Compliant Member; and
  - (i) exercise and perform such other acts as may be provided for from time to time in the By-Laws and / or Code, or which are incidental to any of the above functions and responsibilities.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### Administrative Functions

7.2 The CCC may delegate some of its secretarial and administrative functions and responsibilities to a third party (**Administrator**) appointed by the CCC. The CCC must not delegate its power to administer a Code or to impose a Sanction in relation to Code non-compliance.

### Public Statements

7.3 The CCC will make the following information public:

- (a) The contents of its semi-annual reports as outlined in clause 12.2;
- (b) The contents of its annual review as outlined in clause 12;
- (c) Any Alleged Breach that the CCC decide should be reported to the Relevant Regulatory Bodies (as defined in Schedule 1);
- (d) All other matters as authorised by these terms of Reference or otherwise authorised in writing by the Board.

### Duties

7.4 In executing its duties and responsibilities, the CCC will:

- (a) in a timely manner, keep the Board apprised of its activities and of any incidents of which the Board should be aware; and
- (b) recommend to the Board any changes to procedures to improve the operation of any Code.

7.5 The CCC will perform other duties and activities that the Board considers appropriate in the context of these Terms of Reference.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### 8. MEETINGS

#### Frequency

- 8.1 The CCC will meet as frequently as is required to effectively carry out its role and CCC Members will determine, from time to time, how they will discharge their responsibilities and will convene, adjourn or otherwise regulate meetings and proceedings of the CCC. At a minimum, the CCC will meet at least four times in each 12-month period.

#### Convening

- 8.2 Any CCC Member may call a meeting of the CCC.
- 8.3 Except in the case of an urgent meeting, a notice of each meeting, confirming the date, time, venue and agenda, will be forwarded to each member of the CCC at least 10 Business Days prior to the date of the meeting. The notice will include relevant supporting papers for the agenda items to be discussed to enable decisions to be made on an informed basis.

#### Notice

- 8.4 A notice or agenda may be given by mail (electronic or otherwise), in person, or by facsimile transmission to the usual place of business or residence of the CCC Member or at any other address given to the CCC as a place for service of correspondence.

#### Attendance

- 8.5 Only the following people are entitled to attend a CCC meeting:
- (a) a CCC Member or a CCC Member's alternate; and
  - (b) any person invited to attend the meeting by the CCC Chair including any Administrator, a person providing evidence, information or advice in relation to a matter being dealt with by the CCC, a representative of a Code Compliant Member being investigated by the CCC, a representative of a Code Compliant Member or a person providing administrative assistance to the CCC.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

In the case of a representative of a Code Compliant Member attending pursuant to paragraph (b) above, such representative's right to attend will not include any time at which a matter concerning another Code Compliant Member is being considered.

### Quorum

8.6 A quorum for a meeting of the CCC will be three CCC Members (or their alternates) provided that, unless the Board has approved otherwise, there must be at least two CCC Members (and may not be more than one alternate) at any meeting.

### Chair

8.7 The CCC Chair will preside over each meeting of the CCC. In the absence of the CCC Chair, the CCC Members in attendance will elect one of their number to chair that meeting.

### Proceedings

8.8 Proceedings and meetings of the CCC will be held in such manner, and utilising such technology, as the CCC from time to time agrees and which are not inconsistent with these Terms of Reference. In the absence of any resolution to the contrary, the CCC may meet in any manner permitted for meetings of the Board and in accordance with provisions applicable to meetings of the Board.

### Voting

8.9 Each CCC Member has one vote and every question arising at a CCC meeting shall be determined, on a show of hands or as otherwise determined by the CCC Chair, by a simple majority. The CCC Chair does not have a casting vote.





## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### Minutes

8.10 Minutes of proceedings and resolutions of the CCC meeting will be taken and kept by the Administrator and distributed to all CCC Members for approval. Minutes, and the contents of minutes, must be kept confidential and all reasonable steps must be taken by all relevant people to preserve that confidentiality.

### Material Personal Interest

8.11 If a CCC Member has a material personal interest or potential conflict in relation to a matter that is being considered at a CCC meeting, he/she must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless:

- (c) the CCC Member has notified the other CCC Members of their material personal interest or potential conflict; and
- (d) the other CCC Members are satisfied that the material personal interest or potential conflict is not such as to disqualify the CCC Member from voting on the matter; and
- (e) the nature of the material personal interest or potential conflict and the circumstances in which it was disclosed are recorded in the minutes of that meeting; and
- (f) the details of that minute, relevant determination and relevant reports on the matter are made available for inspection on request by any Code Compliant Member affected.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- 8.12 For the avoidance of doubt, a material personal interest or potential conflict for the purposes of clause 8.11 does not arise solely by reason of a CCC Member's previous employment with or holding of office of a Code Compliant Member, or by reason of the CCC Member being a borrower or other customer of a Code Compliant Member or a related body corporate.
- 8.13 The requirements in clause 8.11 have effect in addition to, and not in derogation of, any general law about conflicts of interest or conflicts of duties.

### 9. MONITORING CODE COMPLIANCE

- 9.1 The CCC may for the purposes of monitoring and enforcing compliance with a Code:
- (a) without limiting the generality of any other provision of these Terms of Reference, including clause 3.3, make reasonable requests for a Code Compliant Member to provide the CCC with access to information, documents and systems which the CCC (acting reasonably) considers necessary or appropriate to carry out its functions and responsibilities;
  - (b) seek independent professional legal, accounting, industry or other advice;
  - (c) conduct enquiries on its own initiative and conduct audits of any Code Compliant Member's compliance with a relevant Code provided that any such audit is limited to (as applicable) an issue which relates to a complaint being investigated by the CCC or a specific issue which the CCC (acting reasonably) believes is of sufficient concern to warrant an audit; and



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (d) request each Code Compliant Member to lodge an annual attestation on its compliance with its relevant Code(s) in such form as the CCC may require from time to time but to include a certification by a director of the Code Compliant Member that it complies with the requirements of being a Code Compliant Member, including that its pro forma documents comply with relevant laws and are enforceable, including those dealing with unfair contracts.

9.2 The CCC may for the purpose of monitoring and assessing compliance with the Code, collect the following, but not limited to, data from Code Compliant Members:

- (a) on a quarterly basis, information relating to any Alleged Breach, noting that each Code Compliant Member must act inform the CCC as soon as practical but no later than 10 Business Days if it becomes aware of any matter that is of such significance that it may reasonably bring disrepute to AFIA and / or to the Division and / or to the Group
- (b) on a quarterly basis:
  - (i) confirmation that, on their BNPL product page, it has a reference to the Code and provides a link to the AFIA website; and
  - (ii) examples of how they have been publicising the Code – for example, press / media / conference commentary, third party and staff education collateral.
- (c) The data will be:
  - (i) in a consistent form that is approved by the CCC, following consultation with Code Compliant Members; and
  - (ii) used to conduct an assessment that allows Code Compliant Members to assess their Code compliance, relative to other Code Compliant Members.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (d) The CCC, for each period in which it collects data, will include the outcome of items (a) and (b) as part of its reporting commitments under clause 12.1(a) and (b) and clause 12.2 (a) and (b).

### 10. INVESTIGATING CODE COMPLIANCE AND ALLEGED BREACHES

#### Alleged Breach

- 10.1 The CCC may only commence an investigation of Code compliance:
- (a) in response to an allegation from any person that a Code Compliant Member has, or may have, breached the relevant Code;
  - (b) in response to a referral or report from an external stakeholder that a Code Compliant Member has, or may have, breached the relevant Code; or
  - (c) in response to an allegation raised by an existing Code Compliant Member that a Code Compliant Member may be guilty of conduct which is unbecoming of a member of AFIA and / or the Group or prejudicial to the interests of AFIA and / or the Group or otherwise has failed to comply with its obligations under AFIA's Constitution; or
  - (d) as an outcome of the CCC's monitoring process, if the CCC has reason to suspect that a Code Compliant Member may have breached the relevant Code (including in circumstances where a Code Compliant Member has self-identified a breach or potential breach);
- (each an **Alleged Breach**).



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### Consideration of Alleged Breaches

10.2 The CCC may consider any Alleged Breach except that, subject to clause 10.3, the CCC must not consider an Alleged Breach in any of the following circumstances:

- (a) Where the person complaining of the Alleged Breach (or another person acting on their behalf) is also seeking compensation or other redress for loss or detriment allegedly suffered by them arising from substantially the same facts. In these situations, the Alleged Breach must be referred to the Code Compliant Member's internal dispute resolution and/or external dispute resolution schemes.
- (b) Where an Alleged Breach is also the subject of a dispute under an external dispute resolution or conciliation scheme or the subject of an investigation by any regulatory body. In these situations, the CCC must await the final determination or findings under the relevant dispute resolution or conciliation scheme or of the relevant regulatory body before commencing any investigation. Where this paragraph (b) applies, on completion of the proceedings under the relevant dispute resolution or conciliation scheme, the CCC can consider whether to undertake its own investigation of the Alleged Dispute and, if it does so, whether or not it will have regard to any determination made in relation to such dispute resolution or conciliation scheme.
- (c) To the extent that the Alleged Breach relates to a Code Compliant Member's commercial judgment including in decisions about lending or security. However, the CCC may consider an Alleged Breach where it is alleged that, in exercising its commercial judgment, the Code Compliant Member has breached the Code and / or has acted in a manner which is likely to bring disrepute to AFIA and / or to the Group.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (d) If the CCC thinks there is a more appropriate forum to deal with the Alleged Breach.
- (e) If the CCC considers that the Alleged Breach is frivolous or vexatious.
- (f) If the Alleged Breach is based on substantially the same events and facts as a previous Alleged Breach by the complainant to the CCC, unless there is new information.
- (g) If the events to which the Alleged Breach relates occurred:
  - (i) before the Code Compliant Member to which the Alleged Breach relates became a Code Compliant Member;
  - (ii) in relation to an entity which was not a Code Compliant Member at the time of the events to which the Alleged Breach relates and was subsequently acquired by a Code Compliant Member; or
  - (iii) if the complainant was aware of the events to which the Alleged Breach relates or would have become aware of them if they had used reasonable diligence, more than one year before the complainant first notified the CCC in writing.

This restriction can be waived at the discretion of the CCC if the CCC is unanimously of the opinion that the delay was reasonable in the circumstances and the Code Compliant Member will not be prejudiced by the delay.

### **Investigations at Request of Board**

- 10.3 The CCC may investigate an Alleged Breach if the Board determines that it is in the interests of the industry or the AFIA that a particular Alleged Breach be investigated by the CCC.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### Responding to Alleged Breaches

- 10.4 Where the CCC investigates an Alleged Breach, it may:
- (a) acknowledge the Alleged Breach;
  - (b) assess the Alleged Breach taking into account the outcomes of any internal and external dispute resolution processes and the outcome being sought;
  - (c) plan the investigation, if the Alleged Breach cannot be resolved on first contact, by defining what is to be investigated and considering whether further information is required;
  - (d) as outlined in clause 8.5 (b), ask an appropriate representative of the Code Compliant Member to attend an interview;
  - (e) provide the person who made the allegation with protections as outlined by Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019;
  - (f) require a Code Compliant Member to investigate an Alleged Breach and report back to the CCC (including, where appropriate, with the assistance of external expertise);
  - (g) investigate the Alleged Breach by reaching a fair and independent view on the issues and provide an appropriate remedy, taking into consideration any undertaking by the Code Compliant Member as to action it will take, or has taken in relation to the Alleged Breach; and
  - (h) respond with a clear decision.
- 10.5 Where appropriate, a determination of the CCC may include recommendations for corrective measures to be implemented by the Code Compliant Member including potential remediation or rectification in respect of the Alleged Breach.
- 10.6 Details of the determination on a de-identified basis:



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (a) may be provided all Code Compliant Members to assist them in understanding their Code compliance obligations; and
- (b) will, if relevant, be provided to the person who made the allegation unless the CCC consider it inappropriate in the circumstances to do so.

### Corrective measures

10.7 If it has been determined by the CCC that a Code Compliant Member has breached a Code, the CCC and the relevant Code Compliant Member may agree on any corrective measures and the relevant timeframes for implementing them.

### Sanctions

10.8 The CCC may impose a Sanction on a Code Compliant Member:

- (a) if the Code Compliant Member has failed to implement and comply with agreed corrective measures (or to do so within the agreed timeframe); or
- (b) where (in the opinion of the CCC) the Code Compliant Member fails to reach agreement with the CCC within a reasonable timeframe in regard to appropriate corrective measures or other remediation to be taken by the Code Compliant Member.

10.9 When imposing a Sanction, the CCC may impose or action one of more of the following Sanctions in accordance with the relevant Protocol and relevant Code:

- (a) require the Code Compliant Member to undertake a commercially reasonable rectification process or other related step within a specified timeframe, taking into account any rectification related to the breach agreed with or imposed on the Code Compliant Member by any regulatory body;
- (b) require a Code Compliant Member undertake a compliance review of their remedial actions or remedial action plan;
- (c) issue a formal warning to the Code Compliant Member;





## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (d) require the Code Compliant Member to undertake an additional Code compliance audit at the expense of the Code Compliant Member;
  - (e) publicise notice of the non-compliance on the AFIA website, or in AFIA's Annual Review;
  - (f) report the Alleged Breach to the Relevant Regulatory Bodies (as defined in Schedule 1 of this document, as amended from time to time);
  - (g) suspend or revoke the Code Compliant Member's certification as a Code Compliant Member;
  - (h) require the Code Compliant Member to cease portraying itself as being a Code Compliant Member and to cease using any logo or other symbol which is permitted for use by only relevant Code Compliant Members and / or to remove from its website and from its documents and literature any reference or indication that it is a Code Compliant Member; and
  - (i) recommend to the Board that the Code Compliant Member's Membership of AFIA and / or of one or more Divisions and Groups be reviewed, suspended or terminated.
- 10.10 The power of the CCC to impose a Sanction on a Code Compliant Member cannot be delegated.
- 10.11 Before imposing a Sanction, the CCC will:
- (a) notify the Code Compliant Member in writing (including by electronic means); and
  - (b) provide an opportunity for the Code Compliant Member to respond with any comment within 15 Business Days of receipt of the notice provided under paragraph (a) above.
- 10.12 The CCC will consider any response by the Code Compliant Member before making a final decision on whether or not to impose a Sanction.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

The CCC will notify the Code Compliant Member in writing of its decision regarding any failure to correct a breach of the Code and any Sanctions to be imposed.

- 10.13 AFIA may take such action as the Board considers appropriate, including an application for injunctive relief, to enforce any Sanction, and may recover the costs of any such action from the party against which it takes such action. This clause may be used in the pleadings in any such proceedings.
- 10.14 The CCC is under no obligation to impose a Sanction and, subject to the terms of the relevant Code and any other governing Protocol document, the decision to impose a Sanction is wholly at the discretion of the CCC. However, the CCC recognises the importance of Sanctions in ensuring that customers have confidence in the Code.

### Appeals

- 10.15 An appeal from a decision by the CCC may be made to the Board. In dealing with any such appeal, the Board may delegate this function to an Appeals Committee of such other committee as it considers appropriate in the circumstances. No member of the CCC may be included on any such committee.

## 11. CONFIDENTIAL INFORMATION

- 11.1 For the purpose of these Terms of Reference (including the CCC and its operation) **Confidential Information** means all technical, commercial and other confidential information and materials of a Group Member, consumer or small business and includes any information or material that discloses or relates to:
- (a) a Code Compliant Member's compliance or non-compliance with a Code;
  - (b) an actual or alleged breach of a Code by a Code Compliant Member;



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (c) commercial, financial or legal affairs of a Code Compliant Member including pricing policies, costing information, supplier lists and customer lists;
- (d) legal advice;
- (e) a matter to which an obligation of confidence applies under privacy law; and
- (f) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose attention that information or material otherwise comes, would consider confidential.

### 11.2 Subject to clause 11.3:

- (a) members of the Board and CCC Members must keep confidential all Confidential Information which comes to their attention in regard to CCC issues; and
- (b) a person who attends a CCC meeting or a meeting with a CCC Member must not disclose or use for a purpose other than contemplated by the relevant Code, any Confidential Information supplied to him/her in connection with the conduct of the business of the CCC.

### 11.3 A CCC Member may disclose Confidential Information:

- (a) to another CCC Member or to any person to whom disclosure is reasonably required for the purpose of the CCC exercising its functions or powers;
- (b) to any person to whom disclosure of the Confidential Information is required by law;
- (c) under corresponding obligations of confidence as imposed by this clause to a person retained to provide advice to the CCC;
- (d) for the purpose of imposing a Sanction on a Code Compliant Member in accordance with a Code; or



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (e) with the prior written consent of the Code Compliant Member, subject to privacy law.

### 12. REPORTING BY CCC

12.1 The CCC will prepare a report for the period from the commencement of its operation to 30 June 2021, and annually to 30 June thereafter, for inclusion in AFIA's Annual Review. Each such report should include an outline of the activities of the CCC in the relevant period, including:

- (a) de-identified information, collected under clause 9.2, of any reported or investigated Alleged Breaches and any corrective measures agreed with the relevant Code Compliant Member(s);
- (b) consolidated de-identified analysis of Code compliance by Code Compliant Members for the period of the report as collected under clause 9.2;
- (c) information as to any Sanctions imposed by the CCC (de-identified where appropriate);
- (d) information as to the number of CCC meetings held and the attendance of CCC Members at them;
- (e) any recommendations on Code improvements and industry issues relevant to the operation of any Code arising out of its experiences of Code compliance in the relevant period, including where non-compliance with a Code indicates an industry-wide issue or weakness of a Code;



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

- (f) a statement that the CCC has complied with its Terms of Reference and any binding obligations on it under a Code or other relevant Protocol document and, if there has been any non-compliance, the report must identify that non-compliance and the reasons for it, including any action that may have been instituted by the CCC to ensure that such non-compliance does not occur in the future; and
- (g) any other matters that the CCC considers should be included that are consistent with the functions of the CCC.

12.2 In addition to clause 12.1, the CCC will prepare a 6-monthly report for the period from the commencement of its operation (anticipated to be 31 December 2020). Each such report should include an outline of the activities of the CCC in the relevant period, including:

- (a) de-identified information as to any reported or investigated Alleged Breaches and any corrective measures agreed with the relevant Code Compliant Member(s);
- (b) consolidated de-identified analysis of Code compliance by Code Compliant Members for the period of the report;
- (c) information as to any Sanctions imposed by the CCC (de-identified where appropriate);
- (d) any recommendations on Code improvements and industry issues relevant to the operation of any Code arising out of its experiences of Code compliance in the relevant period, including where non-compliance with a Code indicates an industry-wide issue or weakness of a Code; and
- (e) any other matters that the CCC considers should be included that are consistent with the functions of the CCC.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

12.3 Before determining what data it collects and publishes, the CCC should take into account any industry data already published by any regulator or AFIA to avoid duplication.

### 13. PROMOTION OF THE CODE

13.1 AFIA and the CCC will facilitate promotion of the Code with relevant external stakeholders. This may include Relevant Regulatory Bodies and / or AFIA and / or the CCC, speaking at conferences, seminars and workshops.

### 14. DEVELOPMENT OF POLICIES AND PROCEDURES

#### Development of Policies and Procedures

14.1 The CCC may develop:

- (a) policies and guidelines on the administration and implementation of any Code and its requirements;
- (b) compliance reporting and other forms; and
- (c) operating procedures related to the activities of the CCC, that are consistent with these Terms of Reference, the relevant Code and any other relevant Protocol document.

#### Recommendations of Changes to Codes

14.2 The CCC may recommend to the Board changes to any Code.

#### Recommendations of Changes to Terms of Reference

14.3 The CCC may recommend to the Board changes to these Terms of Reference.



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### Consultation

14.4 The CCC will consult with relevant Code Compliant Members in developing policies, guidelines, reporting forms, operating procedures relating to a Code and recommended changes to a Code. The CCC may also consult with other organisations and individuals with an interest in any Code, as the CCC considers appropriate.

### 15. REPORTING TO AFIA BOARD

The CCC should report to the Board on matters relevant to the CCC's roles and responsibilities.

### 16. SELF-ASSESSMENT

The CCC will periodically assess its own effectiveness, with a view to ensuring that its performance accords with best practice guidelines. The CCC's Terms of Reference will be reviewed and updated as required.

Draft for Consultation



## BUY NOW PAY LATER PROVIDERS – TERMS OF REFERENCE FOR THE CODE COMPLIANCE COMMITTEE

### SCHEDULE 1

#### 1. RELEVANT LEGISLATION

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

*Australian Securities and Investments Commission Act 2001*

*Competition and Consumer Act 2010*

*Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*

*Privacy Act 1988*

*Spam Act 2003*

#### 2. RELEVANT REGULATORY BODIES

Australian Competition and Consumer Commission (ACCC)

Australian Financial Complaints Authority (AFCA)

Australian Prudential Regulatory Authority (APRA)

Australian Securities and Investments Commission (ASIC)

Australian Transaction Reports and Analysis Centre (AUSTRAC)

Office of the Australian Information Commissioner (OAIC)



FlexiGroup Limited  
Level 7, 179 Elizabeth St, Sydney NSW 2000  
Locked Bag 5005, Royal Exchange NSW 1225

Tel. +61-2-8905-2000  
Fax. +61-2-8905-2424

8 February, 2019

Senate Standing Committee on Economics  
Committee Office  
Department of the Senate

Attention: Mr Mark Fitt  
Committee Secretary  
Mark.Fitt@aph.gov.au

Dear Sirs

**Re: Senate Inquiry into credit and financial services targeted at Australians at risk of financial hardship**

We refer to FlexiGroup Limited's ("FlexiGroup") attendance before the Senate Committee in Brisbane on 22 January, 2019 in relation to the above.

FlexiGroup appreciates the opportunity to provide additional written submissions in response to the questions raised by the Committee during our presentation. Where we believe it may be relevant or helpful, we have also provided additional background context and other information within this document.

**1. Additional background to our Certegy Ezi-Pay and Consumer Lease product offerings.**

**CONSUMER LEASING**

FlexiGroup is one of the largest providers of consumer leasing facilities in the Australian market. We have offered a mainstream consumer lease product to our customers for over 20 years through key point of sale relationships including major retailers.

Leasing is ideally suited to products with a high level of obsolescence (for example, technology) where the objective is not to necessarily own the product outright but rather to continually trade up over time. Other than mobile, personal and home technology, the other category particularly exposed to leasing is motor vehicles for the same reason – a consumer desire to preserve optionality to upgrade rather than to own the relevant asset.

The majority of FlexiGroup's leasing customers are "middle Australia". They have above average income, are more likely to have full time jobs and to own credit cards. The average value of the goods we provide finance for is \$2,200 at an average per-monthly commitment of \$124. The average lease term for those goods is 26 months.

FlexiGroup has early adopted many of the Government Panel recommendations on consumer leasing and believes its new "Lisa" product is best practice as a result of early adopting these recommendations, including in relation to price-caps. FlexiGroup has never accessed the Centrepay facility for the purpose of funding customer commitments under its consumer leasing products (or indeed for any of its other product offerings). Further, FlexiGroup has never offered a "rent, try, buy" or "rent to buy" product, which we believe has created a level of confusion in the market between a genuine consumer lease product and loan products where title passes directly to the consumer at inception of the contract.

## **BUY NOW PAY LATER**

FlexiGroup is also one of the largest and probably the oldest provider of Buy Now Pay Later (BNPL) finance in Australia. Although new FinTech players have brought BNPL into the spotlight with fast, online finance approvals, this form of financing has been provided in Australia for decades with great benefits for the budget conscious consumer.

Under a conventional BNPL model, the customer enjoys an interest free loan and the retailer bears the majority of the cost of financing. This form of financing is ideally suited to people who want to own a product outright.

BNPL provides an invaluable alternative for everyday Australians by helping them purchase goods and services they need or want, with no interest, as an alternative to 20% interest rates seen with conventional finance, for example, bank credit cards.

Certegy Ezi-Pay's average customer is 43 years of age, and more than 72% of our customers are aged 35 years or above. Almost half (47.3%) of our BNPL customers are investing in home improvements including solar panels, furniture and renovations.

### **2. Detail of how many solar sellers/vendors have been suspended or terminated by Certegy Ezi-Pay in the last 12 months?**

During the 12 months to 29 January, 2019, Certegy Ezi-Pay suspended 13 solar sellers and terminated its Merchant Agreement with all of those sellers.

In the preceding year between 29 January, 2017 and 29 January, 2018, Certegy Ezi-Pay suspended 24 solar sellers and terminated its Merchant Agreement with 17 of those sellers. Compliance training was also provided to certain solar sellers following identification of compliance issues.

### **3. Additional clarification in relation to the nature of Door-to-Door activities undertaken by Certegy Ezi-Pay accredited sellers, including the relevant legislative regime that governs D2D activities within the Australian market.**

Certegy Ezi-Pay wishes to correct its statement made to the Senate Committee in respect of ceasing to support door-to-door sales activities.

Certegy Ezi-Pay currently estimates that 85% of its solar sellers undertake their sales using unsolicited sales methods. This often includes a two-stage process, generally commencing with an unsolicited outbound telemarketing call, to set an appointment time for the solar seller to attend the prospective customer's home. Subsequently the appointment is usually re-confirmed and then will be followed by an in-home sales consultation. Certegy Ezi-Pay is committed to continue to review solar sales practices and will work proactively with its solar sellers in the future to ensure that sales practices are appropriate, processes are enhanced and improved where possible and are compliant with the law.

It is important to highlight that the *Australian Consumer Law* sets out a comprehensive legislative framework to enable the legitimate and compliant origination of sales through *unsolicited sales practices*, which is defined by the *Australian Consumer Law* as including door-to-door sales, telemarketing and other forms of direct selling. For example, the *Australian Consumer Law* mandates a range of key disclosure obligations for contract documentation, sets minimum obligations for door-to-door salespersons (including clearly explaining the purpose of the visit and the "cooling off" rights available to consumers pursuant to which a consumer may cancel the relevant contract for any reason).

FlexiGroup Limited  
Level 7, 179 Elizabeth St, Sydney NSW 2000  
Locked Bag 5005, Royal Exchange NSW 1225

Tel. +61-2-8905-2000  
Fax. +61-2-8905-2424

Certegy Ezi-Pay has robust internal accreditation processes in place to ensure the ongoing and active monitoring of its seller base (including those sellers that operate through an unsolicited sales origination model). We review the contract of sale terms and conditions of all prospective solar sellers to ensure the disclosure requirements set out in the Australian Consumer Law are complied with (for example: internal formalised accreditation requires the presentation of the document, font size and/or referencing terms meeting set criteria, and accreditation will not be approved if these requirements are not adhered to). These accreditation processes and other related processes are designed to ensure that sellers are compliant with the relevant provisions of the *Australian Consumer Law*, with other applicable laws and with the terms and conditions of Certegy Ezi-Pay's Merchant Agreement. In 2018, Certegy Ezi-Pay provided a tailored guidance document around the *Australian Consumer Law* requirements to some of its new sellers. Where sellers are identified as having contravened the *Australian Consumer Law* they may be required to attend training, attend compliance meetings at our offices and in more serious cases, they may have their ability to offer Certegy Ezi-Pay suspended or terminated.

As the residential solar industry has grown rapidly since approximately 2009, Certegy Ezi-Pay has in response developed increasingly robust controls during its initial merchant accreditation phase and separate controls aimed at ensuring solar merchants comply with their obligations under the *Australian Consumer Law*. For example, Certegy Ezi-Pay has made proactive compliance calls to consumers to enable the identification and resolution of issues consumers may have with:

- Goods (for example, inverters) and services supplied by solar retailers;
- Solar retailer sales practices;
- Solar retailers' contract of sale; and
- Price (including charges) of the good and services.

Where issues have been identified, Certegy Ezi-Pay has generally engaged directly with its merchant to attempt to resolve issues to our customers' satisfaction. This is not merely an aspirational statement and in practice, Certegy Ezi-Pay provided resolutions for 97 consumers (including, for example, releases and refunds) totalling \$412,378.80 during the financial year ending 30 June, 2018 and settled \$292,977.75 of that at its own cost.

In 2016 Certegy Ezi-Pay developed a more targeted approach to compliance within the solar industry and now makes proactive compliance calls in the following more limited circumstances:

- Solar merchants who have shown a low volume transaction history;
- Consumers within a more vulnerable age bracket; and
- Merchants who have presented increased operational, compliance or financial risk.

During the current financial year (numbers accurate as at the date of this document), Certegy Ezi-Pay has provided resolutions for 78 consumers to the value of \$334,936.30 and settled \$310,806.33 of that at its own cost.

**4. What is the occurrence of customer default rates generally across the Certegy Ezi-Pay and Consumer Lease portfolios? Is there any correlation between higher default rates and the total amount advanced by Certegy Ezi-Pay/total amount of the underlying Consumer Lease?**

The significant majority of losses were incurred through customer contracts with a total contract "value" of under \$5,000. In terms of distribution, 85.02% of all Certegy Ezi-Pay contracts which resulted in a loss event and 91.45% of all consumer lease contracts which resulted in a loss event, involved a total contract value of under \$5,000.

FlexiGroup Limited  
Level 7, 179 Elizabeth St, Sydney NSW 2000  
Locked Bag 5005, Royal Exchange NSW 1225

Tel. +61-2-8905-2000  
Fax. +61-2-8905-2424

Conversely, loss rates for contracts with a total contract value between \$10,000 and \$30,000 were nominal, representing only 4.46% of losses for Certegy Ezi-Pay and 0.41% of all consumer lease losses.

On the basis of this additional analysis, in our experience there is no correlation between default rates and higher amounts being advanced by Certegy Ezi-Pay/higher total value of the underlying consumer lease contract. In fact and in simple terms, customer default rates appear to decline steeply for customers who borrow above \$5,000 under both products.

**5. Response to the specific Certegy Ezi-Pay customer case study (“Martin”) which was outlined in correspondence from the Consumer Action Law Centre dated 22 January, 2019 and tabled by the Committee.**

Certegy Ezi-Pay has been in direct contact with the Consumer Action Law Centre since the date of our presentation before the Senate Committee and we have now been provided with more specific information regarding the “Martin” case study.

Please note that the relevant seller involved in this matter has now been suspended following the receipt of further information from CALC and pending further internal review of the complaint. At this early stage in the resolution process we have identified that the consumer “Martin” had previously made a complaint regarding the purchase of solar panels. Following review and negotiation, Certegy Ezi-Pay’s records state “Martin” expressed satisfaction and the complaint was resolved.

Significantly however, Certegy Ezi-Pay’s records relating to the initial customer complaint indicate that the customer did not raise any of the point of sale representations which are outlined in CALC’s letter at the time of the initial complaint, and which may have resulted in a different determination of this matter by Certegy Ezi-Pay.

Without being more specific at this stage (due to the early stage of the resolution process, and without making any admissions), the representations alleged to have been made by the seller would also have been in breach of Certegy Ezi-Pay’s Merchant Agreement terms and conditions.

**Additional Comments:**

FlexiGroup has noted the positive comments made by the Australian Securities and Investments Commission (ASIC) during the 24 January, 2019 Committee Hearing in Canberra, in relation to the improvements made by FlexiGroup to its consumer leasing practices. FlexiGroup certainly appreciates these comments as it believes that it has worked proactively and constructively with ASIC and its approved External Dispute Resolution Scheme (AFCA) to implement a range of operational and other enhancements to its consumer lease offering in recent times. In particular, FlexiGroup has been a very active participant in the Government Panel Review on Small Amount Credit Contracts and Consumer Leases and strongly supports the immediate enactment of the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018, including in relation to price cap protections and “bright-line” affordability measures.

FlexiGroup did however note that in its presentation, ASIC indicated to the Committee that recent improvements that FlexiGroup has made to its consumer lease product had been made under an ASIC Enforceable Undertaking. This comment by ASIC extended to both FlexiGroup and Thorn. FlexiGroup would like to clarify that it has never been subject to an ASIC Enforceable Undertaking in relation to its

FlexiGroup Limited  
Level 7, 179 Elizabeth St, Sydney NSW 2000  
Locked Bag 5005, Royal Exchange NSW 1225

Tel. +61-2-8905-2000  
Fax. +61-2-8905-2424

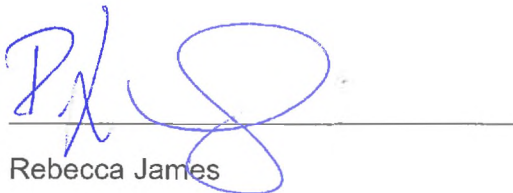
consumer lease product. FlexiGroup has written to ASIC to seek a correction of this statement. FlexiGroup believes that there have been, and continue to be, significant differences between its "Lisa" consumer lease product and other competitive offerings available in market, including the fact that FlexiGroup has never accessed the Centrepay facility to fund consumer lease payments.

FlexiGroup would like to reiterate that it has a demonstrated record of proactive and constructive engagement across its Government, Regulator and Industry relationships and in leading legislative and regulatory change initiatives across a wide range of matters.

FlexiGroup would again like to extend its genuine appreciation for the opportunity to present at the Brisbane Senate Committee Hearing and to provide the additional written submissions included in this document.

Please contact Matt Beaman on (02) 8905 2036; or by email: [matt.beaman@flexigroup.com.au](mailto:matt.beaman@flexigroup.com.au) in the event that you have any further questions or require additional information in relation to this document.

Yours faithfully,



Rebecca James  
Chief Executive Officer  
FlexiGroup Limited





Australian Finance Industry Association Limited

ABN 13 000 493 907

L11, 130 Pitt Street Sydney NSW 2000

T: 02 9231 5877

[www.afia.asn.au](http://www.afia.asn.au)

## MEDIA RELEASE

18 May 2020

### BNPL Code of Practice public consultation closes

The Australian Finance Industry Association (AFIA), has welcomed the comprehensive feedback it has received during the public consultation for the new Buy Now Pay Later (BNPL) Code of Practice. AFIA represents over 100 retail banks, finance companies and fintech lenders, including BNPL providers.

Diane Tate, AFIA CEO said that the world-first BNPL Code of Practice has been developed to strengthen consumer protections for BNPL customers. “BNPL providers are proactively setting a best practice standard in direct response to areas identified as potential risks to consumers, while preserving customer choice to make purchases and payments in a way that suited their needs.”

“AFIA appreciates the time taken by our stakeholders to give us feedback, especially at a time when we are all working hard on managing the many impacts of the COVID-19 crisis,” Ms Tate said.

In particular, Ms Tate highlighted feedback that:

- Applauded the providers for taking a proactive approach to increasing consumer protection
- Agreed that fees should be fair and capped
- Supported the commitment of not offering BNPL to people under age 18, and
- Agreed with the importance of various measures to help customers manage their payments and spending that go above and beyond the law, such as:
  - not providing additional products if a customer is in arrears,
  - stopping collections activity and freezing late fees when considering hardship requests,
  - not initiating bankruptcy proceedings.

Areas of feedback that Ms Tate highlighted would require further work included:

- Identifying what a fair, reasonable, and capped fee might look like – noting competition law obligations and the different BNPL business models limited the degree prescription is possible and workable
- Reviewing the upfront assessments of suitability for a customer without disrupting the simplicity of the product or frustrating customers, and
- Introducing additional actions to support vulnerable customers without imposing restrictions that could inadvertently cause customers to seek alternative and less affordable options or requiring new systems to share customer information that would not be appropriate.

An AFIA industry working group will now review the feedback and plan the next steps of the development and implementation of the new code. This will include codifying existing commitments that BNPL providers have around not permitting the purchase of weapons or gambling services.

“As part of the consultation process it was important for us to give additional time for some of our stakeholders to give us feedback. As a result, we now aim to finalise the code with a view to launching it on 1 January 2021,” Ms Tate said.

“The draft code was developed prior to the COVID-19 crisis, so this is providing real-time experience.

**For more information:** visit our website: <https://www.afia.asn.au> or email [info@afia.asn.au](mailto:info@afia.asn.au)

The crisis has demonstrated how BNPL products and services continue to offer value to customers and retail businesses by providing a simple, low-cost, and technology-based answer to making sure people continue to access the goods and services they need.

“Our BNPL members – Afterpay, Brighte, flexigroup, Klarna, Latitude, OpenPay, Payright and Zip Co – strongly believe that good consumer outcomes are achieved with customer-centric product design, and industry initiatives that go above and beyond the law; and our new code delivers just that.

“Despite the delay in launch date, our BNPL members are bringing forward best practice standards by already introducing many of the commitments in the new code, including having accessible hardship programs, membership of the Australian Financial Complaints Authority, and ensuring that customers do not spend more if they miss a payment,” she said.

AFIA’s BNPL members have committed to additional consumer safeguards that are designed to help customers manage their payments and prevent them from losing control of their spending. The Code requires that BNPL members not provide any additional products or services if a customer is in arrears. Customers do not receive promotional material if they are behind on payments or experiencing financial difficulties. Furthermore, late fees and charges can be waived (including those already applied) while steps are taken to work out a mutually acceptable repayment arrangement.

“Many of our BNPL members have continued to see business growth during the COVID-19 crisis, with the vast majority of customers continuing to use BNPL products and services to manage their payments while they keep their money longer in their bank account.

“Consistent with other consumer products, there was an initial increase in requests from customers asking for hardship assistance because they lost their job or were seeking information because they were concerned their situation would change. Our BNPL members have continued providing fast and compassionate solutions for their customers experiencing a change in their personal and financial circumstances,” Ms Tate said.

Ms Tate said it is important to remember that BNPL providers are already subject to significant regulation, despite the perception otherwise.

“BNPL providers are already required to meet various legal and regulatory obligations; this is often misunderstood. BNPL providers fall under the remit of a range of laws and oversight by regulators including ASIC, ACCC, AUSTRAC, OAIC and the courts.

“BNPL providers must comply with a range of consumer protection laws, including the ASIC Act prohibitions against misleading or deceptive conduct as well as the unfair contract terms provisions. Other laws include the Privacy Act which regulates the handling of BNPL customer personal information including consumer credit reporting information and anti-money laundering laws relating to customer identity.

“ASIC also has a new product intervention power which it could use to take action against a BNPL provider if the product offered is determined to raise risk of consumer harm, while the Design and Distribution Obligations will also apply to BNPL products.”

Ms Tate said due to the different business models in the BNPL market it will take some time to work through the feedback. “AFIA will continue to work with our BNPL members and stakeholders and make sure we stay alert to COVID-19 developments as we finalise the new code this year.”

For media: email [vessa@wilkinsonbutler.com](mailto:vessa@wilkinsonbutler.com) mobile 0477 738 439

**For more information:** visit our website: <https://www.afia.asn.au> or email [info@afia.asn.au](mailto:info@afia.asn.au)





	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2007	-	-	-	-	-	-	-	-	-
2008	-	-	-	-	1	-	-	-	1
2009	-	1	-	-	-	1	2	1	5
2010	-	-	-	1	-	-	2	-	3
2011	-	-	-	-	-	1	-	-	1
2012	-	-	-	-	-	2	-	-	2
2013	-	-	-	-	-	2	-	-	2
2014	-	-	1	-	-	-	-	-	1
2015	-	-	-	-	-	-	-	-	-
2016	-	-	-	-	-	-	-	-	-
2017	-	-	-	-	-	-	-	-	-
2018	-	-	-	-	-	-	-	-	-
2019	-	-	-	-	-	-	-	-	-
2020	-	-	-	-	-	-	-	-	-
Total	-	2	1	2	1	6	5	1	18

## Small generation unit - solar (deemed)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2001	-	12	6	33	41	-	15	11	118
2002	-	23	8	71	107	1	19	22	251
2003	3	134	10	150	246	9	98	14	664
2004	2	235	22	328	300	17	152	33	1089
2005	4	291	35	339	380	13	254	90	1406
2006	10	216	23	195	413	4	200	54	1115
2007	48	779	26	475	1037	25	828	262	3480
2008	278	2890	88	3087	3456	161	2036	2068	14,064
2009	803	14,008	215	18,283	8569	1452	8429	11,157	62,916
2010	2323	69,988	637	48,697	16,705	1889	35,676	22,293	198,208
2011	6860	80,272	401	95,303	63,553	2475	60,214	51,667	360,745
2012	1522	53,961	513	130,252	41,851	6364	66,204	42,653	343,320
2013	2411	33,998	1024	71,197	29,187	7658	33,332	21,600	200,407
2014	1225	37,210	1026	57,748	15,166	4207	40,061	23,496	180,139
2015	1066	33,477	1197	39,507	12,081	2020	31,354	20,797	141,499
2016	1001	29,496	1745	34,422	12,604	2487	26,740	24,199	132,694
2017	1946	43,250	1950	46,448	16,190	2393	31,358	31,404	174,939
2018	3206	59,323	2365	55,085	21,894	2641	47,216	33,108	224,838
2019	3632	75,956	3337	69,712	26,072	2851	60,138	36,398	278,096
2020	680	15,690	520	14,372	5712	618	10,319	8190	56,101
Total	27020	551,209	15,148	685,704	275,564	37,285	454,643	329,516	2,376,089

## Small generation unit - wind (deemed)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2001	-	-	-	6	11	-	1	-	18
2002	-	-	-	7	3	-	1	-	11
2003	-	-	-	-	11	-	1	1	13
2004	-	1	-	5	7	1	3	-	17
2005	-	3	-	2	5	1	-	-	11
2006	-	1	-	1	2	1	1	-	6
2007	-	3	-	7	1	-	-	1	12
2008	-	16	-	5	11	1	6	4	43
2009	-	16	-	6	7	8	10	11	58
2010	-	92	-	1	4	14	11	14	136
2011	-	35	-	-	1	-	5	3	44
2012	-	2	-	2	-	-	-	4	8
2013	-	-	-	-	-	-	3	-	3
2014	-	1	-	-	-	-	10	-	11
2015	-	-	-	-	2	-	10	-	12
2016	-	-	-	-	1	-	9	-	10
2017	-	3	-	1	3	-	3	-	10
2018	-	-	-	-	-	-	-	-	-
2019	-	-	-	-	-	-	1	-	1
2020	-	-	-	-	-	-	-	-	-
Total	-	173	-	43	69	26	75	38	424

## Solar water heater and air source heat pump (deemed)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2001	70	1966	581	4004	667	26	554	2207	10,075
2002	254	4722	957	7697	1886	97	1398	4828	21,839
2003	434	7231	910	8827	3533	168	1475	6075	28,653
2004	516	7870	1144	8927	3022	160	1800	7552	30,991
2005	448	8196	1171	8919	3193	218	2729	9090	33,964
2006	202	7648	1247	9943	2416	139	4728	9601	35,924
2007	453	8765	1414	16,830	2869	350	9157	11,139	50,977
2008	1001	20,203	1236	23,330	5103	906	21,208	12,398	85,385
2009	1974	85,456	1731	36,659	8794	2269	42,120	15,692	194,695
2010	960	38,525	1303	34,262	6812	1433	27,733	16,065	127,093
2011	1038	25,331	1267	30,937	5444	1725	26,446	12,862	105,050
2012	734	10,810	1171	18,973	3473	899	21,594	11,812	69,466
2013	453	9145	884	13,410	2983	827	19,608	10,989	58,299
2014	451	9641	1026	13,433	1930	962	20,613	10,672	58,728
2015	572	8612	1063	11,805	2557	803	23,087	10,205	58,704
2016	677	8611	920	11,442	2281	947	27,702	9438	62,018
2017	705	8970	965	12,024	2617	1034	29,126	8702	64,143
2018	725	8877	987	12,020	2850	1126	32,085	8306	66,976
2019	876	7189	930	10,706	2911	1434	28,514	8405	60,965
2020	251	784	53	1467	526	182	2378	1417	7058
Total	12,794	288,552	20,960	295,615	65,867	15,705	344,055	187,455	1,231,003

## Solar PV systems with concurrent battery storage capacity by year and state/territory

Year	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2014	8	208	3	129	34	5	137	169	693
2015	3	133	1	186	21	6	163	24	537

Year	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2016	105	668	6	331	130	18	240	70	1568
2017	205	1942	18	856	479	93	845	212	4650
2018	308	1876	8	1119	616	164	1362	236	5689
2019	319	1412	22	2677	1618	90	1123	302	7563
2020	51	195	7	144	562	13	141	105	1218
<b>Total</b>	<b>999</b>	<b>6434</b>	<b>65</b>	<b>5442</b>	<b>3460</b>	<b>389</b>	<b>4011</b>	<b>1118</b>	<b>21918</b>

Notes: The above table is based on voluntarily disclosed data for batteries that were installed at the same time as the solar PV system.

Collection of grid-connected installations with disclosed battery data commenced in September 2014.

### Postcode data files

The postcode data files are displayed by month from 2019, with all data aggregated from 2001 to 2018. The [Cracking the small-scale code](#) resource also provides some additional information about small-scale postcode data.

The public register of small-scale technology certificates (STCs) in the [REC Registry](#) allows users to search and view details of small-scale technology certificate creation.

### Download data

#### All data in Excel format

- [Postcode data for small-scale installations - all data](#)
- [State data for battery installations with small-scale systems](#)

#### Raw data in CSV format

- [Postcode data for small-scale installations - SGU-Solar](#)
- [Postcode data for small-scale installations - SGU-Hydro](#)
- [Postcode data for small-scale installations - SGU-Wind](#)
- [Postcode data for small-scale installations - SWH-Air source heat pump](#)
- [Postcode data for small-scale installations - SWH-Solar](#)
- [State data for battery installations with small-scale systems](#)

### Historical data

For monthly breakdowns and aggregated totals for the years 2001 - 2018 see [Historical postcode data files](#).

---