

## ANNUAL REPORTING ON ACTIVITIES OF THE AFIA BUY NOW PAY LATER CODE COMPLIANCE COMMITTEE IN RELATION TO THE AFIA BUY NOW PAY LATER CODE OF PRACTICE

As outlined in section 12.1 of the Terms of Reference for the AFIA Buy Now Pay Later Code of Practice (BNPL Code), the Buy Now Pay Later Code Compliance Committee (CCC) is pleased to table our report for the 12 months ending 30 June 2023 for inclusion in the AFIA Annual Review.

Terms of Reference – clause 12.1	Commentary
(a) Information collected under clause 9.2, 9.3 and 9.4 of any reported or investigated Alleged Breaches and any corrective measures agreed with the relevant Code Compliant Members (CCMs)	<p>The CCC received twenty five reports under ToR 10.1(a) that a Code member has, or may have, breached the Code in the period 1 July 2022 to 30 June 2023. Of these reports:</p> <ul style="list-style-type: none"> <li>• Nine related to customer service or account administration issues that were resolved in the BNPL provider’s IDR process</li> <li>• Eight related to hardship requests that were actioned by the BNPL provider</li> <li>• One was about dis-satisfaction with the outcome of a cosmetic service that was paid for using BNPL</li> <li>• One matter was a self-report by a Code member about a collection agent who was not an AFCA member for a period of time</li> <li>• One matter is ongoing at AFCA and relates to alleged inappropriate provision of credit by a BNPL provider</li> <li>• Five matters were out of scope – three related to events before the Code existed, one related to a product that is not BNPL and the other was an enquiry.</li> </ul>
(b) Consolidated analysis of Code compliance by CCMs for the period of the report as collected under clauses 9.2, 9.3, 9.4	As outlined in its Terms of Reference, the CCC monitors code compliance and collects data to gain insights into potential areas of non-compliance. For the year to 30 June 2023, there was no evidence of systemic non-compliance.
(c) Information as to any Sanctions imposed by the CCC	No sanctions were imposed by the CCC.
(d) Information about any serious and systemic issues of breaches of the Code which have come to the CCC’s attention	None arising.

<p>(e) Information as to the number of CCC meetings held and the attendance of CCC Members at them</p>	<p>The CCC formally met 4 times during the financial year as follows:</p> <ul style="list-style-type: none"> <li>• 5 August 2022</li> <li>• 11 November 2022</li> <li>• 20 February 2023</li> <li>• 22 May 2023</li> </ul> <p>All CCC members attended every meeting.</p> <p>Dr Michael Schaper resigned as CCC chair effective 30 June 2023.</p>
<p>(f) 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 industrywide issue or weakness of a Code</p>	<p>The CCC published its second report about self-regulation under the BNPL Code in May 2023. The report described the role and governance of the CCC, how BNPL providers are accredited under the Code, and the CCC’s compliance monitoring and oversight activities.</p> <p>The CCC actively participated in the Government’s consultation on options for future regulation of the BNPL sector, including making a submission to the consultation and meetings with Treasury. In particular the CCC suggested that because the process of introducing new law can be a slow and resource intensive process that does not provide a solution to an identified problem or gap until some years after the problem or gap has emerged, an industry code has the capacity to more flexibly and quickly deal with such issues. It provides a means to regulate and but also adapt as needed. This approach would also allow a seamless segue of regulation from the current model to a structure with federal regulation.</p> <p>The CCC had detailed engagement with Promontory as the independent reviewer of the BNPL Code. The CCC is supportive of the recommendations in the Promontory report released in March 2023, particularly those that relate to oversight of compliance with the Code, and will continue to work with AFIA to determine how best to implement them, including any resourcing considerations.</p> <p>The CCC continues constructive dialogue with key stakeholders such as ASIC and the ACCC.</p>
<p>(g) 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</p>	<p>The CCC has complied with its Terms of Reference and any binding obligations on it under the Code and other relevant Protocol documents.</p>

<p>that such non-compliance does not occur in the future</p>	
<p>(h) Any other matters that the CCC considers should be included that are consistent with the functions of the CCC</p>	<p>Seven Code members were re-accredited by the CCC for the period 1 March 2023 to 29 February 2024. Annual certification occurs on or before the anniversary of the Code on 1 March.</p> <p>During the year, two BNPL providers ceased to be members of the Code:</p> <ol style="list-style-type: none"> <li>1. LatitudePay Australia Pty Limited</li> </ol> <p>In accordance with Clause 11.1 of the AFIA Buy Now Pay Later Providers By Laws, LatitudePay notified the AFIA Board and CCC of its resignation as a Code compliant member effective 24 February 2023 due to the dis-continuation of its BNPL business.</p> <p>The CCC will continue to accept any reports of alleged breaches of the Code that relate to the period while LatitudePay was a Code member.</p> <ol style="list-style-type: none"> <li>2. Openpay Pty Ltd (Receivers and Managers Appointed)</li> </ol> <p>McGrath Nicol was appointed as receivers and managers to Openpay on 4 February 2023. Based on the information available to it at the time, the CCC took the view that failure to lodge a valid annual attestation about compliance with the Code in accordance with By Law 6.5, along with the uncertainty about the continuation of the business and Openpay's capacity to comply with the requirements of the Code in practice, were sufficient grounds for the CCC, acting reasonably, to determine that it was appropriate to suspend Openpay's certification as a Code compliant member in accordance with By Law 7.2(a).</p> <p>Openpay subsequently ceased to be a member of AFIA effective 18 April 2023 and was therefore no longer eligible to be a member of the Code.</p> <p>The CCC will continue to accept any reports of alleged breaches of the Code that relate to the period while Openpay was a Code member.</p>

Jillian Brewer  
Chair, BNPL Code Compliance Committee