

**January 2023**

Consumer Credit Unit  
Financial System Division  
The Treasury  
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PARKES ACT 2600

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## **SUBMISSION: Regulating Buy Now, Pay Later in Australia**

Brighte Capital Pty Limited (“**Brighte**”, “**we**”) welcomes the opportunity to make a submission to Treasury on the public Options Paper *Regulating Buy Now, Pay Later in Australia* (“**Options Paper**”).

Brighte is a green lender with a mission to make sustainability affordable and accessible to Australian households. Since 2015, Brighte has enabled over 130,000 households make over \$1.6 billion of sustainable investments – lowering energy bills, reducing emissions and supporting clean energy jobs.

Whilst Brighte offers several different finance products, Brighte’s 0% interest payment plan (**Brighte BNPL**) has been offered since inception and is our most popular product.

Compared to traditional retail Buy Now Pay Later (“**BNPL**”) products, Brighte offers a different BNPL product by nature, serving a different segment with different characteristics. On average, Brighte customers are mature aged, predominantly homeowners with high credit scores, who use Brighte BNPL to purchase green energy and expense-reducing products such as solar systems, which can save them around \$1,000 a year on their energy bills. Brighte’s BNPL can only be used for sustainable or comfortable home investments.

This unique combination of customer demographic, the nature and purpose of the product being purchased and Brighte’s internal assessment processes have subsequently delivered very low rates of customer arrears and hardship.

Brighte submits that its BNPL products are providing direct benefits to consumers, enabling them to bring forward the purchase of expense reducing purchases to save on their energy bills - at a time when energy price rises are severely impacting household budgets. These installations, supported by Brighte BNPL being available, are also helping contribute to national emission reduction targets and supporting jobs, small businesses and economic growth in the clean energy sector.

Based on our experience, we consider Brighte demonstrates how a high value, long term BNPL lender is delivering

positive customer focused outcomes in the current regulatory environment.

Brighte notes the concerns raised by consumer advocates with BNPL products, predominantly regarding the retail sector, where vulnerable customers may be accessing multiple retail BNPL accounts and / or purchasing essentials. Brighte also notes the recent Australian Competition Tribunal ruling that ‘rejected assertions BNPL financing of energy products has led to consumer harm’.

It is for these reasons Brighte supports a fit for purpose and flexible regulatory approach that enables consumers to continue to access the significant benefits of BNPL products while ensuring adequate consumer protection where there is evidence consumer harm is occurring.

Brighte submits that the existing regulatory framework, supplemented by improvements to the Code to address demonstrated consumer harm is a proportionate response. Brighte supports making the Code mandatory for all BNPL providers and supports the regulatory changes required to enable ASIC to approve and enforce the Code.

Brighte submits that higher value is not the only determinant of consumer risk, but other factors such as customer demographic, product type, term, the change of financial position (for example expense reducing characteristics due to the purchase) should also be considered when determining what may be an appropriate assessment process.

This submission focuses on the appropriate regulatory options to deliver consumer centric outcomes, innovation, competition and strong consumer safeguards.

## About Brighte

Brighte is a purpose-led and customer focused fintech that is on a mission to make sustainability accessible and affordable. We believe that sustainable homes can be both affordable and comfortable, without compromise.

Everything we do is based around our core belief that families deserve an affordable way to pay. We want families to invest in their homes, to live more comfortable lives and to feel empowered in their decisions.

Brighte is a dedicated green energy financier with more than 95% of our facilities supporting the new energy technology (“**NET**”) transition. This is different to other BNPL products as it does not enable the purchase of low value retail items or essentials that are repaid over a short term (“**retail BNPL**”). Brighte’s 0% Interest Payment Plan (“**Brighte BNPL**”) enables Australian households to invest in NET products, including solar PV, batteries, home electrification, and home improvements.

Founded in 2015, to date Brighte has helped over 130,000 households get solar sooner, partnering with over 2,000 vendors<sup>1</sup> nationally and processing over \$1.6 billion in applications for finance.

Brighte is also partnering with government to enable household decarbonisation. It is the exclusive finance and administration provider for the ACT Government’s \$150m Sustainable Household Scheme and the Tasmanian

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<sup>1</sup> Vendors is the term that Brighte uses to refer to Merchants and/or Retail Partners.

Government's \$50m TAS Energy Saver Loan Scheme.

## Brighte financing options

Brighte holds an Australian Credit Licence (“**ACL**”) and provides three financing options:

1. Brighte BNPL is a continuing credit facility. It is a payment plan option with no interest that removes the upfront cost of a purchase and allows the customer to spread the cost over time.
2. The Brighte Green Loan (“**BGL**”) and;
3. Brighte Personal Loan (“**BPL**”)

Both the BGL and BPL are interest-bearing loan products that are regulated under the National Consumer Credit Protection Act (NCCPA) and NCC.

## Differences of Brighte BNPL

Brighte BNPL is designed, distributed, and used differently to most retail BNPL and traditional credit products, such as personal loans and credit cards.

### **Brighte BNPL is different to other BNPL providers**

The BNPL industry is diverse. BNPL business models, product structures and features vary across the industry. Brighte's BNPL product is a 0% interest payment plan, designed for a particular customer segment and specific category of purchases, enabling consumers to invest in NET products and home improvements.

Brighte supports a robust regulatory environment that promotes consumer confidence, informed decision-making, competition and innovation. Brighte recognises the concerns that have been raised about consumer harm within the BNPL industry<sup>2</sup>. It does not seek to diminish those concerns. However, they primarily involve vulnerable consumers who use multiple retail BNPL products to purchase household essentials and small, retail items. Brighte's consumers, and the types of purchases that Brighte BNPL funds, are notably different from the broader BNPL sector.

Brighte's customers are predominately homeowners, with an average age of between 45 to 50 and have strong credit scores.

According to Brighte market research, the average Brighte customer is at a different life stage than a typical retail BNPL user and tends to have higher incomes than retail BNPL users. They are credit savvy and use Brighte BNPL to make a considered purchase of a capital asset, that is expense reducing.<sup>3</sup>

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<sup>2</sup> Australian Securities & Investments Commission Report 672, Buy now pay later: An industry update, November 2020.

<sup>3</sup> External Brighte Market Research, 2022

Brighte BNPL cannot be used for everyday essentials such as groceries.

According to data from AFIA, in 2021 BNPL transactions represented 0.74 percent of consumer purchases in Australia by volume and 1.22 percent by value.<sup>4</sup>

Brighte has high levels of customer satisfaction and low instances of arrears and hardship, despite significant growth since 2015. .

### **Brighte BNPL is different to traditional credit products**

Brighte BNPL is different to traditional credit products in important ways. The benefits of BNPL for customers not found in other credit products are:

- the availability of an interest-free financing option;
- lower costs due to fees and charges that do not exceed the low exemption thresholds in the NCCPA;
- greater transparency in relation to amount, terms and timing of repayments. Brighte provides key information in its Payment Plan Schedule and Terms and Conditions, including repayments expressed in dollar terms that are easy to understand;
- ease of availability at the point of sale; and
- improved application and approval times.

Signatories to the Australian Finance Industry Association (“AFIA”) BNPL Industry Code of Practice (“**the Code**”) prevent consumers from borrowing if they are in default. This measure is designed to avoid a debt spiral that can occur with traditional credit products, such as credit cards.

Customers have a variety of reasons for choosing Brighte BNPL over other financing options. These include fixed repayment amounts, convenience, easier budget management and lower fees. Brighte BNPL provides customers with greater certainty in an uncertain interest rate environment and supports better management of household budgets.

There are some important differences that distinguish BNPL from traditional credit products that warrant a regulatory approach that reflects those key differences.

## **The Benefits of Brighte BNPL**

Brighte BNPL is designed and distributed, to ensure that it is suitable for its target market. Brighte BNPL provides significant consumer benefits while minimising the risk of consumer harm. It also produces important public benefits. Brighte submits that a proportionate regulatory response should fairly reflect the significant consumer benefits against the low levels of harm experienced under the current regulatory regime.

### **Benefits for consumers**

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<sup>4</sup> The Economic Impact of Buy Now Pay Later in Australia, AFIA, June 2022

Brighte BNPL enable customers to benefit from a cost effective and convenient payment method for acquiring technology that can reduce household energy bills. The potential energy cost savings from the installation of NET assets, like solar, can help to eventually offset the cost of installation.

While a reduction in energy costs is not unique to Brighte BNPL, it does make it more achievable to acquire the asset required with an affordable finance option.

Affordability is the biggest barrier to the purchase of NET products. The upfront cost of NET products including Solar PV and batteries remain prohibitively expensive for budget constrained households. Without finance options, these energy dividends can only be realised by households with liquidity to pay for assets upfront (likely wealthier or debt-free households).

According to Brighte research, more than 80% of Brighte customers surveyed indicated that the primary reason for installing solar was to save money<sup>5</sup>. More than half of the Brighte customers who were asked what they would have done if Brighte BNPL was not available indicated that without the option of Brighte BNPL finance they would have delayed or deferred their purchase entirely.<sup>6</sup>

Brighte notes Treasury's reference to the use of BNPL products to purchase solar products, including the recent regulatory reforms and the introduction New Energy Tech Consumer Code (NETCC). These changes will enhance consumer protections in the solar industry.<sup>7</sup> Brighte was an active participant in the process to develop the NETCC, which will commence in February 2023 and is strongly supportive of it.

Brighte also notes Treasury's reference to the Australian Competition Tribunal ruling that 'rejected assertions BNPL financing of energy products has led to consumer harm'.<sup>8</sup>

### **Supporting Australia's transition to a clean energy future**

Brighte BNPL is enabling Australians to transition to sustainable homes. It provides a fast, simple and transparent finance solution to invest in NET products.

As business supporting the power shift to the home, Brighte financed installations have the potential to reduce greenhouse gas emissions by more than a million tonnes CO2 each year and has facilitated the installation of more than 800MW of rooftop solar capability.

Low-cost credit to invest in expense reducing asset, like solar PV, is needed now more than ever with rising interest rates and the cost-of-living increases, especially in the cost of energy. BNPL products, including Brighte BNPL, are crucial in accelerating solar and home electrification and facilitating the transition to Australia's renewable energy

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<sup>5</sup> External Brighte Customer Research, 2022

<sup>6</sup> External Brighte customer survey, n=1411

<sup>7</sup> Commonwealth Treasury, Regulating Buy Now, Pay Later in Australia: Options paper, November 2022, 17

<sup>8</sup> Australian Competition Tribunal: Application by Flexigroup Limited (No 2) [2020] ACompT 2, File number ACT 1 of 2019, date of determination 15 September 2020. Accessed 16 November 2022.

future.

Brighte submits that the appropriate regulatory approach is one that balances the need to protect consumers, enables the supply of credit to consumers who can afford to repay it, as well as consumer choice, competition and innovation.

### **Benefits to the economy**

Most of the vendors that offer Brighte BNPL are small and medium sized businesses. Many are family owned and operated.

Brighte contributes to the economy through employment and business operations and its indirect economic contribution in the NET and home improvement sectors.

Brighte BNPL enables vendors to offer a product that customers value, need and want. It increases the number of households that can afford to purchase NET products. It also facilitates fast cash flow and enables vendors to manage the credit risk that customers cannot pay them after installation.

Brighte supports Treasury's guiding principles that recognise the importance of a regulatory regime for BNPL that is flexible enough to enable innovation and competition.<sup>9</sup> Brighte submits that to regulate BNPL providers and products disproportionately would stifle these important objectives.

### **Consumer protections**

Brighte's platform and products use technology to deliver value added solutions for consumers. It delivers significant consumer benefits and protections within the existing regulatory environment.

The consumer centric design and distribution of Brighte's BNPL product, including its target customer base, distribution methods, products funded, eligibility criteria and assessment processes, ensure that the product is suitable for those customers who acquire it.

### **Current Regulation**

As noted in the Options Paper<sup>10</sup> BNPL products and providers are currently subject to regulatory requirements. These include the design and distribution obligations (DDOs)<sup>11</sup> and ASIC's Product Intervention Powers (PIP)<sup>12</sup>. Brighte adopts a consumer centric approach to the design, distribution and review of its credit products. Brighte undertakes careful consideration, review and monitoring of the type of customer that its product is suitable for. It has developed and implemented appropriate, fit for purpose suitability assessment processes, tailored to its target market.

BNPL providers, including Brighte, are also subject to consumer protection requirements in the Australian Consumer

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<sup>9</sup> Commonwealth Treasury, Regulating Buy Now, Pay Later in Australia: Options paper, November 2022, 19.

<sup>10</sup> Commonwealth Treasury, Regulating Buy Now, Pay Later in Australia: Options paper, November 2022, 8.

<sup>11</sup> Under Part 7.8 of the Corporations Act 2001 (Cth)

<sup>12</sup> Under Pt. 7.9A of the Corporations Act and Pt 6-7A of the National Consumer Credit Protection Act 2009 (Cth)(the Credit Act).

Law<sup>13</sup>. It can also apply to the conduct of merchants or vendors.

Unsolicited selling and marketing have been raised in the Options paper.<sup>14</sup> Brighte notes that the unsolicited supplies of products and services is regulated by the Australian Consumer Law. Brighte does not engage in unsolicited marketing or sales of its products.

Signatories to the BNPL Code are required to take steps to ensure there is no unlawful unsolicited marketing under Code Commitment 2 and Clause 9.5 As a Code signatory Brighte is committed to meeting ASIC's good practice guidance on advertising financial products and services.

### **BNPL Industry Code of Practice (“the Code”)**

Brighte is a member of AFIA, was an active participant in the development of the AFIA Buy Now Pay Later Code of Practice (“the Code”) and has been a signatory since its commencement in March 2021.

Code signatories have shown a preparedness to implement best practice standards for the BNPL sector that go above and beyond current regulatory requirements and strengthening consumer protections. The Code does this while still preserving consumer choice innovation and competition.

A key advantage that the Code has over legislation is that the Code can be adapted and updated to reflect changes in the industry and to consumer preferences, quickly and easily. The current independent review of the Code provides evidence of the commitment of signatories to continuous improvement, best practice standards and responsiveness to the expectations and needs of customers.

Many of the issues raised in the Options paper are already covered by legislation or in the BNPL Code. As an AFIA member and Code signatory Brighte supports changes to the Code that address demonstrated consumer harm and improve customer standards. We also would like to note that since the Code has only been in operation for less than 2 years, the real impacts of it and its potential contribution of reducing any potential occurrence of consumer harm may not have yet been fully realised at this time.

The Code covered 95% of the BNPL providers in the industry at the time it was introduced. However, this is no longer the case. Brighte supports making it mandatory for BNPL providers to set and maintain industry wide best practice standards.

The Code was also developed to respond to key issues identified and voiced by advocates, ASIC, and other stakeholders, as well as bring value and confidence to consumers., However, ASIC did not have the power to approve the Code at the time it was developed. Brighte supports making the Code mandatory for all BNPL providers and supports the regulatory changes required to enable ASIC to approve the Code.

Brighte also supports the proposal that industry work in consultation with government to strengthen Code provisions, including making aspects of it enforceable by ASIC, where this is practical and in the best interests of

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<sup>13</sup> The Competition and Consumer Act 2010. The ACL regulates conduct including false or misleading representations, consumer guarantees and warranties, pricing requirements and information standards, harassment and coercion and unconscionable conduct.

<sup>14</sup> Commonwealth Treasury, Regulating Buy Now, Pay Later in Australia: Options paper, November 2022, 17

consumers.

### **Managing the risk of harm to consumers**

Brighte has implemented a robust risk management framework including policies, procedures and systems to ensure it complies with its regulatory requirements, delivers positive consumer outcomes and minimise the risk of harm to consumers.

Key elements of managing risk of consumer harm include Brighte's product design and distribution, eligibility criteria, assessment processes, staff training, ongoing consumer protection policies and processes, vendor accreditations, monitoring and reporting. All policies and procedures are subject to ongoing reviews and continuous improvements.

### **Regulatory Proposals**

Brighte agrees with the comments by the Assistant Treasurer and Minister for Financial Services, the Honourable Stephen Jones, MP that 'BNPL products are unique, and any future regulatory framework needs to reflect that'.<sup>15</sup>

BNPL products are a popular financing option particularly within the NET sector. There has been increasing uptake of BNPL to finance NET products in recent years. The result is vigorous competition in NET and finance sectors.

Brighte supports the guiding principle that changes to the regulatory regime should address 'the main instances of consumer harm arising from BNPL products while continuing to ensure BNPL products are accessible to consumers.'<sup>16</sup>

Brighte submits that the existing regulatory framework supplemented by improvements to the Code to address demonstrated consumer harm is an appropriate regulatory response that ensures consumer protections while enabling consumers who can afford it to continue to access the significant benefits of BNPL. It endorses the proposal that industry work in consultation with government to strengthen BNPL Code provisions where this is practical and in the best interests of consumers.

### **Affordability Obligations**

Brighte submits that a flexible and scalable test to ensure that a BNPL product is not unaffordable for a customer is an appropriate and proportionate response to the risk of consumer harm.

Brighte has strict eligibility criteria and has implemented a robust assessment process to ensure that its credit products are suitable for its customers. Brighte acknowledges that the BNPL credit amount could be a factor in determining the risk that a product is unsuitable for a consumer. However, there are numerous other factors that

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<sup>15</sup> Address to the Responsible Lending and Borrowing Summit, 12 July 2022

<sup>16</sup> Commonwealth Treasury, Regulating Buy Now, Pay Later in Australia: Options paper, November 2022, 19.



may indicate the potential for consumer harm that should be considered. These include the term, the repayment amount as a proportion of overall incomes and expenses, credit history, the consumer's understanding of the product, the use of the product and whether it can produce financial benefits for the consumer. Target market characteristics are also important such as if the product features of the product meet the consumer's objectives and needs. Brighte BNPL enables a specific market segment to invest in products that are expense reducing assets and increase the sustainability of and value to their home.

Brighte's suitability assessment processes are designed to ensure that it complies with the:

- Tiered requirements contained in Clauses 11 and 12 of the BNPL Code that it ensures that the product provided is suitable, including collecting appropriate data.
- Requirements under Clause 11.3 to be satisfied someone seeking BNPL products is not a 'vulnerable customer' before providing the product.

Brighte's approach has delivered significant consumer and other benefits, with high customer satisfaction levels and comparatively low levels of arrears and hardship. These outcomes demonstrate that a tailored and scaled approach to assessments produce significant benefits to consumers while minimising consumer harm, even within the current regulatory regime.

Brighte submits that a bespoke affordability test that is flexible and scalable should apply to all BNPL products, irrespective of value. Brighte does not support an affordability assessment that has prescriptive 'one size fits all' requirements and prevents the flexibility of determining how obligations can be met in relation to a particular consumer and circumstances relevant to their individual application.

Brighte will be participating in the Consumer Credit Reporting (CCR) regime. However, the BNPL sector is diverse with providers leveraging a variety of technology enabled and data-driven methods to support their suitability assessments. Therefore, Brighte submits that participation in the CCR regime should not be mandatory for BNPL providers.

As an AFIA member and BNPL Code signatory, Brighte is open to clarifying and enhancing the upfront affordability and ongoing suitability assessment processes. However, Brighte supports a flexible principles-based approach rather than mandated requirements.

## **Licensing**

Brighte notes that Options 2 and 3 would require a BNPL provider to hold either a modified or full Australian Credit Licence ("ACL") or be an Authorised Representative of a licensee.

The existing regulatory framework and BNPL Code requirements include many of the general licensing obligations. The Code requires signatories to meet requirements about:

- Internal and external dispute resolution, including a requirement to be a member of AFCA;<sup>17</sup>
- Hardship assistance;<sup>18</sup>
- Fees;<sup>19</sup>
- Marketing;<sup>20</sup>

Brighte's BNPL meets the exemption criteria prescribed in section 6(5) of the National Credit Code and regulation 51 in the Credit Act regulations.

Like other BNPL Code signatories, Brighte is committed to ensuring late fees and charges are fair, reasonable, and capped, per clause 10.1(g) of the Code. Given the larger BNPL amounts than retail BNPL, Brighte's fees compared to the total BNPL credit represent a very small amount to the consumer compared with traditional credit products.

Brighte has ongoing processes to provide protection and support to its customers. Including processes to handle complaints and to support consumers facing financial difficulty and hardship.

Brighte has easily accessible internal and external dispute resolution processes for its customers and is a member of Australian Financial Complaints Authority (AFCA), providing an avenue for consumers to raise their complaint externally in the event they are dissatisfied.

Brighte is committed to supporting its customers who experience a change in financial circumstances or hardship. It has processes to identify indicators of financial vulnerability at the time of application and throughout the customer relationship.

There is a risk with any credit product that a customer's circumstance may change unexpectedly. The Code recognises this by requiring signatories to meet a number of obligations, including responding within specific timeframes as outlined in clause 14. These requirements replicate the same, and in some ways greater, industry standards as required under the National Credit Code.<sup>21</sup>

Brighte's hardship policy and procedures are designed to ensure that customers can access hardship assistance quickly and easily. This is demonstrated through low rates of hardship and arrears. Brighte provides training to staff to enable them to recognise the indicators and respond with respect, sensitivity, and compassion. Brighte offers tailored solutions to support customers in financial difficulty or experiencing hardship.

From a risk-based perspective, the characteristics, and features of BNPL products, particularly their ease of

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<sup>17</sup> Clause 13 of the Code

<sup>18</sup> Clause 14 of the Code

<sup>19</sup> Clause 10.1 of the Code

<sup>20</sup> Clauses 9 and 10 of the Code

<sup>21</sup> Pt 4 Div 3 of the National Credit Code outlines the obligations of lenders when making changes to a credit contract on ground of hardship, including timeframes to assess and respond to a hardship request.

understanding, repayments expressed in dollar terms and low cost do not warrant the introduction of a licensing regime that would impose additional unwarranted requirements and costs on both providers and consumers.

Brighte supports the proposal that merchants, in Brighte's case vendors, would not be required to be an authorised representative of Brighte to offer its BNPL product. This is an appropriate and proportionate response to the differences between BNPL products and traditional credit products.

Brighte has determined and documented the channel and method of distribution of its BNPL product in accordance with its DDO requirements, Code obligations, its risk management framework and consumer centric design principles.

In addition to DDO requirements, the BNPL Code requires signatories to monitor and review the outcomes of our distribution arrangements, including the way that partners are using the product. For example, under clause 10.2 Brighte is required to take reasonable steps to ensure that vendors adhere to the minimum standards outlined in Part C of the Code. These include:<sup>22</sup>

- Acting lawfully, fairly and ethically in their dealings with consumers;
- Communicating clearly when dealing with consumers and in marketing and advertising material that relates to the BNPL products and services; and
- Responding to complaints on a timely basis.

Brighte require vendors to be accredited, enter into a Vendor Agreement, agree to comply with Brighte's Vendor Code of Conduct and receive training before they can offer Brighte BNPL. Brighte ensures ongoing due diligence through several checks and balances contained in a formal Vendor and Agent Monitoring program to ensure our vendors continue to meet the standards expected of them.

Brighte notes that the Options paper does not provide details about the proposed licensing requirements or the practical impact on partners and/or merchants. Brighte would seek to make a supplementary submission when further detail is known about the way bespoke licensing proposals will operate in practice.

## CONCLUSION

Buy now pay later financing options have been shown to be beneficial to consumers, business and the economy. In Brighte's case this extends to financial benefits consumers, the clean energy sector and supporting Australia's transition to a renewable energy future.

As a lender offering higher value and longer term BNPL, Brighte has delivered consumer centric outcomes in the regulatory environment that is currently applicable to BNPL.

Therefore Brighte supports a fit for purpose and flexible regulatory approach that continues to ensure that

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<sup>22</sup> Clause 17.1 of the Code

consumers can access the benefits of BNPL while incorporating adequate consumer protections. We consider it important to not apply a 'one size fits all' approach and prevent the flexibility of determining how obligations can be met in relation to a particular consumer and circumstances relevant to their individual application.

Brighte submits that the existing regulatory framework supplemented by improvements to the Code to address demonstrated consumer harm where it is evident is a proportionate response.

Brighte would welcome the opportunity to provide more information or assistance to the Department about the matters raised in this submission, if required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Freitas', with a stylized flourish extending to the right.

**Nigel Freitas**

Head of Corporate Affairs

Brighte