



# Review of the Buy Now Pay Later Code of Practice

Prepared for

**Australian Finance Industry Association (AFIA)**

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## Disclaimer

Promontory Australia, a business unit of IBM Consulting, has been appointed by the Australian Finance Industry Association (AFIA) to undertake an independent review of the Buy Now Pay Later Code of Practice.

The assessment is based on information received from AFIA, submissions received in response to our public consultation, meetings with key stakeholders over several months through to March 2023 and other public reports. In producing this Report, Promontory requested and relied on AFIA's provision of complete, accurate, and timely information and all necessary rights and permissions to use such information to generate and share the Report.

Promontory's role in undertaking the independent review of the Buy Now Pay Later Code of Practice was limited to the scope set out in Chapter 1 of this report and may not incorporate all matters that might be pertinent or necessary to a third party's evaluation of the information contained in this Report. Promontory's Report has been prepared for AFIA. No other party beneficiary rights are granted or intended, and any use of this Report by another party is at its own risk.

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## Glossary

Term	Definition
<b>ACCC</b>	Australian Competition and Consumer Commission
<b>ACL</b>	Australian Credit Licence
<b>AFCA</b>	Australian Financial Complaints Authority
<b>AFCA Code Team</b>	AFCA Code Compliance and Monitoring Team
<b>AFIA</b>	Australian Finance Industry Association
<b>AFSL</b>	Australian Financial Services Licensees
<b>Alleged Breach</b>	Defined in Clause 10.1 of the Buy Now Pay Later Terms of Reference
<b>ASIC</b>	Australian Securities and Investments Commission
<b>Banking Code</b>	Australian Banking Association's Banking Code of Practice
<b>BCCC</b>	Banking Code Compliance Committee
<b>BNPL</b>	Buy Now Pay Later
<b>By Laws</b>	Buy Now Pay Later By-Laws
<b>CCC</b>	Buy Now Pay Later Code Compliance Committee
<b>Code Member</b>	Referred to in the Buy Now Pay Later Code of Practice as 'Code Compliant Member', meaning a member of AFIA who has been approved as a Code Compliant Member of the AFIA BNPL Providers Group and is a signatory to the Code.
<b>DDOs</b>	Design and Distribution Obligations
<b>EDR</b>	External Dispute Resolution
<b>General Insurance Code</b>	Insurance Council of Australia's General Insurance Code of Practice
<b>IDR</b>	Internal Dispute Resolution
<b>NCCP Act</b>	National Consumer Credit Protection Act 2009
<b>Promontory, us or we</b>	Promontory Australia, a business unit of IBM Consulting
<b>Royal Commission</b>	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
<b>The Code or the BNPL Code</b>	The Buy Now Pay Later Code of Practice
<b>ToR</b>	The Buy Now Pay Later Terms of Reference

## Executive Summary

The Buy Now Pay Later Code of Practice (**the BNPL Code** or **the Code**) was introduced in March 2021 through the Australian Finance Industry Association (**AFIA**) following a 2019 Senate Inquiry into the Buy Now Pay Later (**BNPL**) sector. The BNPL industry acted to develop the Code quickly with the aim of establishing minimum conduct and customer protection standards in a newly emergent and rapidly evolving sector that is not covered by mainstream forms of credit regulation, notably the *National Consumer Credit Protection Act 2009*. The Australian BNPL sector introduced the Code in advance of other similar jurisdictions.

In other words, the BNPL Code is a new self-regulatory initiative in a sector where both industry structures and regulatory arrangements are still maturing. As a point of comparison, the Australian Banking Association's Banking Code of Practice (**Banking Code**) was introduced in 1993 and has been reviewed and changed multiple times.

The review of the Code is taking place at the same time as the Australian Government is consulting on improving the regulation of consumer credit in Australia, with a particular focus on the BNPL sector, through the release of an Options Paper by the Commonwealth Treasury in November 2022. While Promontory's review of the Code is separate from the Treasury consultation process, there are aspects of the approach to regulation set out in the Options Paper that have significant implications for the Code and that impact on the recommendations in this review. All options in the Treasury Paper anticipate an ongoing role for a 'strengthened' BNPL Code.

This Government reform process should assist with the ongoing development of the BNPL Code. It is widely accepted that self-regulatory mechanisms operate most effectively within a coherent overall regulatory framework, with clarity around statutory requirements and the role of relevant regulators. The current regulatory reform process should help clarify expectations for the role of the Code, its areas of focus, and its relationship to the legal framework for BNPL.

It is also worth noting that, more broadly, self-regulation in the finance sector has been the subject of increased scrutiny in recent years, not least because of the questions raised about its effectiveness in the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (**Royal Commission**). There are, as a result, higher expectations around both the design and administration of self-regulation. This is the environment into which the Code has been introduced.

Given this context, it is not surprising that elements of the Code are still maturing. It is therefore a positive action by the BNPL sector, through AFIA, to establish a review of the Code so soon after its introduction. This is a welcome recognition that the Code needs to develop rapidly given the pace of change in this sector. Codes are intended to evolve and, as this is the first review of the Code, it is to be expected that there will be substantive areas identified for enhancement, as has been the case with other industry codes undergoing reviews over time. Promontory's observations on areas for improvement should be seen in this context.

Overall, we found there was broad support for an ongoing role for a self-regulatory Code for the BNPL sector. The nine broad commitments set out in the Code received general support during our consultation. These are:

1. 'We will focus on customers.'
2. 'We will be fair, honest, and ethical.'
3. 'We will keep you properly informed about our product or service.'
4. 'We will make sure our BNPL product or service is suitable for you.'
5. 'We will undertake an ongoing review of the suitability of our products or services.'
6. 'We will deal fairly with complaints.'
7. 'We will offer financial hardship assistance.'
8. 'We will comply with our legal and industry obligations.'
9. 'We will support and promote this Code.'

These overarching commitments contained within the Code appear sound, were seen as positive, and were well supported. The industry appears to have 'got these right', and there were no suggestions for significant change to these headline foundations of the Code. There was also strong support from stakeholders for a range of key requirements that fall under these commitments, such as the requirement for Code Members to become members of the Australian Financial Complaints Authority (**AFCA**) in relation to complaints handling.

The challenge for the BNPL sector is to ensure the Code translates these commitments into meaningful actions that support better customer outcomes in a practical sense.

On this point, whatever principles and promises a code may contain, it is the application of these in practice that will determine whether a code is effective. Our review found that there is significant room for improvement on this front. While some aspects of the Code were working in practice, other areas would benefit from more focus on compliance to ensure that the promises being made to customers are consistently delivered. Although our review was not able to undertake extensive industry monitoring, there was evidence of inconsistencies and deficiencies in how some of the key Code provisions are being applied in practice.

A well-supported code is critical for the success of any form of self-regulation. Some industry participants highlighted that the BNPL sector in Australia was leading best practice globally in terms of industry self-regulation and viewed the Code in a very positive light. For this to translate to better customer outcomes there needs to be a focus on the Code as, *first and foremost*, a mechanism for raising standards and ensuring better treatment of customers, including delivering outcomes that go beyond minimum legal requirements.

In this light, it is important that industry stakeholders are open to the opportunity to improve industry practices and standards through enhancements to the Code. At times, we encountered a defensiveness in relation to criticisms of the Code. Given the ongoing role



anticipated for the Code, it is critical that the sector demonstrates a positive attitude towards the Code's evolving role in delivering *better* customer outcomes.

With the evolving regulatory context of BNPL, it is not surprising that the Code is being discussed as part of the potential overall regulatory framework. Indeed, it is useful to consider the role of the Code in this light and how it integrates into the broader regulation of BNPL. The Treasury Options Paper has considerable discussion of the potential role of the Code. However, this policy dimension should not be the dominant narrative around the Code. If the Code is to play an important role in the future regulatory framework, it will only be because of its actual contribution to better customer outcomes and better industry practices – this needs to be the ongoing focus.

The effectiveness of the Code is dependent on the existence of meaningful and clear commitments designed with the genuine desire to promote better practice and improve on the way in which BNPL operates in the market. All financial sector codes have grappled with this challenge of ensuring broad-based member commitment, enforceability, and support. The BNPL sector has the benefit of being able to observe what has and hasn't worked in other sectors. A key success factor is the nature and level of industry support. Given the focus of BNPL products, with the emphasis on a customer-focused experience and customer-friendly interactions, this should be readily achievable by all industry members.

Our review has identified a range of areas where we recommend improvements that can be made to the Code and its administration:

- There are opportunities to strengthen and/or elaborate on key substantive provisions. An example is in relation to aspects of the Code's commitments around vulnerable customers.
- There are also areas where the drafting and structure of the Code could be enhanced. This category of recommendations is important, as clarifying the meaning and minimum expectations in relation to a specific commitment helps to ensure that the Code is clear for both members and customers and supports enforceability.
- For some areas of the Code, we are not suggesting major changes now but instead proposing that current provisions should be reviewed after the Government's reforms to the BNPL sector are clear. The most significant example of this is in relation to the provisions covering suitability (Commitment 4).
- We also point to opportunities to improve aspects of how the Code works in practice. That is, we identify some areas where *compliance* with existing Code requirements would benefit from a stronger focus and where the application of Code provisions should be improved.



- We make several recommendations about the administration of the Code. There are opportunities to improve compliance monitoring and reporting practices which support the enforcement of the Code. This includes considering how to enhance the effectiveness of the structure and operation of the BNPL Code Compliance Committee (**CCC**). The Code Compliance Committee is an important part of ensuring the Code's effectiveness in practice. While we saw robust upfront accreditation processes (which go beyond the practices of some other industry codes), there is a need for ongoing compliance monitoring to mature.
- Finally, we also point to some developments in the regulatory settings for the Code that would improve the standing and effectiveness of the Code, but that are not immediately within the ability of the industry (through AFIA) to implement, such as ASIC approval for the Code. We have termed these 'Potential Regulatory Developments'.

This review is a positive and proactive step in ensuring that the Code continues to evolve and remains meaningful, fit for purpose, and delivers the right outcomes. As a relatively new Code, there are opportunities to make revisions arising from experience and to learn from other examples of self-regulation, so that enhancements to the Code improve customer outcomes and the way that BNPL products operate in the market.

# Introduction

## Background to our engagement

On 1 March 2021, AFIA announced the introduction of a Code of Practice for the BNPL sector.

The objectives of the Code are outlined in clause 1, which notes the Code has been voluntarily developed and is intended to assist Code Compliant Members (**Code Members**) of the AFIA BNPL Providers Group to:

- promote a customer-centric approach to the design, marketing and distribution of a BNPL product or service;
- promote high industry standards of service for customers and build best practices across the BNPL industry; and
- support compliance with legal and industry obligations.

The Code sets out a requirement for a full review of the Code on a regular basis including open and wide public consultation.

On 14 October 2022, AFIA announced an independent review of the Code. Promontory, a business unit of IBM Consulting (**Promontory, us, we**) was appointed to conduct the review. Our Scope of Services is outlined in Appendix A. Our review considers the impact and effectiveness of the Code in achieving its objectives.

This Report outlines Promontory's findings.

## Our Approach and Methodology

Promontory's approach has involved a combination of desk research, documentation review and interviews with key stakeholders.

To support our assessment, we undertook the following:

- **Consultation:** Promontory issued a consultation note on 7 November 2022 inviting interested parties to comment on a range of issues raised in relation to the performance and content of the Code.<sup>1</sup> Ten submissions were received, with two being confidential. Non-confidential submissions are available on the AFIA website. A full list is available in Appendix B. The Treasury Options Paper on '*Regulating Buy Now, Pay Later in Australia*' is also a key input into Promontory's considerations.<sup>2</sup> We have reviewed all public submissions to the Treasury Options Paper.

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<sup>1</sup> Promontory, *Review of the 'Buy Now Pay Later Code of Practice – Consultation Note*, [https://afia.asn.au/files/galleries/20221107\\_Promontory\\_Consultation\\_Note\\_on\\_review\\_of\\_the\\_BNPL\\_Code\\_of\\_Practice.pdf](https://afia.asn.au/files/galleries/20221107_Promontory_Consultation_Note_on_review_of_the_BNPL_Code_of_Practice.pdf), November 2022.

<sup>2</sup> The Commonwealth Treasury, *Regulating Buy Now, Pay Later in Australia*, <https://treasury.gov.au/consultation/c2022-338372>, November 2022.

- **Interviews:** Promontory interviewed relevant stakeholders including Code Members, the CCC, the Australian Banking Association (**ABA**), the Australian Securities and Investments Commission (**ASIC**), the Commonwealth Treasury, the Australian Competition and Consumer Commission (**ACCC**), the Australian Financial Complaints Authority (**AFCA**) and AFCA Code Compliance and Monitoring Team (**AFCA Code Team**), the Australian Retailers Association, Consumer Groups, and Financial Counsellors. A full list is provided in Appendix C.
- **Documentation review:** Promontory reviewed information related to the consultation undertaken in Code development, promotion of the Code, complaints data and reporting to the CCC, accreditation applications, analysis of Code Member business data provided to the CCC, CCC meeting minutes and agendas, and other relevant information on the BNPL sector and regulatory context.
- **Research:** Promontory reviewed research related to BNPL industry developments and industry studies relating to the BNPL sector.

This Report considers both the content and performance of the Code, as well as supporting processes and frameworks in place as part of compliance monitoring and maintenance of the Code.

Promontory would like to thank all organisations and individuals that made a submission to the review and all stakeholders who engaged in interviews.

## Report Structure

This Report is structured as follows:

- **Chapter 1 – Background:** Provides background details of evolution of the BNPL sector, the Code, and the recent Treasury consultation.
- **Chapter 2 – The Code’s Operating Context:** Offers broader observations and recommendations relating to the ‘whole of Code’. This includes the regulatory and legal status of the Code, the language and structure of the Code, and the coverage of the Code.
- **Chapter 3 – The Code’s Key Commitments:** Outlines Promontory’s analysis and recommendations relating to the design and operation of the Code’s nine key commitments, as well as Part C of the Code.
- **Chapter 4 – Code Compliance Monitoring and Enforcement:** Outlines Promontory’s analysis and recommendations relating to the enforceability and compliance monitoring processes in place to support the Code’s operation.
- **Chapter 5 – Recommendations:** Collates Promontory’s full set of recommendations.
- **Appendix A:** Scope of Services.
- **Appendix B:** Submissions List.
- **Appendix C:** Interview List.

# Chapter 1: Background

## 1.1 Background on Buy Now Pay Later and the Code

BNPL products are an alternative to more traditional forms of credit. They allow customers to purchase and receive goods and services immediately and pay future instalments over a period of time. They typically involve a third-party financing entity which provide customers with finance which can be used to pay for purchases of goods and services. Cash is not provided to the customer. BNPL providers do not charge interest on the finance used but may charge customers low fixed fees for using the finance. As part of a BNPL transaction, the BNPL provider will pay the merchant the value of the purchase upfront less a service fee for accepting BNPL.

In 2021-2022, Australians spent \$15.3 billion on BNPL, an increase of 28.4% from FY21 (\$11.9 billion).<sup>3</sup> Despite the growth of BNPL products, overall BNPL still represents a relatively low proportion of total transactions within the overall Australian payments system. However, there are now over 6.3 million active BNPL accounts.<sup>4</sup>

BNPL providers are subject to a range of regulations under the framework covering financial products. This includes:

- **Australian Securities and Investments Commission Act 2001** – which provides general financial services customer protections, including in relation to misleading and deceptive conduct.
- **Chapter 7 of the Corporations Act 2001** – which includes the Design and Distribution Obligations (DDOs) and the Product Intervention Powers.
- **Schedule 2 to the Competition and Consumer Act 2010** – which includes some conduct provisions which are not covered by the ASIC Act such as false or misleading presentation, unsolicited supplies, pricing and information standards.
- **Anti-Money Laundering and Counter-Terrorism Financing Act 2006** – which includes provisions relating to customer identification and verification requirements, record keeping, reporting suspicious matters, and providing periodic compliance reports to AUSTRAC.
- **Privacy Act 1988** – which includes provisions to protect the handling of personal information about individuals.
- **Spam Act 2003** – which regulates commercial email and other types of electronic messages.

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<sup>3</sup> RFI Global, *The Economic Impact of Buy Now Pay Later in Australia*, [https://afia.asn.au/files/galleries/BNPL\\_report\\_short\\_WEB-0001.pdf](https://afia.asn.au/files/galleries/BNPL_report_short_WEB-0001.pdf), January 2023.

<sup>4</sup> Ibid. It should be noted that the number of BNPL customers will be lower than 6.3 million because some people have an active account with more than one provider.

BNPL is not regulated under the *National Consumer Credit Protection Act 2009 (NCCP Act)*, as these products typically operate under the exemption for interest-free continuing credit contracts set out in Schedule 1 of the National Credit Code. The main implication of this is that BNPL providers are not required to comply with responsible lending obligations. That is, they are not required to consider a customer's financial position or whether their product or credit limit is unsuitable for a customer before offering their product.

BNPL providers are also not required to hold an Australian Credit Licence (**ACL**), which includes with it a range of obligations (although some BNPL providers do have a licence as they also provide NCCP regulated credit products).

The Code was developed by AFIA and its members in response to a Senate Inquiry in 2019 which identified that:

- the BNPL industry is growing rapidly, diverse, and evolving;
- BNPL arrangements have influenced the spending habits of some consumers; and
- there are varied and inconsistent practices among BNPL providers.<sup>5</sup>

The Code is a voluntary form of self-regulation and sought to respond to these findings and introduce a set of minimum standards and customer protections.

The Code is comprised of three key documents which set out the framework for the commitments and operation of the Code. These are:

- **The Code** – outlines commitments made by Code Members to BNPL customers.<sup>6</sup>
- **The Buy Now Pay Later Terms of Reference (ToR)** – describes the purpose, scope, and authority of the CCC who is responsible for administering and enforcing compliance with the Code.<sup>7</sup>
- **The Buy Now Pay Later By-Laws (By-Laws)** – administered by AFIA and outline a set of rules for AFIA members and binds Code Members to comply with the Code.<sup>8</sup>

Promontory observed that the framework supporting the Code is sound, however there are some opportunities for clarification in how the documents interact and are intended to operate. These are set out within the relevant section of this Report.

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<sup>5</sup> Promontory, *Review of the 'Buy Now Pay Later Code of Practice – Consultation Note*, [https://afia.asn.au/files/galleries/20221107\\_Promontory\\_Consultation\\_Note\\_on\\_review\\_of\\_the\\_BNPL\\_Code\\_of\\_Practice.pdf](https://afia.asn.au/files/galleries/20221107_Promontory_Consultation_Note_on_review_of_the_BNPL_Code_of_Practice.pdf), November 2022.

<sup>6</sup> AFIA, *Buy Now Pay Later Code of Practice*, [https://afia.asn.au/files/galleries/AFIA\\_Code\\_of\\_Practice\\_for\\_Buy\\_Now\\_Pay\\_Later\\_Providers.pdf](https://afia.asn.au/files/galleries/AFIA_Code_of_Practice_for_Buy_Now_Pay_Later_Providers.pdf), March 2022.

<sup>7</sup> AFIA, *Buy Now Pay Later Terms of Reference*, [https://afia.asn.au/files/galleries/AFIA\\_BNPL\\_Code\\_of\\_Practice\\_Terms\\_of\\_Reference.pdf](https://afia.asn.au/files/galleries/AFIA_BNPL_Code_of_Practice_Terms_of_Reference.pdf) March 2021.

<sup>8</sup> AFIA, *Buy Now Pay Later By-Laws*, [https://afia.asn.au/files/galleries/AFIA\\_BNPL\\_Code\\_of\\_Practice\\_By-Laws.pdf](https://afia.asn.au/files/galleries/AFIA_BNPL_Code_of_Practice_By-Laws.pdf), March 2021.

## 1.2 The Government's Consultation on Regulating Buy Now Pay Later in Australia

On 21 November 2022, the Commonwealth Treasury announced the Government's review of the regulatory framework for BNPL arrangements under the NCCP Act, alongside the release of an Options Paper for consultation.<sup>9</sup> The paper examines the regulatory challenges of emerging financial products with a particular focus on BNPL. It considers the appropriate regulatory approach to maintain the benefits of accessing credit while ensuring customers are adequately protected.

The paper notes that the exemptions available to BNPL under the NCCP Act have supported the growth of BNPL but may create the potential for customer harm due to the absence of key protections which exist under responsible lending obligations.

Treasury's Options Paper was issued soon after Promontory's commencement of the Code review. While the reviews are distinct processes, in practice the Treasury process and the issues set out in the Options Paper have implications for the Code review.

Each of the three regulatory options outlined in Treasury's Options Paper anticipates an ongoing role for a 'strengthened' or 'revised' industry Code. Option 1 sets out in more detail those areas that Treasury envisages may be considered in a stronger Code:

- product disclosure and warning requirements;
- access and standards of dispute resolution and hardship practices;
- excessive consumer fees and charges, including default fees;
- refund and chargeback processes;
- advertising and marketing;
- mitigating risks associated with scams, domestic violence, coercive control, and financial abuse; and
- ensuring compliance with these requirements are adequate.<sup>9</sup>

Given this Government process, we have proposed in relation several areas of the Code, that changes are not implemented now but rather that a review of certain sections is undertaken as soon as practicable once the outcomes of the BNPL reforms are clear. These areas are identified and set out in more detail in Chapter 3 of this Report and primarily relate to the Code commitments on suitability and related issues around responsible lending.

There is also a limited set of issues that have been identified by stakeholders and which Promontory understands may be considered as part of Treasury's review process or other

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<sup>9</sup> The Commonwealth Treasury, *Regulating Buy Now, Pay Later in Australia*, <https://treasury.gov.au/consultation/c2022-338372>, November 2022.

regulatory reforms, but that were not covered by our review. These issues include the possible disclosure of merchant fees for BNPL products, and BNPL provider participation in comprehensive credit reporting.

### **1.3 Comparison to other codes**

Promontory has not undertaken an extensive formal benchmarking against other financial sector codes. However, we have looked to some other codes as providing relevant examples or comparisons for certain parts of the BNPL Code. For example, we have identified areas where we have observed that the BNPL Code is performing well compared with the standards we have seen within several other codes, such as accreditation, the frequency and type of data collected for compliance purposes, and the inclusion of minimum standards for merchants and retailers.

Promontory has referenced the Banking Code more frequently as a point of comparison. This is for several reasons. The Banking Code has a strong focus on credit products, and some of its members offer BNPL products. It is a long-standing Code that has been through multiple reviews, and thus there are lessons that can be drawn from this experience. It is widely understood by financial sector stakeholders. It has been approved by ASIC, which also helps to establish relevant benchmarks. We recognise that there are limitations to such comparisons given some of the differences with the BNPL sector, but the Banking Code provides a more relevant comparison than most other codes.



## Chapter 2: The Code's Operating Context

### 2.1 Regulatory and legal status of the Code

This Chapter considers 'Code as a whole' - the overall structure and effectiveness of the Code and its regulatory status. Chapter 3 discusses the individual commitments and provisions of the Code.

Self-regulatory codes are most effective if they operate within a coherent regulatory framework, where the role of the code is clear vis a vis other forms of regulation. Several regulators, notably ASIC in the financial services sector, have published guides that set out appropriate benchmarks for codes. There is, in some cases, the ability to seek regulatory approval for codes, although this has not been widespread to date.

In general, there is a view that codes can and should (1) clarify and explain legal requirements and (2) make commitments to customers that go above and beyond legal standards. For example, ASIC's Regulatory Guide 183 – Approval of financial services sector codes of conduct (**RG 183**) states that the primary role of a financial services sector code is to raise standards and complement legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with their customers. Codes will also be most effective where the commitments they make are clear and enforceable.

There are opportunities for potential enhancements in these areas. We note that not all of these are immediately within the control of the AFIA and/or individual BNPL providers, but rather are broader regulatory observations (termed 'Potential Regulatory Developments'). Nonetheless, we encourage AFIA to consider pursuing these developments as it looks to advance the Code over time.

#### 2.1.1 ASIC approval

ASIC can approve codes of conduct that relate to the activities of holders of an Australian Financial Services Licence (**AFSLs**), ACLs, or issuers of financial products. It does so against the standards set out in RG 183. This is an important step for any industry code to assist consumer confidence and to help ensure appropriate and robust standards are in place to support the ongoing effectiveness of a code.

AFIA considered the standards in RG 183 in its development of the Code, as well as ACCC guidance on industry-led codes. We understand that AFIA sought to have the Code approved by ASIC when it was first developed. However, ASIC did not undertake an approval process, as BNPL providers are not required to hold AFSLs and/or ACLs (although some do as they offer other products that require a licence, and RG 183 provides that ASIC may consider approving a Code that is open to subscription by non AFS licensees although this is not intended to cover the core membership of the Code<sup>10</sup>). We recognise that seeking code

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<sup>10</sup> ASIC RG 183, *Approval of Financial Services Sector Codes of Conduct*, March 2013, 183.17.

approval under the ASIC framework is currently outside of AFIA's control given current regulatory requirements.

The Code would benefit from the process of ASIC approval. This issue should be revisited once the reforms to BNPL regulation are clear, particularly as they relate to licensing requirements. Depending on the outcomes of the Government's reform process, it would be desirable for AFIA to submit the Code for ASIC approval, contingent upon making any other changes that arise from the reform process.

As noted above, AFIA had regard to RG 183 in the development of the Code. An ongoing commitment to code enhancement should help position the Code for any future RG 183 application, particularly around the expectation that codes continue to evolve to set standards that go beyond minimum legal requirements or industry practice.

In seeking ASIC approval or meeting the requirements of RG 183, AFIA should consider the following:

- The ability to demonstrate that the Code delivers measurable customer benefits and positive outcomes.
- The extent to which the Code contains plain language provisions that deal with the Code's scope, objectives, and core rules.
- The enforceability and legal status of the Code – as outlined in sections 2.1.2 and 4 of this Report.

**Potential  
Regulatory  
Development 1**

Consideration should be given to submitting the Code for ASIC approval once the outcomes of the BNPL reforms are clear.

***2.1.2 The legal status of the Code as it relates to customer ability to enforce commitments could be clearer***

The legal status of the Code is described in section 6 as 'contractually enforceable commitments made by Code Compliant Members' and it goes on to state that 'these commitments are enforceable by customers through AFCA'.<sup>11</sup> RG 183 notes that a code should have rules which are binding on and enforceable against subscribers or the body that has power to administer the code through contractual arrangements.

While the BNPL Code states that commitments are enforceable by customers through AFCA, the Banking Code more clearly sets out that a contractual relationship exists between the bank and customer through individual customer contracts.

The BNPL Code states that these contractually enforceable commitments are enforceable by customers through AFCA. It is important that customers do have the ability to take matters to

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<sup>11</sup> AFIA, *Buy Now Pay Later Code of Practice*, clause 6.

AFCA, and that AFCA is able to reference the Code in its consideration of complaints. However, it is not clear whether the commitments described in the BNPL Code are to be explicitly included in relevant BNPL contracts and this has led to a range of approaches by Members such as:

- including in contracts that Code commitments are contractually enforceable;
- including some Code commitments included as specific contractual terms (e.g. complaint response timeframes and fee change notice periods); or
- a general reference to the Code in contracts.

The Banking Code more clearly sets out that a contractual relationship exists between the bank and customer through individual customer contracts (see box below).

***The Banking Code of Practice – Chapter 1 Section 2: The Code forms part of our banking services and guarantees -***

*‘Our written terms and conditions for all banking services and guarantees to which the Code applies will include a statement to the effect that the relevant provision of the Code apply to the banking service or guarantee’*

***The Buy Now Pay Later Code of Practice – Clause 6: Legal Status of the Code –***

*‘This Code describes contractually enforceable commitments made by Code Compliant Members. These commitments are enforceable by customers through AFCA.’*

The current approach may lead to customers having inconsistent rights to enforce the Code depending on their BNPL provider. BNPL providers should consider whether the BNPL Code should be clarified by modifying the Code’s language around contractual obligations to ensure that commitments will be incorporated in BNPL customer contracts. That is, the Code could require that Members specify in their BNPL contracts that relevant provisions of the Code apply. This would facilitate a more consistent approach to customer protection and rights to enforce the Code, as is the case in the Banking Code.

**Recommendation 1**

Clarify clause 6 of the Code to ensure consistent protection is afforded to customers. This may be achieved by modifying the Code’s language around contractual obligations to ensure that commitments will be incorporated in BNPL customer contracts.

### **2.1.3 Reference to Code Member**

The use of the term ‘Code Compliant Member’ throughout the BNPL Code is inconsistent with other codes. Promontory recommends the use of the term ‘Code Member’ to avoid any inadvertent impression that Members are simply assumed to be compliant by virtue of their membership.

<b>Recommendation 2</b>	Simplify the reference from ‘Code Compliant Member’ to ‘Code Member’ throughout the Code documents.
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## 2.2 The language and structure of the Code

Promontory has identified opportunities to improve the drafting and structure of the Code to help ensure that commitments are clear, set out logically, expressed consistently, and are meaningful. These are set out below, with more specific observations relating to individual commitments set out in Chapter 3.

### ***2.2.1 The high-level Code commitments should be underpinned by provisions with greater clarity and detail***

The nine high level commitments set out in the Code were seen as positive and appropriate. Sections covering some of these commitments are well set out, but others would benefit from greater clarity and coherence. Improving the drafting and structure of the Code so that commitments that sit under these principles are set out in a clearer and more consistent manner, will assist both customers and Code Members to understand how these will apply in practice.

These observations are set out below in Chapter 3 that covers each Code commitment.

### ***2.2.2 There is scope to remove repetition and improve structure so as to facilitate understanding and consistency of requirements***

There are opportunities for the Code to be restructured and rationalised to reduce the level of repetition and group related requirements so that they can be easily identified.

For example:

- Similar, but not identical requirements relating to vulnerability can be found across multiple commitments. The commitment ‘*We will focus on customers*’ sets out provisions relating to vulnerability. Commitments relating to training on vulnerability are set out across multiple sections of the Code and worded slightly differently (e.g. clauses 8.1, 8.5, 14.2). The Code should be streamlined to include all provisions related to vulnerability within the relevant section on vulnerability. Similar requirements do not need to be restated.
- References to legal requirements and obligations are found throughout the Code rather than in the commitment ‘*We will comply with legal and industry obligations*’. For example, clause 9.2 states ‘we will commit to the Australian Government’s Artificial Intelligence Ethics Principles.’ As a general rule, where a reference to relevant legislation or regulatory guidance sets out how a Code Member will meet the requirements of a certain commitment, it would be desirable to briefly state the key objective or context of the relevant guidance or legislation. In other cases, references to legal requirements and obligations would more sensibly be situated within the Code commitment ‘*We will comply with legal and industry obligations*’. These areas are identified within Chapter 3 of this Report.

- Part C of the Code covers obligations relating to merchants and retailers, however additional commitments are found throughout the Code (such as clause 9.6, 10.2(c)). These sections should be resituated to Part C of the Code so that all relevant requirements are grouped and consistent.
- The commitment ‘we will be fair, honest and ethical’ should underpin all Code commitments. These concepts are mentioned in several places, but there is an opportunity to set out this commitment as a ‘guiding principle’ of the Code upfront by making it Commitment 1. This commitment is then supported by similar statements across several other commitments such as ‘we will handle complaints promptly and fairly’ and ‘we will treat you fairly, respectfully and consider your specific circumstances if you are experiencing financial difficulty’. Specific recommendations relating to elements of the Code which require additional detail or could be rationalised are set out within later sections of this Report.

## 2.3 Coverage of the Code

### 2.3.1 *The Code should include a definition of ‘customer’*

The Code audience is referred to as ‘customers’ but this term is not explicitly defined in the Code. The Code is designed for retail customers, but in practice, the absence of prescriptive definition of ‘customer’ suggests that the Code applies to small business customers, except for a limited set of exclusions. These exclusions cover products or services offered to persons or strata corporations that are predominantly for a purpose that is not a consumer purpose.

There would be benefit from greater clarity around the definition of ‘customer’ in the Code. It would be undesirable for genuine small business customers who are purchasing the same sorts of products as retail customers to be inadvertently disadvantaged.

One stakeholder identified that the Code does not capture commitments specific to dealing with small business customers and suggested alignment to the Banking Code and the Customer Owned Banking Association Codes of Practice in this regard. The Banking Code explicitly states that the Code applies to individual and small business customers. The Customer Owned Banking Association Codes of Practice includes specific additional commitments for Small Business customers.<sup>12</sup> However, several of these commitments are related to particular loan and credit products for small businesses that BNPL does not offer.

Promontory also suggests that AFIA continue to monitor the provision of BNPL products for small businesses in future reviews of the Code.

#### **Recommendation 3**

Update the Code to include a definition of ‘customer’. Consideration should be given to the explicit inclusion of small business.

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<sup>12</sup> Customer Owned Banking Code of Practice, *Customer Owned Banking Code of Practice*, clause 78.

### **2.3.2 The Code does not have complete industry coverage**

Since the Code came into effect, BNPL offerings have continued to expand and diversify, and are being offered by a wider range of providers across the market, such as Banks that are members of the Banking Code.

There are BNPL providers operating in Australia who are not subject to either the Banking Code or BNPL Code, and providers who are subject to the Banking Code rather than the BNPL Code. We note that in the most recent Banking Code review, there was a commitment to review that Code following the outcomes of the BNPL regulatory reforms.<sup>13</sup>

AFIA has sought to take a lead on self-regulation in this sector through the development of the BNPL Code, but it cannot mandate subscription to the Code.

ASIC's RG 183 notes that it is normally undesirable to have a number of different codes covering substantially the same subject area and that they should be harmonised to the greatest extent possible. To address this, some stakeholders including Code Members have suggested the Code should be mandatory for all BNPL providers. However, it is not within AFIA's remit to mandate membership - this is a policy question for Government. In this context, AFIA should consider the implications of wider Code membership following the outcomes of BNPL regulatory reforms.

#### **Potential Regulatory Development 2**

AFIA should consider the implications of wider Code membership following the outcomes of BNPL regulatory reforms.

### **2.3.3 The BNPL market is diverse, presenting a need to ensure that the Code is scaled across the sector**

In addition to being offered by a wider segment of the market, over time BNPL products have also become available to service a wider range of products at different price points. Today, BNPL providers range from offering a maximum \$2,000 credit limit for lower value products, to offering solar and home improvement products up to the value of \$30,000. Some BNPL products are now also becoming available to support agriculture and small business customers. The diverse nature of BNPL business models is indicated by the maximum transaction values and loan terms across the nine BNPL Code Members. This is set out in Table 1.

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<sup>13</sup> Australian Banking Association, *2021 Independent Review of the Banking Code of Practice Final Report – Australian Banking Association response to recommendations*, <https://www.ausbanking.org.au/wp-content/uploads/2022/12/ABA-Response-to-BCOP-Review.pdf>, 2022.

**Table 1 – Product Offerings across BNPL Code Members (sourced from Code Member websites)<sup>14</sup>**

Code Member	Member 1	Member 2	Member 3	Member 4	Member 5	Member 6	Member 7	Member 8	Member 9
Maximum Loan Amount	\$3,000	\$2,000	\$30,000	\$30,000	\$2,000	\$20,000	\$35,000	\$10,000	\$20,000
Loan Term	6-8 weeks	No term	2-60 months	6-60 months	4-6 weeks	2-24 months	72 months	6-24 months	2-60 months

The Code in some areas allows for different business models operating across the industry. As an example, the Code outlines different requirements for customer suitability assessment requirements depending on the transaction value being offered by the Code Member.<sup>15</sup>

Given the diversity and continuing evolution of the BNPL market, there may be opportunities to consider scalability based on factors other than transaction value to address particular issues or risks. Scalability can act as a mechanism to ensure that obligations are proportionate. Factors that may be considered over time include underlying purchase, nature of the target market, or customer type.

As the BNPL market develops, AFIA and Code Members should continue to assess whether there are any provisions that require scalability and/or that should be included to deal with particular new and emerging segments of the market, for example agricultural equipment.

<b>Recommendation 4</b>	As the BNPL market develops, AFIA and Code Members should continue to assess whether there are any provisions that require scalability and/or that should be included to deal with particular new and emerging segments of the market.
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<sup>14</sup> This information correct is as at the time the review was conducted (October 2022).

<sup>15</sup> AFIA, *Buy Now Pay Later Code of Practice*, clause 11.5.



## Chapter 3: The Code's Key Commitments

The Code sets out nine key commitments that are binding on Code Members. These are:

1. 'We will focus on customers'
2. 'We will be fair, honest, and ethical'
3. 'We will keep you properly informed about our product or service'
4. 'We will make sure our BNPL product or service is suitable for you'
5. 'We will undertake an ongoing review of the suitability of our products or services'
6. 'We will deal fairly with complaints'
7. 'We will offer financial hardship assistance'
8. 'We will comply with our legal and industry obligations'
9. 'We will support and promote this Code'

Our overall observation is that there was broad stakeholder support for these headline commitments. They were seen as appropriate and desirable objectives, and there were no suggestions for additional key commitments. Rather, commentary on the Code focused on:

- how these headline commitments are translated into meaningful, clear, and appropriately detailed promises, requirements and guidance; and
- how effectively these commitments are complied with and enforced.

This Chapter discusses each of these individual commitments, and commitments relating to merchants and retailers.

### 3.1 Commitment 1: 'We will focus on customers'

This is the first of the nine commitments outlined in the Code. It places varied obligations on Code Members relating to the quality of the product as well as customer vulnerability.

The Code adopts the ASIC description of customer vulnerability and outlines 'vulnerability factors' which a customer can experience, such as specific life events, personal difficulties, and personal or social characteristics impacting a person's ability to manage financial interactions.<sup>16</sup>

This commitment also covers a range of other points related to ensuring that a Code Member is providing a service that meets its customers' needs. This includes a restriction on BNPL products for gambling and the purchase of firearms and prohibiting the sale of BNPL products to those below the age of 18.

Promontory's consultation note included the following question in relation to this commitment:

- *Are the Code provisions that relate to dealing with customers with a vulnerability sufficiently clear and specific?*

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<sup>16</sup> ASIC, *ASIC Corporate Plan 2019-2023*, 2019.

The importance of appropriately dealing with customer vulnerability has arisen as a leading issue in Promontory's engagement with various stakeholders, particularly consumer groups. While this issue is not unique to BNPL, stakeholders and industry participants have observed that as a relatively young sector there are opportunities to enhance practices in this space. While the Code provisions were seen as reasonable in this area, there were also several opportunities for improvement that were identified.

The key areas raised by stakeholders relating to this commitment covered both the wording of the Code's commitments and in some cases its operating effectiveness and its application. These are set out below.

### **3.1.1 The Code places onus on the customer to self-identify as vulnerable**

Consumer groups have raised concerns with clause 8.3 which states; 'we may become aware of your vulnerability circumstances only if you tell us about them or it is otherwise reasonable for us to become aware of it'. There are many reasons why a customer may be reluctant to speak up about their vulnerabilities, such as potential stigma and a fear that this may limit their access to BNPL arrangements.

Consumer groups have identified customer vulnerability as a particularly important issue for the BNPL sector, highlighting that there is a significant proportion of BNPL customers who may be experiencing a vulnerability. ASIC's Report 600 found that 44% of BNPL users had an income of less than \$40,000<sup>17</sup>, and consumer groups provided case studies to suggest that the use of BNPL products (among other forms of credit) is common in customers with a low income and other potential points of disadvantage.

There is a view that the current Code provisions are reactive and do not require the Code Member to take any action to seek to identify vulnerabilities at the point of entry. In light of potential vulnerable BNPL customers, there should be a greater onus on Code Members to take steps to encourage customers to disclose their vulnerabilities or obtain information which may detect a vulnerability at the point of entry. We have not seen evidence of an assessment of vulnerability being undertaken at the point of entry, or information being collected which would indicate this during the initial suitability assessment.

As a comparison, the NCCP Act imposes a positive obligation to seek information about a customer which would indicate a potential vulnerability. This includes requiring a licensee to make reasonable inquiries about a customer's objectives in relation to the credit contract and the customer's financial situation. A credit product is deemed unsuitable if it is likely that the customer will be unable to comply with their financial obligations under the product or will only be able to comply with substantial hardship, or where the product will not meet the customer's objectives.

Promontory considers there are opportunities to revise the language in the Code to encourage Code Members to be more proactive in dealing with vulnerability and offering clearer guidance

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<sup>17</sup> ASIC, Rep 600 – Review of BNPL arrangements, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/> November 2018.

to customers to advise Code Members of any vulnerabilities, especially for higher value transactions. This could be achieved by amending clauses 8.3, 11.3(a), and 11.1(e) to ‘we will encourage you to tell us about your vulnerability’, as set out in the Insurance Council of Australia’s General Insurance Code of Practice (**General Insurance Code**) and to be adopted in the Banking Code.<sup>18</sup>

#### **Recommendation 5**

Revise language in clause 8.3 to encourage Code Members to be proactive in dealing with vulnerability, such as to ‘we will encourage you to tell us about your vulnerability’.

### **3.1.2 The definition of ‘vulnerability’ in the Code could be supported with a clearer list of indicators**

Code Members and consumer groups acknowledged that the Code adopts the ASIC definition of ‘vulnerability’. However, consumer groups suggested that a simple and non-exhaustive list of clearly identifiable categories of vulnerability would be easier for customers and the staff of Code Members to understand. Promontory notes this is consistent with the approach in the Banking Code.<sup>19</sup>

Adding a concise list within the Code in addition to the current provisions relating to the ASIC definition of ‘vulnerability’ will assist customers in understanding and identifying potential vulnerabilities. This list may include factors such as age, disability, mental health conditions, physical health conditions, family violence, language barriers, literacy barriers, cultural background, Aboriginal or Torres Strait Islander peoples (or identifying as Aboriginal or Torres Strait Islander), remote location, financial distress, and any other personal, or financial circumstances causing significant detriment.

#### **Recommendation 6**

Clarify the definition of ‘vulnerability’ in clause 8.4 by setting out specific categories of vulnerability in a concise and non-exhaustive list alongside current ‘vulnerability’ factors set out in the Code.

### **3.1.3 The Code should ensure commitments to vulnerable customers are clear and more specific**

While the Code makes a positive commitment to take ‘extra care’ with customers experiencing a vulnerability, consumer groups commented that it would benefit from additional detail on what this means and make clear and explicit commitments to vulnerable customers. For example, the Code could include examples of specific commitments to assist vulnerable customers, such as through providing access to free interpreter services where required, or access to services to assist communication with customers experiencing hearing difficulties.

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<sup>18</sup> Insurance Council of Australia, *General Insurance Code of Practice*, clause 93 states that ‘We encourage you to tell us about your vulnerability so that we can work with you to arrange support – otherwise there is a risk that we may not find out about it.’ The Australian Banking Association agreed to adopt similar wording in response to recommendation 39 of the Banking Code Review.

<sup>19</sup> Australian Banking Association, *The Banking Code of Practice*, clause 39.

Adding specific and clear commitments for vulnerable customers will help give meaning to this commitment and improve customer outcomes. This will also promote a consistent minimum standard and better practice across all Code Members.

<b>Recommendation 7</b>	Introduce specific and clear commitments to assist people experiencing vulnerabilities.
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### ***3.1.4 Improving staff training***

Clause 8.5 of the Code states that Code Members will train staff to act with sensitivity and respect towards vulnerable customers. Stakeholders strongly supported this provision of the Code in principle. However, during interviews Promontory heard anecdotal evidence that this provision is inconsistently applied across Code Members. We heard examples that indicated staff within the same Code Member did not appear to have a consistent approach or level of understanding in their dealings with vulnerable customers. This was identified as an issue particularly in relation to dealing with indigenous customers and customers experiencing domestic and family violence.

Promontory notes that the Code currently includes a more detailed clause relating to training on customer vulnerability, with specific reference to domestic and family violence, under the commitment relating to financial hardship (clause 14.2). There would be benefit in moving clause 14.2 to the relevant commitment covering customer vulnerability and replacing current clause 8.5. There may also be opportunities to improve the compliance monitoring processes for this requirement to address the concerns raised about its application. This may be through collecting information on staff training rates or requesting that evidence of training is provided as part of compliance monitoring (see related recommendation 40 in Chapter 4 – Code Compliance Monitoring and Enforcement).

<b>Recommendation 8</b>	Outline consistent and comprehensive requirements on staff training through moving clause 14.2 to the relevant commitment covering customer vulnerability and replacing current clause 8.5.
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### ***3.1.5 There are opportunities to provide additional detail on what is meant by 'inclusive and accessible'***

While this Code commitment includes a clause relating to providing an 'inclusive and accessible service', consumer groups expressed concerns with the inclusive and accessible options provided by Code Members, particularly when customers are seeking hardship assistance or lodging a complaint. It was noted that BNPL products are designed to appeal to a broad customer base and are widely available, therefore the avenues for customer contact should be readily accessible for a broad range of people.

Promontory has observed variation in how this commitment is met across Code Members. While some Members offer multiple communication channels, others adopt a 'digital first' strategy and do not offer a telephone number. For some disadvantaged customers, access to a telephone would be beneficial. Vulnerable customers, especially those experiencing mental health issues and cognitive impairment may require environmental and occupational

modification strategies for tasks such as ‘managing money’<sup>20</sup>. Where a provider operates a digital first strategy, it is important to consider how to enable those who find the use of a ‘mobile app’ difficult especially when they confront challenges or problems with BNPL services and related financial issues.

The Banking Code includes detailed commitments on ‘inclusive and accessible banking’ and has a dedicated section to providing guidance on these requirements. Promontory considers there are opportunities to provide additional detail within the BNPL Code on what is meant by ‘inclusive and accessible’, such as identifying who may require services which are more accessible, and specific commitments for cohorts of customers including remote and indigenous peoples.

<b>Recommendation 9</b>	Provide additional detail on what is meant and expected by ‘inclusive and accessible’ as part of clause 8.2.
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### **3.1.6 Restricted use of BNPL products**

Promontory notes the limited set of restrictions relating to the use of BNPL products set out in clause 8.7 (f) of the Code (e.g. online gambling, retail gambling and purchase of firearms etc.). There was broad support for these restrictions across varied stakeholders with the exception of one submission from the shooting industry which supported the availability of BNPL for the purchase of firearms. Promontory is not proposing changes to this aspect of the Code.

## **3.2 Commitment 2: ‘We will be fair, honest, and ethical’**

This commitment sets out that Code Members will always act fairly, honestly, ethically and transparently in dealings with customers. This is a critical overarching commitment.

The Code elaborates on this commitment, stating that Code Members will take reasonable steps to ensure their products or services are not used or suggested in relation to unlawful unsolicited marketing or selling. Where a Code Member becomes aware that a merchant or retailer is engaging in unlawful unsolicited marketing or selling, the Code sets out that Members will deal with them in accordance with Part C of the Code. This commitment also states that Code Members will commit to the Australian Government’s Artificial Intelligence Ethics Principles.

Promontory’s consultation note included the following question relating to this commitment:

- *Are the requirements around acting ethically, honestly, and fairly supporting good customer outcomes, for example in relation to unsolicited marketing or selling?*

The key issues identified in relation to this commitment are set out below.

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<sup>20</sup> Mental Health Coordinating Council, *Cognitive functioning: supporting people with mental health conditions*, [https://mhcc.org.au/wp-content/uploads/2018/05/2016.02.17\\_supporting\\_cognitive\\_functioning\\_mhcc\\_version\\_v.11.pdf](https://mhcc.org.au/wp-content/uploads/2018/05/2016.02.17_supporting_cognitive_functioning_mhcc_version_v.11.pdf), July 2015

### **3.2.1 The Code may benefit from additional detail on what is meant by acting ‘fairly and honestly, be ethical and treat you reasonably’**

The overarching commitment to act fairly, honestly, and ethically, is largely aligned to key requirements in financial services law, such as the general conduct obligations in the NCCP Act, which state that credit licensees are required to do all things necessary to ensure that credit activities authorised by the licensee are engaged in efficiently, honestly, and fairly.<sup>21</sup>

As set out above, Promontory’s view is that the commitment to act fairly, honestly, and ethically is a key pillar of the Code and should underpin everything Code Members do. This commitment was strongly supported by stakeholders.

Promontory observed that the provisions supporting this commitment largely state that Code Members will not act unlawfully and will comply with the law. In particular, the commitment includes an undertaking that Code Members will ‘take all reasonable steps to ensure that BNPL products are not used or suggested in relation to unlawful unsolicited marketing or selling of BNPL products or services.’<sup>22</sup>

There is less guidance about what it means to act fairly or ethically, which may involve actions that go beyond minimum legal standards. Generally, there is a view that commitments in codes to act ‘fairly’ or ‘ethically’ require more than just compliance with legal requirements. While consumer groups strongly supported the inclusion of these principles in the Code, they also commented that there may be benefit in providing non-limiting examples of what it means to act fairly, honestly, and ethically such that the commitment is clearer in practice. As an example, Code Members may demonstrate they are acting fairly and ethically by terminating a relationship with a merchant receiving multiple serious complaints or where there are credible and repeated instances of problematic sales practices. Alternatively, AFIA may consider setting out this commitment as a ‘guiding principle’ of the Code upfront, with the commitments underneath providing better guidance on how this will be achieved by Code Members, including through measures that go beyond minimum legal compliance.

#### **Recommendation 10**

Simplify and clarify the meaning of ‘act fairly, and honestly, be ethical and treat you reasonably’ in clause 9.1 of the Code through providing examples of actions to clarify the meaning of this commitment.

### **3.2.2 The Code should clarify that it commits members to supporting fair, honest, and ethical selling practices as well as lawful conduct**

Promontory recommends that this commitment is replaced with a broader commitment that covers (1) all sales practices (not just those which are unsolicited) and (2) fair, honest and ethical conduct, as well as legal requirements. This may also be used as an example of what it means to act in a manner which is fair, honest and ethical as set out in recommendation 10.

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<sup>21</sup> NCCP Act, section 47(1)(a).

<sup>22</sup> AFIA, *Buy Now Pay Later Code of Practice*, clause 9.5.



The Code should make it clear that Code Members will seek to ensure that their BNPL products:

- are not the subject of unlawful, unfair, unethical or dishonest selling practices or unsolicited selling; and
- are not used to finance other products that are the subject of unlawful, unfair, unethical or dishonest selling practices or unlawful unsolicited selling.

There is also an opportunity to make it clearer who sales practices commitments apply to and in what context. Unsolicited selling can arise in several situations and can arise from the conduct of both Code Members as well as merchants and retailers. Provisions relating to Code Members directly could be kept in this commitment, while those relating to the minimum standards that Code Members will require of merchants and retailers should be set out in Part C of the Code.

Further observations and related recommendations on how this revised commitment can be enhanced in relation to the selling practices of merchants and retailers are included in section 3.10 which covers Part C of the Code - Minimum standards for merchants and retail partners.

<b>Recommendation 11</b>	Amend clause 9.5 on unsolicited selling of BNPL so it reflects the commitment to act fairly, honestly and ethically in relation to selling as well as unlawful conduct. Clarify that the Code covers both the unsolicited selling of BNPL and the related issue of unsolicited, unfair, or unethical selling of products where the purchase is funded by BNPL.
<b>Recommendation 12</b>	Rationalise areas which cover unsolicited marketing or selling by moving provisions/expectations relating to merchants and retailers to Part C of the Code and retaining provisions relating to Code Members within this commitment. These standards should be consistent and responsibilities distinct. Clause 9.6 should be deleted.

### ***3.2.3 Explanation on the key objective underpinning the commitment to comply with the Australian Government’s Artificial Intelligence Ethics Principles***

As set out in section 2.2.2, the reference to the Australian Government’s Artificial Intelligence Ethics principles would benefit from concise additional information on the main objective(s) underpinning this commitment and why it is in this section. This will assist customer’s understanding what this means in practice and clearly outline minimum standards and expectations for Code Members.

<b>Recommendation 13</b>	Provide concise detail on the objectives underpinning the commitment to comply with the ‘Australian Government’s Artificial Intelligence Ethics Principles’ in clause 9.4 to explain what the principles mean in practice.
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### **3.3 Commitment 3: ‘We will keep you properly informed about our product and service’**

Appropriate and clear customer information is a critical contributor to good customer outcomes. This commitment sets out an extensive range of specific requirements intended to help customers make informed decisions about their products, services, and repayments. These include requirements around communication relating to fees and repayments, capping fees, transparent and clear terms and conditions, and ensuring marketing material is not misleading and deceptive, and ensuring that marketing materials are not provided to those in a financial hardship arrangement. All stakeholders supported these requirements in the Code.

Promontory’s consultation note included the following questions in relation to this commitment:

- *Are the requirements under the Code in relation to informing customers of key product features, including fees, ensuring consistent customer understanding of BNPL products and services?*
- *Are there any areas where further or different information could be required under the Code to promote consistent customer understanding of BNPL products and services?*

These requirements are critical to ensuring that customers receive accurate and understandable information about BNPL products. The Code covers the main areas around information provision, but there is scope for improvement, especially in a sector that focuses on ensuring easy and simple customer interactions. The key issues identified are set out below.

#### **3.3.1 The commitment to ensure that late fees are ‘fair, reasonable, and capped’ could have additional guidance on these requirements**

Clause 10.1(g) of the Code states *‘if we charge a late fee, it will be fair, reasonable, and capped’*. This was introduced with the positive objective on placing a limit on late fees and providing a level of certainty to customers. Code Members have commented that they view this clause as effective and has led to fees being considerably lower than equivalent regulated credit products.

Promontory notes that the NCCP Act outlines specific requirements in relation to fees for different credit products, including clear and quantifiable caps.<sup>23</sup> Stakeholders commented that introducing an explicit minimum cap on late fees within the Code could drive a tendency to price up to that level by providers (and would also raise competition issues).

Providers argued that, in general, fees charged in the BNPL industry are considerably lower than alternate credit products, which supported the view that this provision was operating effectively. For example, Afterpay referenced research undertaken by Accenture which found that the most vulnerable credit card users pay up to seven times more in fees compared with

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<sup>23</sup> NCCP Act, section 31A(3) specifies that the maximum monthly fee that may be imposed for a small amount credit contract must not exceed 4% of the adjusted credit amount in relation to that contract.

Afterpay users.<sup>24</sup> Code Members also highlighted the Code requirement to communicate with customers before charging a late fee.

Consumer groups highlighted the importance of this issue, noting that research conducted by ASIC found that 21% of BNPL users surveyed missed a payment in the last 12 months, and missed payment fee revenue for BNPL providers grew by 38% in FY2019.<sup>25</sup> They raised concerns that the commitment that fees will be ‘capped’ lacks specificity or a clear point of reference on what is fair and reasonable and may give customers a greater sense of protection than is warranted in practice. In this context it is worth noting that many customers may not read the detail of provisions relating to late fees, as they typically do not purchase such products with the expectation that they will miss payments, so it is important that there is substance behind this commitment rather than relying on customers to compare such fees.

Consumer groups recommended that this provision should provide additional detail or a reference point to what is ‘fair and reasonable’, such as stating that fees will be capped and limited to the reasonable pre-estimated loss, and that this could be principles-based, rather than prescriptive.

Promontory observed that late fees across the industry vary significantly. This also includes variation within a single Code Member depending on different factors related to a particular transaction. Examples of factors driving these variations include the transaction amount, the retailer involved and the plan length.

It is also the case that fees (including late fees) can be varied at any point by any provider as long as a 40-day notice period is provided and the fee remains ‘fair and reasonable’.<sup>26</sup> Such flexibility is not unusual in financial products, but it does have implications for how customers might understand the cap on late fees. The significant flexibility that Code Members have to change the maximum late fee is unlikely to be consistent with how many customers would understand a ‘fee cap’.

A summary of fees is outlined in Table 2 below, sourced from the AFIA website.<sup>27</sup>

**Table 2 – Fees across BNPL Code Members**

Code Member	Late Payment Fee Cap
Member 1	25% of purchase price or \$68 (whichever is lower).
Member 2	\$49.90 per calendar year.
Member 3	For purchases less than or equal to \$65 fees are capped at \$6. For purchases greater than \$65, Member 3’s late fees for ‘Product Type 1’ are capped at 18% of the

<sup>24</sup> Afterpay, *Afterpay Economic Impact* <https://afterpay-corporate.yourcreative.com.au/wp-content/uploads/2021/04/Afterpay-Economic-Impact-report-2020-Accenture.pdf>, 2020.

<sup>25</sup> ASIC, Report 672: *Buy Now Pay Later: An industry update*, <https://download.asic.gov.au/media/5852803/rep672-published-16-november-2020-2.pdf>, November 2020.

<sup>26</sup> AFIA, *Buy Now Pay Later Code of Practice*, clause 10.1(h),

<sup>27</sup> AFIA, *BNPL Fees Fact Sheet*, <https://afia.asn.au/BNPL-Fees>.

Code Member	Late Payment Fee Cap
	purchase or up to \$48 whichever is lower. Member 3's late fees for 'Product Type 2' are capped at 18% of the purchase or up to \$78, whichever is lower.
Member 4	\$0 for purchases of less than \$25 total value. There is a maximum of three late fees that can be applied to a purchase. Late fee cap is \$24 for purchases of \$200+ which reduces to a maximum of \$6 for purchases up to \$59.99.
Member 5	One late payment fee of \$10 when purchase amount is equal to or less than \$50. A cap of \$50 (5 late payment fees) when purchase amount exceeds \$50 but less than \$5,000. For purchases exceeding \$5,000: 12 late payment fees per year (\$180).
Member 6	One late payment fee of \$9.50 per instalment payment due under a payment plan.
Member 7	Late payment fees capped at the lower of 10% of approved limit or \$250.
Member 8	\$250 in aggregate
Member 9	One late payment fee of \$5. An additional late fee is charged where a customer has caught up on all repayments and then misses another repayment at a later date.

Analysis across Code Members illustrates the variation in the quantum of the cap on late fees suggests different approaches to the interpretations of 'reasonableness'. For example, for lower value transactions at a maximum value of \$3,000, the cap on late fees ranges from \$5 to \$68. This suggests that while the requirement in the Code has supported the introduction of fee caps, it could benefit from increased guidance around what is 'fair' and 'reasonable' to provide a level of confidence and protection to customers. This may include the requirement to state that fees are fair and reasonable having regard to the cost incurred by the Code Member due to receiving a late payment and limited to the reasonable pre-estimated loss.

<b>Recommendation 14</b>	Provide additional detail or a measurable reference point on what is considered 'fair, reasonable, and capped' in relation to late fees in clause 10.1(g) of the Code.
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### ***3.3.2 Some customers (or their nominated representatives) have experienced difficulties with accessing information relating to their BNPL accounts***

This commitment includes detailed provisions relating to supply of information about BNPL products and fees prior to becoming a customer. This is an important commitment, and consumer groups were supportive of the provisions in this area of the Code. However, concerns were raised about compliance with these requirements.

Consumer groups have commented that some customers are facing challenges in obtaining information about their account after signing up and using the product. Examples included case studies where Code Members failed to provide basic information that a customer is entitled to receive under the Code relating to an account or significantly exceeded the

timeframes for providing this information set out in the Code. Further, information that a customer might reasonably expect such as statements or suitability assessments, is sometimes provided but in other cases very difficult to obtain. Examples were cited where material was only provided once a complaint was to be taken to AFCA.

At times providers pointed customers to a digital platform or a 'mobile app' to access this information. In many cases this may be helpful and ensure rapid access. However, it was also observed that the app may not include all relevant information and/or cannot be accessed by a nominated representative. Given the focus in the BNPL sector on ease of customer interactions, and the use of technology to support customers, there is scope to improve the provision of key customer information.

Examples were also cited of customers facing difficulties accessing information relating to repayment schedules. This presents challenges to those with multiple BNPL transactions and/or accounts seeking to understand and manage outstanding payments. Promontory recommends that existing clauses which relate to providing information prior to becoming a customer (e.g. clause 10.1c(i) – scheduled repayment obligations) are extended to allow a customer access to information on request (i.e., are added to the information which can be requested under 10.1(e)). That is, it should be clearer that customers must be able to access information about amounts payable and when they fall due.

There is also an opportunity make some limited but important additions to the list of documents that can be requested in clause 10.9 to include information such as suitability assessments and formal transaction statements. This may be achieved through enhancing and simplifying existing digital platforms so that this information is easily available and accessible to the customer. However, the Code should also ensure that Code Members have flexible processes in place for those facing accessibility challenges or working with nominated representatives.

Outside of enhancements to the content of the Code, the evidence provided by consumer groups suggests that there is a need to improve oversight and compliance monitoring relating to document and information requests. This may be through enhancing reporting to the CCC to capture circumstances where requests for information have not been addressed within the required timeframe, or documents required to be available under the Code have not been provided. A related recommendation is included in Chapter 4 - Code Compliance Monitoring and Enforcement.

<b>Recommendation 15</b>	Extend the requirement in clause 10.1(e) to include a commitment to provide access to information on repayment schedules as requested, not just prior to becoming a customer (10.1(c)).
<b>Recommendation 16</b>	Expand the list of documents that can be requested in clause 10.9 to include suitability assessments (as relevant) and formal transaction statements.

### ***3.3.3 There are opportunities to improve product disclosure and warning practices***

Stakeholders expressed support for clause 10.1(a) of the Code which states that terms and conditions will be fair, clear, transparent, and written in plain language. This is a key Code

requirement, especially with products that will often be used in situations where a customer is making a relatively quick decision about funding a purchase.

However, while these requirements in the Code are important, consumer groups highlighted that this is not always effectively applied in practice and customers do not always understand the cost of using a BNPL product and associated fee structures.

We heard that some vulnerable customers who have less understanding that BNPL is effectively credit, and clearer and more transparent information may be needed to assist some customers in understanding the nature of this product. Working with representatives for vulnerable customers, such as financial counsellors, may assist messaging and education on this issue.

Information relating to fees, fee comparisons and product information should be made clearly available on Code Member's websites rather than, or in addition to, the AFIA website (as is currently set out in the Code in clause 10.1(b)). Customers do not typically think to go to the industry association's website to source information about fees. Promontory also observed that this information was not straightforward to locate on the AFIA website and the website is not primarily designed for retail customers. Information relating to fees should be made available via a link on Code Member websites. Additionally, to avoid confusion we recommend that commitments by AFIA (as compared to Code Members) should be moved to the end of this commitment (end of section 10).

As set out above, there are several areas where this section of the Code can be improved. Promontory also recommends that this area is also reviewed following the conclusion of the BNPL law reform process, particularly if more standardised requirements for BNPL fee disclosure and warning requirements are mandated. Should this occur, the Code could potentially include additional guidance to help ensure more consistent disclosure and warning process. This could consider how best to set out a consistent approach to product disclosure and warnings so that it is easier for customers to interpret and compare. Any guidance on a standardised approach would benefit from being customer tested.

<b>Recommendation 17</b>	Relocate commitments by AFIA (currently clause 10.1b) instead of Code Members to the end of this commitment (end of section 10). Information relating to fees should also be made available via a link on Code Member websites.
<b>Recommendation 18</b>	Review provisions relating to disclosure and warning requirements (clause 10.1) following the BNPL law reform processes especially if more standardised requirements for BNPL fee disclosure and warning requirements are introduced. Alternatively, the Code should develop guidance for a more consistent disclosure and warning process which is tested with customers.

### **3.3.4 There is opportunity to improve the ability for customers to make early repayments**

This commitment includes a provision stating that customers will be entitled to pay out their contract or repayments with no fees attached.<sup>28</sup> Consumer groups support this provision but noted that the current allowance for minimum notice periods can in some cases result in customers incurring additional account keeping fees during this time. They also commented that it can be difficult to close an account or source information about this process.

By way of comparison, the Banking Code commits to give readily accessible information about how to close an account and will enable this to be done quickly and easily. Promontory recommends that the Code is enhanced to facilitate early repayments quickly and consider including a reasonable timeframe (following consultation with industry members).

#### **Recommendation 19**

Enhance the provision in clause 10.7 relating to early repayments to include that these will be processed quickly and consider including a reasonable timeframe (following consultation with industry).

### **3.3.5 Actioning credit limit reduction requests**

Consumer groups suggested that the process for requesting a credit limit reduction is overly complex, and sometimes not addressed in a timely manner. A contrast was observed to transaction limit increases which occur quickly, automatically, and often are unsolicited. A customer should be able to reduce their credit limit with ease and at any time. Promontory recommends that a commitment is introduced within the Code which requires a Code Member to enable their customers to reduce their credit limits easily and on request. This should also be made available through a number of channels so that it is accessible to a broad range of customers.

#### **Recommendation 20**

Introduce a commitment which requires a Code Member to enable their customers to reduce their credit limits easily and on request.

### **3.3.6 Greater detail on the intended objective of complying with ASIC's best practice guidance on advertising**

As outlined in section 2.2.2, where there is a reference to legislation or guidance within the Code, this should be supported by concise detail on the intended objective. There is an opportunity to provide additional detail on what is meant by 'we will comply where relevant with ASIC's best practice guidance on advertising' including identifying the specific guidance document being referenced. It is currently unclear which guidance document(s) is being referred to.

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<sup>28</sup> AFIA, *Buy Now Pay Later Code of Practice*, clause 10.7.



**Recommendation  
21**

Provide concise additional detail on the intended objective of complying with ASIC's best practice guidance on advertising in clause 10.2(a).

### **3.4 Commitment 4: 'We will make sure our BNPL product or service is suitable for you'**

This commitment includes requirements relating to the suitability assessment for new and existing customers of a Code Member. The commitment includes tiered suitability assessments based on the transaction amount. This is split into four groups:

1. Transaction amounts for new customers below \$2,000;
2. Transaction amounts for new customers between \$2,001 and \$15,000;
3. Transaction amounts for new customers between \$15,001 and \$30,000; and
4. Transaction amounts for new customers over \$30,000.

Suitability assessments require Code Members to undertake additional checks to satisfy themselves that one of the below criteria is met where the transaction amount is between \$2,001 and \$15,000 and both criteria met where the transaction amount is between \$15,001 and \$30,000:

- Customer Data – For example, information about income and expenses that satisfy the Member's internal risk management processes (e.g. this could be by using appropriate industry benchmarks).
- Third-Party Data – For example, a credit check or an equivalent check that provides information about the customer's existing debts and liabilities.<sup>29</sup>

For transaction amounts above \$30,000, Code Members need to confirm that the existing customer assessment, including the transaction amount and term ratio is consistent with their suitability assessment and internal risk management processes.<sup>30</sup>

Separate requirements are included for the suitability assessment for existing customers increasing their limit, largely leveraging off a customer's repayment history to inform the assessment.

Promontory's consultation note included the following questions relating to this commitment:

- *Are the provisions of the Code dealing with the new customer assessment process clear and effective?*
- *Are the provisions of the Code dealing with existing customer assessment process clear and effective?*

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<sup>29</sup> AFIA, *Buy Now Pay Later Code of Practice*, clause 11.5.

<sup>30</sup> *Ibid*, clause 11.13



The Code's approach to customer suitability assessments was the leading issue raised by various stakeholder groups in submissions and interviews. Code Members were concerned that requirements in this area should not become so detailed as to remove the flexibility and ease of use for BNPL products, especially by customers undertaking lower value transactions, while consumer groups were concerned about the risks for customers of inappropriate lending, over-indebtedness and financial pressure, especially for vulnerable customers.

This area is a key focus of BNPL law reform. All legislative options outlined in the Treasury Options Paper envisage additional requirements around affordability or suitability assessments. Our view therefore is that rather than implementing changes to this part of the Code at this point, it would be more sensible to undertake a review of this section of the Code as soon as possible after the introduction of the reforms to BNPL regulation.

Treasury's Options Paper referenced ASIC's Consumer Monitor monthly survey report for Q1 2022 which showed 23 per cent of BNPL users experienced Household Income and Labour Dynamics in Australia ('HILDA') financial stress indicators, and 19 per cent experienced two or more stress indicators.<sup>31</sup> We were also provided with case studies from consumer groups suggesting that BNPL products have been provided to low income, vulnerable individuals with high volumes of debt.

It is universally accepted that the current requirements in the Code in relation to the suitability assessment do not provide the same or comparable protections to the NCCP Act. AFIA advised that the Code was developed using suitability language contained in the Design and Distribution Obligations (**DDOs**) and not the responsible lending language in the NCCP Act, in anticipation of these legal obligations. BNPL providers have raised concerns that additional obligations could adversely impact flexibility and accessibility afforded to customers under the current approach.

In undertaking a review of this section following the outcomes of BNPL regulatory reforms, consideration could be given to the following areas of the current Code which were identified by stakeholders during our consultation:

- **Clarifying how information is used to inform the suitability assessment:** While the Code requires a Code Member to obtain customer data and/or third-party data, it does not specify that this information should provide insight into a customer's financial position, or how this information should be used to inform the suitability assessment. The Code does not define 'suitability' or the circumstances in which a product should be deemed 'unsuitable'. There is an opportunity to clarify the nexus between information received and the suitability assessment.

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<sup>31</sup> The Commonwealth Treasury, *Regulating Buy Now, Pay Later in Australia*, <https://treasury.gov.au/consultation/c2022-338372>, November 2022.

- **Improving the visibility of customers with multiple BNPL accounts and/or other credit products:** The current suitability assessment set out in the Code does not require Code Members to seek information to understand a customer’s financial profile. A key issue which has been raised in submissions and interviews is the number of customers holding multiple BNPL accounts and/or other credit products. This results in some customers potentially accumulating higher volumes of debt than they can effectively manage. If a customer holds multiple accounts or credit products this impacts the effectiveness of the current tiered suitability assessment set out in the Code. It also potentially reduces the effectiveness of low initial credit limits as a mechanism for dealing with the risk of unaffordability. It is evident that multiple credit accounts can result in a customer accessing a potentially unsuitable amount of credit.
- **Credit limit increases:** Some Code Members provide unsolicited transaction limit increases to customers, and this is not prohibited under the Code unless a customer is in arrears. Some Code Members highlighted that these increases are for relatively smaller amounts and would not facilitate high value transactions and are appropriate in this context. Unsolicited credit limit increases are prohibited under the NCCP Act.<sup>32</sup> Where credit limit increases are solicited, a credit licensee must first consider whether the product is unsuitable and undertake a full assessment in accordance with responsible lending obligations.<sup>33</sup> These considerations are more robust than the Code, which includes an assessment process for existing customers which is consistent with the criteria for new customers with an additional criterion to also consider ‘appropriate repayment ability’. Consumer groups commented that repayment history is not always a reliable indicator of suitability, as it does not consider a customer’s income or expenses outside of the single BNPL product.
- **Clarifying the interaction between *individual* suitability assessments compared to whole of product assessments:** The interaction between individual suitability assessments compared to whole of product assessments or assessments based on customer segments (e.g. clause 11.3(b)) is unclear. While broader product suitability assessments based on customer assessments may be a useful touchpoint or reference point as part of an individual suitability assessment, they should be considered as distinct assessments.

**Recommendation  
22**

Review the Code commitment ‘*We will make sure our BNPL product or service is suitable for you*’ as soon as possible following the introduction of reforms to BNPL regulation. In doing so, solutions should address the following:

<sup>32</sup> NCCP Act, section 133BE states that a credit provider is not to offer etc. to increase credit limit of a credit card contract.

<sup>33</sup> NCCP Act, section 123.

	<p>i) Clarifying what ‘suitability’ means for BNPL customers and ensuring there is a clear nexus between the information obtained by Code Members as part of the suitability criteria and how this is used to inform the suitability assessment.</p> <p>ii) Improving the visibility of customers with multiple BNPL accounts and/or other credit products.</p> <p>iii) Including commitments around unsolicited credit limit increases and clarifying the operation of the suitability assessment for existing customers to aggregate all BNPL transaction amounts (if the assessment remains tiered).</p> <p>iv) Clarifying the interaction between individual suitability assessments compared to assessments based on customer segments or whole of product assessments (i.e., clause 11.3(b)).</p>
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### **3.5 Commitment 5: ‘We will undertake an ongoing review of the suitability of our products or services’**

This commitment includes provisions relating to an ongoing suitability assessment of BNPL products. It imposes a positive obligation on Code Members to monitor how customers overall are using their products.

Promontory’s consultation note included the following questions relating to this commitment:

- *Are the factors set out in the Code relating to the ongoing suitability assessment of BNPL products and services (Suitability Assessment) effective?*
- *Are there are limitations to how the factors are applied in practice which impact the effectiveness of the suitability review?*

This was an area which received limited feedback in Promontory’s consultation. In practice, Promontory’s interviews indicated that Code Members have generally adopted an approach to assessing suitability of BNPL products which is consistent with the requirements under DDOs, which are required by law and administered by ASIC.

The value of the Code is to potentially expand on the DDO guidance provided by ASIC by suggesting, for example, elements of suitability testing that are specific to BNPL. The Code does this in clause 12.3(h) by identifying that feedback from merchants and retailers should be considered. There is scope for examining the types of information in clause 12.3 to expand on or develop those which are particularly relevant to the BNPL sector to assess suitability.

We saw examples of robust processes in place among some Code Members, including regular reviews of Target Market Determinations and the use of clear frameworks and processes to inform product suitability and ensure that products are only distributed to

customers within the target market. Given the limits of our review we were not able to assess whether these practices are consistent across all Code Members.

The Code should also be clarified so that it is evident that this relates to overall market wide suitability rather than individual customer suitability.

<b>Recommendation 23</b>	Expand on the types of information included in clause 12.3 to identify those which are particularly relevant to the BNPL sector to assess suitability.
<b>Recommendation 24</b>	Clarify that section 12 relates to market wide suitability.

### 3.6 Commitment 6: 'We will deal fairly with complaints'

This commitment includes provisions relating to the approach to acknowledging and responding to complaints and sets out that all Code Members will have a Complaints Policy that is visible and easily accessible.

All stakeholders supported the importance of this commitment. The requirement under the Code to join AFCA, while not a legal requirement through a license condition, was widely regarded as a very positive feature of the Code.

Concerns tended to focus on how this commitment to deal fairly with complaints was operating in practice.

Promontory's consultation note included the following questions relating to this commitment:

- *Are the internal dispute resolution procedures that Code Compliant Members must follow for complaints sufficiently clear and effective?*
- *Are the internal dispute resolution procedures in place among Code Compliant Members effective in dealing with complaints in practice and lead to fair and timely resolutions for consumers?*
- *Is the ability for consumers to take complaints to AFCA clear and effective in practice?*
- *Is the ability to take Alleged Breaches to the CCC clear to customers?*
- *Is there is a sufficiently clear distinction between the matters AFCA and the CCC will deal with?*

Code Members point to the low level of Internal Dispute Resolution (**IDR**) and External Dispute Resolution (**EDR**) complaints to evidence the effectiveness of complaints resolution processes and the Code more generally in driving improved customer outcomes. According to AFIA, IDR complaints have been sitting at 0.1-0.2 complaints per hundred active accounts since Q3 2021, and EDR complaints equate to 0.005 complaints per hundred active accounts in Q2

2022.<sup>34</sup> This low level of complaints is obviously desirable and for many customers the use of BNPL is clearly convenient and trouble-free. This is a contributing factor to the growth of BNPL in the market.

Having said this, and as has been observed in relation to other parts of the financial services industry, a low number of complaints is not an unambiguous indicator of the absence of customer problems. Similarly, lower levels of complaints are not a simple indicator of the effectiveness of IDR processes or the Code.

There are several reasons that complaint numbers in isolation may not be a straightforward gauge of customer outcomes and the effectiveness of the Code. Customers may not understand how and where to complain. The process may be difficult, and we heard case study evidence on this point (for some customers). The amount in dispute may not, in the customer's view, be worth the time and energy involved in initiating the complaints process. We heard that some customers were, at times, reluctant to make a complaint as they do not want to lose access to BNPL products and services. It is also widely recognised that vulnerable customers are less likely to initiate complaints and to use dispute resolution processes such as AFCA.

The key issues identified relating to this commitment are set out below, and primarily go to the accessibility of the complaints process and compliance monitoring to ensure adherence with the Code.

### **3.6.1 The reference within the Code to 'ASIC standards' could be clarified**

This commitment includes a provision which states that Code Member's complaint resolution procedures will comply with the same ASIC standards and requirements that AFSL holders must comply with, except where Code Members will improve on those standards and requirements.

Promontory understands that this is intended to refer to ASIC Regulatory Guide 271 – Internal Dispute Resolution ('RG 271'), and ASIC Regulatory Guide 267 – External Dispute Resolution ('RG 267'). This should be clarified within the Code so that customers understand the commitments being made.

The Code currently sets out some relevant provisions from RG 271, however there may be benefit to referencing additional provisions which are particularly relevant to a customer. This may include the requirement to provide a final outcome IDR response to a complainant no later than 30 calendar days after receiving the complaint<sup>35</sup>, (especially in the context that 'acknowledgement' and 'initial' complaint response timeframes are already set out within the Code) and ensuring the IDR process is easy to understand and use, including by people with disability or language difficulties (discussed further in section 3.6.2 below).

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<sup>34</sup> AFIA submission to Promontory's consultation, page 5.

<sup>35</sup> ASIC RG 271, *Internal Dispute Resolution*, 271.56.

**Recommendation  
25**

Clarify the reference to 'ASIC standards' in clause 13.2 with reference to RG 271 and RG 267 as relevant and consider where key provisions from RG 271 should be referenced explicitly within the Code to improve customer understanding, particularly the commitment to provide a final outcome response to a complainant in no later than 30 calendar days.

**3.6.2 There are opportunities to make the complaints process easier and more accessible**

There may be opportunities to enhance the flexibility and accessibility of IDR processes among Code Members. RG 271 states that the IDR process should be flexible about how complaints are lodged and offer multiple lodgement methods.<sup>36</sup> It also requires that the IDR process is easy to understand and use, including by people with disability or language barriers. Some Code Members do not provide the option for customers to raise a complaint over the telephone and adopt a digital only platform – in such circumstances the onus should be on providers to ensure that this does not result in disadvantage for customers. We also heard that some customers experienced challenges lodging a complaint where there are language barriers.

While some Code Members commented that the choice to adopt a digital only model is consistent with their Target Market Determination, there are other opportunities to enhance the flexibility of the IDR process through enhancing technology and providing accessible services for those with a disability or language barrier. This may involve, for example, providing information on IDR processes in a range of languages and formats. To promote awareness and compliance with the key requirements within RG 271, these should be included as provisions within the Code.

Promontory recommends that this commitment should also provide additional detail regarding a customer's ability to choose to have a Code Member deal with a representative such as a financial counsellor. This should also enable customer representatives to raise complaints to the CCC. While Promontory understands there are currently no restrictions on customer representatives (including financial counsellors) raising complaints to the CCC, the Code would benefit from being more explicit on this point and requiring Code Members to consider facilitating easier contact and communication for customer representatives.

**Recommendation  
26**

Introduce a provision within this commitment to state that complaints provisions will be flexible and offer multiple lodgement methods, consistent with RG 271.

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<sup>36</sup> ASIC RG 271, *Internal Dispute Resolution*, 271.136.

**Recommendation  
27**

Provide greater detail (building on clause 13.8) regarding a customer's ability to choose to have the Code Member deal with a representative such as a financial counsellor and the way that this requirement operates. This includes explicitly recognising that customer representatives may raise complaints to the CCC and requiring Code Members to consider facilitating easier contact and communication for customer representatives.

**3.6.3 There is inconsistent compliance with the timeframes relating to complaints set out in the Code**

Stakeholders supported the clauses within this commitment that set out timeframes to respond to complaints as an important and welcome part of the Code's commitment to complaints handling. However, there was mixed feedback regarding the extent to which these timeframes are adhered to in practice. We heard that in some cases, complaints have been responded to swiftly and effectively. In other cases, we have heard that Code Members took considerable time to respond to complaints, in excess of requirements in the Code. Concerns were also raised by the retail sector in relation to the customer complaints they had received about BNPL providers not acting in a responsive or timely manner.

The CCC does not collect information relating to compliance with complaint timeframes set out in the Code, and we understand that some Code Members do not have internal processes to monitor compliance or self-report breaches. Further observations related to opportunities to enhance compliance monitoring in this regard, are set out in Chapter 4 – Code Compliance Monitoring, and Enforcement.

**3.7 Commitment 7: We will offer financial hardship assistance**

This commitment sets out the approach to financial hardship assistance and responding to a financial hardship request. This includes timeframes for responding to hardship requests, a commitment to work with a nominated representative, freeze collection activities while a request being considered, and provide reasons where a request is denied.

Promontory's consultation note included the following questions relating to this commitment:

- *Are the provisions relating to customer's experiencing financial difficulty adequate?*
- *Are these provisions being appropriately and consistently applied by Code Compliant Members?*

Stakeholders commented favourably on the Code's requirements and commitments related to customers facing hardship. These were seen as important and comprehensive. Promontory observes that the clauses appear largely consistent with legislative requirements and guidance set out in RG 271. Commitments also include complying with ACCC's and ASIC's



debt collection guidelines.<sup>37</sup> Issues raised generally related to the application of those commitments in practice, rather than their design.

Consumer groups and other stakeholders commented that they have not observed a meaningful difference in the handling of hardship requests since the Code was introduced and continue to see issues with the timeliness of responses to requests and the handling of vulnerable consumers. This was also an area where the CCC acknowledged improvements could be made.

The key issues identified are set out below.

### ***3.7.1 There is evidence of compliance issues with the Code commitments relating to timeframes to respond to hardship requests***

The Code sets out specific timeframes to respond to a hardship request or seek additional information. It is positive that the Code has set out clear minimum expectations which are consistent with legislative requirements and ASIC guidance. Some providers are more responsive in this area. However, there was feedback across consumer groups and financial counsellors that these timeframes are not consistently adhered to in practice, including withing BNPL products.

AFIA's submission commented that Code Members have proven responsive to requests for hardship assistance and the average time to act on a hardship request is 12 days. This is well within the 21-day timeframe set out within the Code. AFIA's submission also notes that Code Members decline very few applications, with only ten declined applications in Q3 2022.<sup>38</sup>

Information on hardship requests is collected from all Code Members as part of the CCC's compliance monitoring processes. This information is collected on a quarterly basis and includes volume of applications received and approved, average resolution time, abandoned cases, and average duration of arrangements. This data was reviewed by Promontory, and it was observed that there were significant variances across Code Members. One Code Member recorded an average resolution time of 64 days, well in excess of the 21 day requirement set out under clauses 14.6 and 14.7 of the Code. Promontory also notes that the reliance on average resolution time may mask individual cases of non-compliance, as the data is collected in aggregate and averaged across applications. No data is collected on the number of cases where the resolution time exceeds that specified in the Code. Promontory understands that there have been no breaches self-reported in relation to this requirement.

Consumer groups have commented that hardship applications can involve 'considerable back and forth' with Code Members, particularly where a customer or nominated representative is requesting documents to assist with preparing a hardship request. AFCA's submission to Treasury also expresses concern that one of the five most common issues raised in BNPL

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<sup>37</sup> ACCC, *Debt collection guideline: for collectors and creditors*, 2021, [//www.accc.gov.au/system/files/Debt%20collection%20guideline%20for%20collectors%20and%20creditors%20-%20April%202021.pdf](https://www.accc.gov.au/system/files/Debt%20collection%20guideline%20for%20collectors%20and%20creditors%20-%20April%202021.pdf).

<sup>38</sup> AFIA, *AFIA submission to Promontory's consultation*, <https://treasury.gov.au/sites/default/files/2023-02/c2022-338372-afia.pdf>, December 2022 page 6.

complaints over the period from 1 November 2018 to 30 November 2022 is the ‘failure to respond to request for hardship assistance’.<sup>39</sup>

While the Code imposes timeframes for a customer to respond to a Code Member’s request for additional information, there is no obligation on the Code Member to provide timely information in response to a request made by the customer. Promontory heard evidence of Code Members taking several months to provide basic information such as an account statement, contract, or the terms of an agreement. This unreasonably extends the process for a customer or their representative to take the initial step to commence a hardship request. Commitments relating to timeframes to provide information in response to a hardship request should also be extended to apply where a customer or their nominated representative requests information from a Code Member. A related recommendation is included in Chapter 4 – Code Compliance Monitoring and Enforcement.

**Recommendation  
28**

Extend provisions relating to timeframes in clause 14.6 to apply to an information request from a customer or nominated representative.

### ***3.7.2 Some Code Members have inflexible mechanisms for requesting hardship assistance which are not suited to vulnerable customers***

RG 271 sets out requirements in relation to dispute resolution processes, as well as hardship assistance. While the Code commitment ‘*we will deal fairly with complaints*’ explicitly outlines that Code Members will comply with ASIC standards, this is not mirrored in the commitment relating to hardship. In practice, the provisions of the Code are largely consistent with RG 271. However, RG 271 states that credit providers and lessors should have a dedicated telephone number to accept and deal with hardship notices.<sup>40</sup>

Consumer groups commented that a number of Code Members only offer hardship assistance via email or other digital means. We have heard several case studies where it is evident that this restriction limits the accessibility of hardship assistance to vulnerable of customers.

Offering hardship assistance which is accessible is fundamental to its effectiveness. For those most vulnerable customers who are facing significant stress, who have a disability, are experiencing mental health issues or other vulnerable circumstances, a ‘one size fits all’ approach is unlikely to be effective. As outlined earlier in our Report, while we understand that some Code Members adopt a digital only product which is suitable to their desired target market, this channel can have limitations when a customer’s circumstances change, such as when issues arise in relation to financial stress or mental health difficulties.

AFIA should consider how the Code can ensure that appropriate channels for hardship assistance are offered and accessible to all consumer cohorts. This may include adding a

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<sup>39</sup> AFCA, *AFCA submission to Treasury consultation*, <https://treasury.gov.au/sites/default/files/2023-02/c2022-338372-afca.pdf>, December 2022, page 8.

<sup>40</sup> ASIC RG 271, *Internal Dispute Resolution*, RG 271.96.

reference to complying with ASIC standard RG 271 (as is done in the commitment ‘we will deal fairly with complaints’) and expanding on what those related key commitments are.

**Recommendation  
29**

Consider introducing a provision within this commitment to comply with RG 271 to improve the accessibility of the hardship process to vulnerable customers.

**3.7.3 There are opportunities to introduce clearer commitments to protect customers where debts arise from financial abuse**

BNPL, like other credit products, can be an avenue for financial abuse or coercive debt. This can occur, for example, where multiple debts are created in a partner’s name either without their knowledge or control. The Code does not currently include protections relating to the management of debt resulting from financial abuse including guidance around waivers and removing adverse information from credit reports.

Promontory recommends introducing commitments on preventing and responding to financial abuse, including recognising financial abuse, protecting customer confidentiality and safety, helping customers when accounts are in dispute through waivers or removing adverse information from credit reports, and providing appropriate employee training and awareness of policies. The ABA has prepared guidance on ‘preventing and responding to family and domestic violence’ which complements the provisions in the Banking Code, which may be a useful reference.<sup>41</sup>

**Recommendation  
30**

Introduce clearer provisions within this commitment around identifying and recognising financial abuse (including improving staff training and awareness) and providing protection to customers where debts arise from financial abuse, including guidance around waivers and removing adverse information from credit reports.

**3.8 Commitment 8: ‘We will comply with our legal and industry obligations’**

This commitment includes provisions relating to complying with obligations under the law. This includes meeting privacy obligations and protection of personal and financial information.

Promontory’s consultation note included the following questions relating to this commitment:

- *Are the provisions relating to compliance with legal and industry obligations sufficiently clear, noting different BNPL providers may be subject to different obligations?*
- *Are the provisions relating to the protection of personal information, disclosure, and privacy adequate?*

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<sup>41</sup> Australian Banking Association *Preventing and Responding to Family and Domestic Violence*, <https://www.ausbanking.org.au/wp-content/uploads/2021/03/ABA-Family-Domestic-Violence-Industry-Guideline.pdf>, 2021.

This commitment did not receive extensive feedback. Stakeholders noted that there are occasions where the Code references ‘laws’ or ‘regulation’ which are not clearly identified. For example, clause 13.7 outlines that Code Members are ‘*committed to responding to complaints and disputes in a way that is consistent with the law.*’

In at least some instances, these references could be more specific so as to provide customers with a clearer indication of their protections or entitlements under the Code. This would not require extensive repetition of legal provisions that can be found in legislation or regulatory guidance, as this would reduce the readability and extend the length of the Code. Rather, Promontory recommends that where the Code refers to specific legislation or regulation, the relevant law or Code should be referenced in the context of its key objectives (or objective) so that the context of the commitment is clear to customers. As an example, BNPL providers are already subject to the *Privacy Act 1988* and the OAIC Privacy Principles, this should be referenced within this section of the Code so that it is clear what ‘privacy obligations’ are referred to in clause 15.2(a). This would strengthen the commitment and provide customers with a clearer indication of their rights.

Promontory notes that there is an explicit reference to a set of relevant laws in the AFIA By-Laws which are not outlined in the Code.<sup>42</sup> There may be benefit to replicating these at the back of the Code for clarity and to promote customer understanding of the application and meaning of the commitment. This would not restate the law but would rather simply provide a list of relevant laws for customer reference.

**Recommendation  
31**

Reference the relevant law where the Code refers to specific legislation and regulation. Consider replicating the set of laws referenced in the AFIA-By Laws at the back of the Code to promote customer understanding of the application and meaning of the commitment. This includes referencing the Privacy Act 1988 and OAIC Privacy Principles within this commitment.

### 3.9 Commitment 9: ‘We will support and promote the Code’

This commitment sets out the role of Code Members in promoting the Code, and ensuring staff are trained to understand and comply with the Code.

Promontory’s consultation note included the following questions relating to this commitment:

- *Overall, is there an adequate level of awareness of the Code including how it applies and the protections it offers?*

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<sup>42</sup> AFIA, *Buy Now Pay Later By-Laws*, schedule 1.

- *How does the current level of awareness of the Code impact its effectiveness as a measure of consumer protection? What level of awareness is needed to ensure the Code is effective? How can this be achieved?*
- *Is there adequate awareness of the BNPL CCC and its role?*

More recent activities to promote the Code include industry forums, AFIA media releases and AFIA reports. Feedback from stakeholders generally suggested a low level of awareness of the Code among customers. However, this is not inconsistent with other industry codes.

Promoting the Code helps to add overall customer confidence in the operation of the BNPL market. General promotional activities can help to indicate to key stakeholders the commitment to better standards and good customer outcomes.

Having said this, it is arguably not critical for there to be general awareness of the Code among customers. Rather, promotion and support of the Code should work in such a way that customers (and any representatives) can readily identify the existence of the Code and their rights if they face problems or wish to raise a complaint. This means, for example, that references to the Code on Member websites, apps, or relevant disclosure material should be readily identifiable and that the protections of the Code should be readily apparent if consumers have a complaint or query.

Furthermore, appropriate promotion and support of the Code should also target those who work for Code Members. That is, the existence of the Code, and information about key requirements should be well understood by the staff of Code Members.

Promontory observed inconsistency in the level of promotion among Code Members, with variation in the prominence and granularity of information relating to the Code on Member websites.

Most Code Members have a dedicated web page with information about the Code, a link to the Code and a link to their hardship and complaints policy. This can usually be found by clicking a link at the bottom of the home page. Each Code Member offers a different level of detail on the Code, with one Code Member listing all commitments and providing information about the role of the CCC, others summarising the Code's objectives, and others not having any information about the Code on their website at all.

Promontory's desktop review of Code Member websites illustrates the inconsistent level of Code promotion.

**Table 3 – Code Promotion among Code Members**

Code Member	Code promoted on home page?	Dedicated BNPL Code page with information about the Code?	Link to Code on Code page?	Link to hardship and complaints policy on Code page?	Accreditation displayed?
Member 1	Yes	Yes	Yes	Yes	Yes

Code Member	Code promoted on home page?	Dedicated BNPL Code page with information about the Code?	Link to Code on Code page?	Link to hardship and complaints policy on Code page?	Accreditation displayed?
Member 2	Yes	Yes	Yes	Yes	No
Member 3	Yes	Yes	Yes	Yes	Yes
Member 4	Yes	Yes	Yes	Yes	Yes
Member 5	No	No	Yes but on terms and conditions page	N/A <sup>43</sup>	No
Member 6	No	No	No	No	No
Member 7	No	No	Yes but on a product suitability page and via accreditation symbol	N/A	Yes
Member 8	Yes	Yes	Yes	Yes	Yes
Member 9	Yes	Yes	Yes	Yes	No

The CCC may choose to collect information relating to Code promotion activities under clause 9.2(b) of the ToR, however AFIA has advised that this information is not currently being collected. The CCC should consider collecting this information to ensure compliance with the Code and promote consistency across the sector. A related recommendation is included in Chapter 4 - Code Compliance Monitoring and Enforcement. There is also an opportunity to introduce guidance on what constitutes adequate Code promotion in the By-Laws, such as those outlined in RG 183.<sup>44</sup> Engagement with financial counsellors and other customer advisers should be part of this activity.

<b>Recommendation 32</b>	Introduce guidance on what constitutes adequate Code promotion in the By-Laws. Engagement with financial counsellors and other customer advisers should be part of this activity.
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<sup>43</sup> Not applicable as the Code Member does not have a dedicated Code page.

<sup>44</sup> ASIC RG 183.78 sets out examples including providing training for community sector case workers on code provisions, ensuring that all subscribers have copies of the code at public offices, or communicating code information via call centre hold messages or in Product Disclosure Statements. For Code Members, this may include more prominent acknowledgement of the Code on website and apps.

### **3.10 ‘Minimum Standards for merchants and retail partners’**

Part C of the Code outlines a set of minimum standards that Code Members require its merchants and retailers to comply with. These standards outline a range of expectations as to how merchants and retailers should act in their dealings with BNPL customers. The minimum standards cover advertising and marketing of BNPL products, customer confidentiality, responding to customer complaints in a timely manner, and ensuring staff understand the Code. Merchants and retailers must also provide information about BNPL fees and charges in an accessible format.

Merchants and retailers are not members of the Code. These standards are therefore applied by Code Members in their dealings with merchants and retailers.

Promontory’s consultation note included the following questions relating to Part C of the Code:

- *Are the minimum standards for merchants and retail partners appropriate and are they being monitored effectively in practice?*

Promontory acknowledges that the development of minimum standards for merchants and retailers is unique and goes beyond other comparable industry codes. It is particularly important given the role that merchants and retailers play as intermediaries (points of distribution) for the sector. In this context, Promontory has identified opportunities to improve the clarity and enforceability of Part C of the Code.

The key issues identified are set out below.

#### **3.10.1 Consider how to engage with merchants and retailers to support Code objectives**

The Code requires merchants and retailers to ensure that their employees and agents understand the minimum standards and are trained to meet them.

Feedback from the retail industry highlights the need for more training and support for retail staff to ensure these standards are met. Submissions commented that this could be achieved through increased engagement between the BNPL sector, the CCC, and the retail industry to foster a better awareness of the Code, its role, and minimum standards. Promontory supports consideration of how to better engage, given the key role that merchants and retailers play as an intermediary for BNPL products.

Promontory recommends increased dialogue and collaboration between AFIA and the merchant and retailer sector to promote awareness of the Code and merchant and retailer compliance. This will require cooperation from all parties and may include targeted engagement with the industry by Code Members and AFIA as a whole, as well as merchant and retailer representation at the CCC. This is an area where the relevant representative bodies for merchants and retailers could also consider how to best engage with the BNPL sector, including through structured engagement with the CCC.

Submissions also identified the need for better information resources for customers at the point of sale. Promontory recommends that the Code should be clearly referenced in



documents and/or information provided as part of BNPL onboarding communications (see the comments in section 3.9 on Code promotion).

<b>Recommendation 33</b>	Consider how to promote better engagement between AFIA, the CCC and the merchant and retail sector to promote awareness of the Code and merchant and retail compliance.
<b>Recommendation 34</b>	Introduce a provision to ensure that the Code is clearly referenced in documents and/or information provided by merchants or retailers as part of BNPL onboarding communications at the point of sale.

### ***3.10.2 Include minimum standards and examples that reflect a commitment to fair, honest and ethical sales practices***

As noted, this commitment is a positive feature of the Code, going beyond other comparable Codes. The Code would benefit from some elaboration of how this works in practice.

Consumer groups provided several case studies of unfair or unethical sales practices by merchants and retailers including where BNPL products have been used to finance low value-add on warranty products, or to supplement finance where an application for a loan with a regulated credit provider has been declined. We also received comments about pressure selling and aggressive marketing of products in conjunction with BNPL, some of which were arguably overpriced or of questionable quality. In these instances, while the sales practices may have been lawful in some circumstances, there are reasonable grounds to suggest they were unfair, or unethical.

Section 3.2.2 of this Report recommended expanding on the Code Member's commitment in relation to unsolicited selling to ensure that it is clear, enforceable, and reflects the commitment to act fairly, honestly and ethically in relation to selling – and so that it clarifies that the Code covers both the unsolicited selling of BNPL and the related issue of unsolicited, unfair, or unethical selling of products where the purchase is funded by BNPL. Further, it recommended that the commitment and related minimum standards for merchants and retailers are made clear in Part C of the Code.

The inclusion of this revised commitment in Part C of the Code would benefit from being written so that it provides additional guidance on how this commitment will be met or the sorts of indicators of unethical or unfair sales so that customers are clear on what minimum standards are expected of retail and merchant providers in this regard. For example, the New Energy Tech Consumer Code outlines a commitment to avoid high-pressure sales tactics and outlines examples of what this means in practice, including avoiding 'applying psychological pressure to persuade you to make a quick purchase decision' and avoiding 'employing badgering techniques.'<sup>45</sup>

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<sup>45</sup> Clean Energy Council, *New Energy Tech Consumer Code*, Part B, Clause 4.

**Recommendation  
35**

Introduce concise examples of indicators of unethical or unfair sales, such as pressure selling or employing badgering techniques, as part of reflecting the revised commitments relating to sales practices and related minimum standards in Part C (recommendation 12).

***3.10.3 There are opportunities for greater consistency in the application of merchant and retailer minimum standards***

There is an opportunity to increase the effectiveness of standards for merchants and retailers by providing some more specific guidance for this commitment. This would also assist monitoring and enforcement of these provisions. We were provided with feedback that there have been inconsistent approaches and outcomes in the practices of merchants and retailers and Code Members in some cases. Areas identified for improvement are set out below.

*Clarifying the meaning of acting lawfully, fairly, ethically*

As outlined in section 3.2.2, clause 17.1(a) states that merchants and retailers are required to ‘act lawfully, fairly and ethically in their dealings with consumers’. This is similar to the commitment applying to Code Members to be ‘fair, honest and ethical’.

As outlined in our observations relating to the Code Member commitment ‘we will be fair, honest, and ethical’ in section 3.2.1, there would be benefit in providing additional guidance relating to the scope of this commitment. This is particularly important given the volume of reporting relating to this minimum standard. Reporting to the CCC showed that 78% of merchant non-compliance over the period 1-Oct-21 to 31-June-22 related to non-compliance with the minimum standard to act lawfully, fairly, and ethically in dealings with customers.

Providing additional guidance relating to the scope of this commitment would not only improve customer understanding, but also promote a consistent understanding among Code Members for the purposes of merchant and retailer compliance monitoring. This could be addressed by adopting a similar approach as has been recommended in relation to the commitment for Code Members to act ‘fairly, honestly and ethically’ (recommendation 10), through providing examples of actions to clarify the meaning of this commitment. This may include reference to examples of sales practices that are unfair in relation to unsolicited selling by the merchant or retailer (as discussed in section 3.10.2).

*Expectations for timeliness of complaint responses by merchants and retailers are undefined*

Code Members observed that a significant number of customer complaints relate to issues with the goods or service supplied by the merchants or retailers rather than the BNPL product itself. Part C requires that complaints are responded to on a ‘timely basis’. However, this is not defined and makes the commitment difficult to monitor and enforce. One Code Member advised that they apply 21 days as a measure to monitor against for this standard, but Promontory did not observe any level of consistency amongst Members. While it is not straightforward to apply this to all retailers in a consistent way, as there may be different timeframes in particular retail sectors for complaints, there would be benefit in setting an expected timeframe for responses that would apply to merchant or retailer responses in the

absence of other standards. We suggest 21 days, and this could be the subject of consultation with the sector.

*Potential for inconsistent approaches for the provision of information about BNPL services, fees and charges*

Stakeholders noted that whilst Part C requires merchants and retailers to provide customers with clear and upfront information about BNPL services and fees in an accessible format, guidance is lacking on how this should be carried out in practice. Stakeholders have asked for further clarity on this to improve transparency and consistency of practices in this area. Clear guidance should be developed by AFIA and Code Members in support of this objective. This requirement should be reviewed following the BNPL law reform outcomes in relation to disclosure.

<b>Recommendation 36</b>	<p>Clarify the minimum standards for merchants and retailers to:</p> <ul style="list-style-type: none"><li>i) define a time threshold for responding to complaints, such as 21 days to enable the monitoring of the timeliness of complaints handling; and</li><li>ii) subject to BNPL law reform, develop guidance to ensure merchants and retailers adopt a consistent approach to provide customers with clear and upfront information about BNPL services and fees in an accessible format.</li></ul>
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***3.10.4 There is scope to improve compliance and monitoring processes in relation to merchants and retailers among Code Members***

Code Members are required to have monitoring processes in place to ensure the Minimum Standards set out in Part C are met on an ongoing basis and to report instances of material non-compliance to the CCC on a quarterly basis.

Given the diversity of the sector and the differing transaction amounts offered by BNPL providers, we would not expect to see identical approaches to monitoring practices across the sector. However, there should not be significant inconsistencies in the standards applied by Code Members to merchants and retailers in relation to their treatment of customers. We heard case studies of BNPL providers who continued to deal with merchants or retailers that have a history of complaints and problems relating to poor customer outcomes and ‘unethical sales practices’.

Given there may be sensitivities in sharing of merchant and retailer compliance information between Code Members, this should be an area where the CCC should play a more active role in assisting Code Members implement appropriate monitoring programs. Legal advice may be needed to ensure that any additional reporting requirements are reasonable. Notwithstanding this, there is scope for improvements as Promontory’s review of reporting to the CCC observed:

- No definition or commonly understood interpretation of what is considered ‘material’ for reporting of non-compliance to the CCC. For example, one Member stated that they had a significant number of merchants or retailers suspended or terminated each month but may report 6 - 10 to the CCC because of what they deemed to be a material breach of the Code.
- An inconsistency in volume of reporting across Code Members, with AFIA observing that retail and low value providers often do not submit any merchant or retailer analysis reports for several quarters in a row. There is no explicit requirement to lodge a ‘nil return’ for a reporting period.
- Reporting does not require analysis of trends or issues to provide insight on significant matters, which could help guide the CCC if it was to focus on a particular sector.

These observations highlight an opportunity to enhance oversight by the CCC. Promontory recommends that guidance on materiality thresholds for reporting of non-compliance with Part C is established. Materiality could consider, for example, those suspended or terminated, repeat offenders, and where multiple customers have raised complaints, especially around pressure selling. Additional reporting information could include details on the nature of non-compliance and proposed consequences or actions taken. Promontory recommends a legal review is undertaken on any potential additional reporting requirements.

For enforcement purposes, Part C would also benefit from having greater clarity on which merchant or retailer related commitments can be enforced through AFCA or the CCC. Promontory recommends that this is made explicit within the Code.

<b>Recommendation 37</b>	Subject to legal advice, identify additional monitoring and reporting requirements. Define materiality thresholds for Code Members to report to the CCC instances of material merchant and retailer non-compliance with minimum standards, supported by clear guidance. Materiality could consider, at a minimum, those suspended or terminated, repeat offenders and where customers have raised complaints. Additional reporting information should include details on the nature of non-compliance and proposed consequences or actions taken and merchants and retailers should be identified by name to assist with analysis of potential trends and systemic issues.
<b>Recommendation 38</b>	Update Part C of the Code to clarify which merchant and retailer related commitments can be enforced by AFCA or the CCC.

### ***3.10.5 Merchant and retailer related commitments should be more consistently expressed throughout the Code***

The Code contains commitments binding on Code Members related to merchants and retailers which are not captured in Part C. These commitments include:

- taking reasonable and appropriate steps to ensure merchant or retail partners will not provide services for online gambling, retail gambling, gambling at domestic or offshore casinos and the purchase of firearms (clause 8.7);
- dealing appropriately with merchant or retail partners engaging in unlawful unsolicited marketing or selling (clause 9.6); and
- monitoring and reviewing outcomes of distribution arrangements as part of product suitability commitments (clause 12.2 d).

Promontory recommends that all merchant and retailer related commitments should be grouped in Part C of the Code and cross-referenced as required.

**Recommendation  
39**

Relocate all merchant and retailer related commitments to Part C of the Code and cross-reference as required. Clause 9.6 should be deleted as per recommendation 12.

## Chapter 4: Code Compliance Monitoring and Enforcement

### 4.1 Introduction

RG 183 highlights that independent monitoring mechanisms are key components of effective codes. Without adequate monitoring and remedies, 'breaches of a code may go undetected or uncompensated and there may be little incentive for subscribers to continue to comply'.<sup>46</sup> Activities undertaken by monitoring and enforcement bodies, sometimes called code compliance committees typically include education and guidance, investigations of breaches, and stakeholder engagement.

There are different models for code compliance committees in the financial services sector. Several codes in the financial services sector<sup>47</sup> are supported by the AFCA Code Team, which is a separately operated and funded unit of AFCA that supports the work of independent compliance committees that oversee these codes. The AFCA Code Team monitors compliance and works with subscriber institutions to ensure they comply with their code obligations.

The BNPL sector has established a CCC model that operates on a stand-alone basis, but it shares many of the same responsibilities as other similar code committees.

### 4.2 Code Compliance Monitoring, Reporting, and the CCC

The CCC is an independent committee responsible for administering and enforcing compliance with the Code. The function and key responsibilities of the CCC are set out in the ToR.

Promontory had several meetings with the CCC, and notes that its members were engaged and committed to the objectives of the Code.

In discharging its responsibilities, the CCC receives quarterly reporting from Code Members, undertakes an accreditation process, responds to 'Alleged Breaches', and has the ability to impose corrective measures and sanctions. The role of the CCC is to ensure both compliance and consequence.

Promontory's consultation note included the following questions relating to Code Compliance Monitoring and Enforcement:

- *How effective are the mechanisms in place to monitor and ensure compliance with the Code?*

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<sup>46</sup> ASIC RG 183, *Approval of Financial Services Sector Codes of Conduct*, 183.36.

<sup>47</sup> Australian Banking Association Banking Code of Practice, Customer Owned Banking Code of Practice, General Insurance Code of Practice, Life Insurance Code of Practice, Insurance Brokers Code of Practice.

- *Are the sanctions and actions that the Code Compliance Committee may take in response to an alleged or confirmed breach of the Code adequate?*
- *Is the reporting relating to compliance with the Code, complaints, and breaches sufficient?*

Membership of the CCC is consistent with general regulatory guidance and industry practice, in that there is an independent chair and equal industry and consumer representation – as stated on the AFIA website, the CCC members have been selected to have legal, consumer and industry representation.<sup>48</sup> The consumer representative on the CCC was nominated and appointed through the Consumer’s Federation of Australia selection process, which is sound practice for the selection of consumer member. While it is evident that there is a balance of representation, consistent with the requirements of RG 183<sup>49</sup>, the commitment to ensure balanced representation should be made explicit within the ToR.

As the compliance body for a relatively new Code, the CCC is still developing aspects of its role. It receives a useful set of information about various aspects of the Code on a quarterly basis, but there are some opportunities to expand aspects of this information without being burdensome. The CCC’s efforts to date have been largely focused on accreditation and re-accreditation processes and establishing the committee and reporting practices. There has been less focus to date on proactive inquiries and ongoing compliance monitoring.

The CCC reports on its activities publicly via the AFIA Annual Review publication. For the FY21 and FY22 reporting periods, a total of seven complaints and one Alleged Breach were received by the CCC. In the majority of cases, the complaints were referred to the relevant Code Member’s IDR process and resolved through this avenue. Of the matters reviewed by the CCC, no Alleged Breaches were established, and no sanctions have been imposed to date.

The CCC undertakes an ‘accreditation process’ for members joining the Code and a simpler reaccreditation process on an annual basis. Promontory heard evidence that the CCC has used the accreditation process to enhance the design and documentation of Code-related processes and policies by members. Accreditation has also been a mechanism to provide education to Code Members.

As part of its evolution, we believe there is scope for enhancement in the CCC’s approach to ongoing and proactive compliance monitoring. At this early stage, the CCC has not produced guidance on the Code (either in whole or key provisions) or initiated ‘own motion’ reviews or investigations. There is also scope to consider whether additional information may assist in the targeting of matters, including those which been reported to it and subsequently resolved through IDR or EDR. It will be important to ensure that the CCC is adequately resourced in order to carry out effective ongoing compliance monitoring. In this light, AFIA could consider the following in developing the Code and supporting By-Laws and ToR:

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<sup>48</sup> AFIA, *CCC Members*, <https://afia.asn.au/BNPL-CCC-Role-Members>.

<sup>49</sup> ASIC RG 183, *Approval of Financial Services Sector Codes of Conduct*, 183.76.



- ensuring the CCC is receiving comprehensive information to support monitoring of compliance with the Code;
- supporting the CCC to proactively monitor compliance and supporting the industry to interpret and apply the Code – this may involve a rebalance in effort from accreditation and providing the CCC with additional resources;
- seeking opportunities to enhance the CCC’s engagement with stakeholders to share insights and identify areas where the Code can be enhanced;
- improving the CCC’s ability to enforce the Code; and
- ensuring the CCC’s independence is clear and that the distinction between the roles of the CCC and AFIA Board are clear.

Additional detail on each of these observations is set out below.

#### ***4.2.1 There is scope for additional data/information to be reported to the CCC to assist its assessment of compliance with the Code and areas of focus***

The CCC collects and reviews information relating to IDR and EDR complaints, hardship, and merchants and retailers, on a quarterly basis as part of its ongoing compliance monitoring process. This existing quarterly data collection provides a useful set of data to the CCC. It should assist the CCC to consider not only individual compliance, but also broader systemic issues and challenges.

There are opportunities to enhance the data being collected, without imposing unreasonable burden on Code Members. This would provide the CCC with a better basis for its monitoring work and would have the benefit of providing more comprehensive insight into compliance, given the broad range of Code commitments.

Promontory has the following observations from our interviews with AFIA and the CCC and our review of Code Member reporting to the CCC:

- Quantitative complaints and hardship data helps to provide a picture of trends and issues in customer outcomes and Code compliance. There is scope for a limited set of additions to this data. Examples could include quantitative data on adherence to response timeframe commitments for complaints and hardship, staff training rates particularly in relation to vulnerability, and percentage of total complaints that relate to merchants or retailers and other key complaint categories.
- Collection of *qualitative* insights would assist the CCC in identifying trends, emerging risks, or potential areas of focus (e.g. brief narrative on dominant complaint types). The CCC could develop some qualitative data categories for collection, with consideration being given to the frequency – these could be provided less regularly e.g. annually. This could include, for example, a brief overview of key complaint trends, any emerging issues with merchant and retailers and/or trends in dealing with more vulnerable customers.

- There is scope for clearer guidance on how reporting fields should be interpreted in the collection templates to minimise the risk of inconsistent interpretation and poor data quality. For example, in the collection template for complaints, it is unclear how 'active' vs 'new' complaints should be interpreted and there is potential for a complaint to be doubled-counted if it moves from IDR to EDR during the period. Another example is the potential to provide guidance on materiality thresholds for self-identified Code breaches.
- Reporting to the CCC includes information on the number of EDR complaints by provider sourced from AFCA's publicly available data cube, which is a useful headline indicator of EDR trends. In addition, there is scope for direct engagement between the CCC and AFCA to provide a more detailed view of EDR experience in BNPL. While AFIA meets with AFCA, it would be useful for the CCC to also establish routine engagement with AFCA to share and obtain insights on trends and watch points in the BNPL sector.
- Not all information routinely collected is outlined in the relevant section of the ToR (e.g. hardship and complaints data) and the merchant and retailer compliance reporting requirements are separately captured under Part C of the Code. It is recommended that clause 9.2 of the ToR is updated to include the requirement to report complaint, hardship, merchant and retailer, and other data routinely collected by the CCC.

*The requirement for Code Members to self-report breaches should be clarified*

The analysis of quarterly reporting is one of the key activities of the CCC in monitoring the administration of the Code, and the CCC places significant reliance on this for the purposes of compliance monitoring. However, at this stage there is a lack of reporting of self-identified Code breaches – very few appear to have been reported.

Promontory did not observe a consistent practice of self-reporting breaches, nor was it clear if Code Members are being actively asked to provide this information, or a nil return in this regard. Promontory notes that the By-Laws require all Code Members to report 'possible breaches of the Code'.<sup>50</sup> We also observed an inconsistent understanding amongst Code Members on whether they are required to routinely report self-identified breaches to the CCC and if so, if there is a materiality threshold that applies.

Self-identified breach reporting can play an important role in monitoring compliance of industry codes and can assist with increased visibility of current and emerging risks. By way of example, self-identified breaches of the Banking Code represented 33% of all breaches identified for the 12-month period to 30 June 2021. The Banking Code and its signatories have benefited from investment and attention over a considerable time to integrate compliance systems for legal and regulatory obligations and self-regulatory obligations. While the Banking Code is a more mature Code, this demonstrates the importance of clarifying expectations to Code Members. It reinforces the need for Code Members to have compliance monitoring

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<sup>50</sup> AFIA, *Buy Now Pay Later By-Laws*, clause 8.2.

systems in place to proactively ensure compliance of the Code and address potential breaches.

A factor to consider in relation to breach reporting is the potential for BNPL providers to be licensed once BNPL regulatory reforms have been implemented. If this was to occur, Code Members would also potentially be subject to regulatory breach reporting requirements, and it would be desirable to ensure that any requirements in the Code were aligned. For this reason, we recommend that this requirement is reviewed once the outcomes of the BNPL regulatory reforms are clear. This review could consider:

- how to ensure that reporting of self-identified breaches is made more explicit in the ToR and By-Laws (including a nil return) and is clearly communicated to Code Members;
- the timeframe for such reporting, e.g. on a six-monthly basis;
- a materiality threshold for such reporting in consultation with Code Members; and
- alignment with any regulatory breach reporting requirements that may be introduced, so as to avoid unnecessary overlap or inefficiencies.

As part of this, Code Members may wish to consider how to leverage compliance systems for identifying and reporting breaches over time.

<b>Recommendation 40</b>	<p>Enhance data collection and reporting to the CCC by:</p> <ul style="list-style-type: none"> <li>i) Collecting quantitative data on adherence to response timeframes commitments for hardship and complaints. Consideration should also be given to, staff training rates, particularly with regard to vulnerability and merchant and retailer complaint numbers.</li> <li>ii) Developing qualitative data categories with consideration being given to frequency, these could be provided less regularly than quarterly such as six-monthly, or annually.</li> <li>iii) Creating guidance to clearly explain how data should be reported in the data collection template.</li> <li>iv) Establishing routine engagement with AFCA to share and obtain insights on trends and watch points in the BNPL sector.</li> <li>v) Updating clause 9.2 of the ToR to include the requirement to report complaint, hardship, merchant and retailer and other data routinely collected by the CCC.</li> </ul>
<b>Recommendation 41</b>	<p>Review self-reporting of Code breaches following BNPL reforms. This review could consider:</p>

- how to ensure that reporting of self-identified breaches is made more explicit in the ToR and By-Laws (including a nil return) and is clearly communicated to Code Members;
- the timeframe for such reporting, e.g. on a six-monthly basis;
- a materiality threshold for such reporting in consultation with Code Members; and
- alignment with any regulatory breach reporting requirements that may be introduced, so as to avoid unnecessary overlap or inefficiencies.

#### ***4.2.2 The CCC should establish a plan for the development of Code policies and guidance, proactive compliance monitoring and/or ‘own motion inquiries’***

As mentioned above, the CCC’s efforts to date have been focused on accreditation and establishing the committee. However, now as the Code enters its second iteration and its third year it is desirable for the CCC to advance its work around ongoing monitoring and engage in proactive efforts to promote compliance with the Code.

Promontory understands that the CCC has not yet developed policies and procedures relating to administration, implementation, and operating activities. These documents are key to ensuring a consistent approach to decision making and the factors taken into consideration when reviewing accreditation and evaluating Alleged Breaches. The CCC should look to develop policies, frameworks, and guidance in relation to the administration and implementation of the Code as contemplated in the ToR and By-Laws. This would also have the benefit of informing best practice and assist with the CCC’s ability to recommend Code enhancements.

Clause 9.1(c) of the ToR allows the CCC to conduct inquiries on its own initiative (‘own-motion’ inquiries). The CCC has not yet conducted such inquiries. Typically, these inquiries facilitate the development of clear guidance to support the application of an industry code or identify areas where further education is required. Resources and guidance prepared as a result of inquiries and reviews of compliance with certain code provisions have helped increase understanding and improved compliance by signatories to other codes. This approach is consistent with expectations set out in RG 183, particularly where monitoring processes rely on self-reporting by subscribers.<sup>51</sup> Promontory recommends that the CCC consider how and when own-motion inquiries are undertaken, especially as they will require consideration of resourcing and/or information requests. Examples of topics could include some of the areas identified in this review that would benefit from a greater focus on compliance in practice e.g. hardship provisions. This will provide the CCC with greater visibility over compliance issues and where resources should be directed.

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<sup>51</sup> ASIC RG 183, *Approval of Financial Services Sector Codes of Conduct*, 183.79.

*Public reporting by the CCC could provide detail and analysis to enhance transparency*

The ToR require the CCC to publicly report six-monthly (including as part of AFIA’s Annual Review) on information related to investigations of any Alleged Breaches and corrective measures (including sanctions). This should report a consolidated analysis of Code Member compliance, any recommendations on Code improvements, and industry issues relevant to the operation of the Code.

Since the commencement of its operation (1 March 2021), the CCC has produced three reports - two annual reports via the Annual AFIA Annual Review Reports (30 June 2021 and 30 June 2022) and a report in March 2022 on ‘The First Year of Self-Regulation’.<sup>52</sup> These have been useful reports at this early stage in the life of the Code and the CCC, especially ‘The First Year of Self-Regulation’ report. However, there is an expectation of greater levels of information and data going forward.

Consumer groups suggested that at present there is a lack of substantial publicly available data. ‘The First Year of Self-Regulation’ was a detailed report covering information on the role of the CCC, the accreditation process, information on complaints, and investigation of a breach. However, the annual reports via the AFIA Annual Review provided less information.

In its March 2022 report on ‘The First Year of Self-Regulation’, the CCC states that it intends to report at least annually to the community about its work to ensure that Code Members provide high standards of service for customers and best build practices across the industry’.<sup>53</sup> This is a positive commitment. This report, as well as the AFIA Annual Review reports should be enhanced with further insights and analysis as the CCC matures and compliance monitoring practices are improved.

Promontory also observed that the ‘The First Year of Self-Regulation’ report was the only report available via the CCC website. This is inconsistent with the ToR which requires all reports to be published on both the AFIA and CCC websites. Promontory recommends that the CCC website is updated to include references to their annual reports in the AFIA Annual Reviews.

<b>Recommendation 42</b>	Develop policies, frameworks, and/or guidance in relation to the administration and implementation of the Code to assist the CCC’s in promoting a consistent approach and inform best practice. This includes demonstration of processes related to considering Alleged Breaches of the Code.
<b>Recommendation 43</b>	The CCC should consider how and when inquiries of its own initiative are undertaken.

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<sup>52</sup> AFIA, *Buy Now Pay Later: The First Year of Self-Regulation*, [https://afia.asn.au/files/galleries/Buy\\_Now\\_Pay\\_Later\\_The\\_First\\_Year\\_of\\_Self\\_Regulation\\_March\\_2022.pdf](https://afia.asn.au/files/galleries/Buy_Now_Pay_Later_The_First_Year_of_Self_Regulation_March_2022.pdf), 2022.

<sup>53</sup> Ibid.

**Recommendation  
44**

Publish all CCC reports on the CCC and AFIA websites, as required by the ToR.

### 4.3 Accreditation and Ongoing Compliance Monitoring

BNPL providers are required to undertake an initial accreditation process conducted by the CCC to become Code Members and are subsequently required to be re-accredited on an annual basis via an annual compliance declaration process. Since the Code came into effect in March 2021, the CCC has assessed ten applications for accreditation and accredited nine BNPL providers as Code Members.<sup>54</sup> Following the annual attestation process, all nine Code Members were re-accredited in 2022.<sup>55</sup>

Promontory's consultation note included the following questions relating to accreditation:

- *Is the process for accreditation as a Code Compliant Member of the Code transparent, well-understood, effective, and consistently applied?*
- *Are there opportunities to enhance the accreditation process?*

Promontory observed that the accreditation process has led to an improvement in the documentation of Code Member policies and customer facing materials, particularly in the areas of complaints and financial hardship. Code Members provided feedback that they view the accreditation processes as thorough, and the approach from the CCC as rigorous and comprehensive.

In this light, Promontory did not have additional suggestions or recommendations around the accreditation process. Rather, our recommendation is that the CCC's focus needs to rebalance to ensure that there is also sufficient focus on ongoing monitoring and proactive compliance.

#### 4.3.1 *The emphasis on accreditation, while robust, is focused on 'design' rather than 'practice'*

Promontory's review of the accreditation process found that the CCC required almost all applicants to make changes to their policies, procedures and customer facing materials, prior to accreditation. Examples included requiring amendments to hardship and complaint policies and requiring updates to terms and conditions, as well as requiring legal advice in some cases, to confirm compliance of updated materials. It was evident to Promontory in interviewing the CCC, that considerable time and effort is invested in the accreditation process.

The accreditation process differs from other industry codes which involve a less intrusive initial sign-on process, and more rigorous ongoing compliance monitoring practices. The current

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<sup>54</sup> One applicant withdrew their application.

<sup>55</sup> During our review process, the re-accreditation process for 2023 was undertaken which led to seven members being re-accredited. One provider has withdrawn from the BNPL market and is no longer a Code Member and another provider has been placed into receivership.

accreditation process is heavily focused on confirming that the design and documentation of policies and procedures complies with the Code.

There is certainly value in testing policies upfront via accreditation. However, it is now appropriate for the CCC to focus more heavily on testing ongoing compliance and the practical application of Code requirements. This may involve the use of complaint and other qualitative data, carrying out investigations and mechanisms such as own-motion inquiries or other proactive techniques. Promontory recognises that this may require a rebalancing of effort and resources from accreditation and re-accreditation to ongoing compliance monitoring. AFIA should ensure that the CCC is adequately resourced to implement recommendations related to enhanced monitoring practices. The outcomes of BNPL regulatory reforms may also be relevant in this context. If these reforms were to result in licensing for BNPL providers, then some requirements currently subject to accreditation may be appropriately covered through licensing requirements.

<b>Recommendation 45</b>	Increase CCC efforts on ongoing compliance monitoring, with a rebalance of effort from the resourcing dedicated to the initial and re-accreditation process.
<b>Recommendation 46</b>	Ensure that the CCC is adequately resourced to implement recommendations related to enhanced monitoring practices.

#### 4.4 Enforceability

The enforceability of a code is fundamental to its effectiveness and instilling public confidence in a code's commitments. RG 183 considers several factors in determining enforceability, and thereby the effectiveness of codes. These factors include dispute resolution, remedies, sanctions, and reporting breaches to ASIC.

Promontory's review of the Code documents is positive in this regard, in that they largely align with the ASIC guidelines. However, there are further opportunities to improve the enforceability as discussed below.

As noted earlier, clarifying the legal status of the Code for customers would also assist effective enforceability.

##### ***4.4.1 The role of the CCC with regards to receiving Alleged Breach reports and considering complaints should be clarified***

The current requirements within the Code are unclear as to the CCC's role in receiving individual complaints compared to receiving and considering breach reports. Clause 13.13 states that 'in addition to contacting us or AFCA, you can report an alleged breach of this Code to the CCC'. Clause 13.14 then states 'if you have a specific complaint about us [Code Member], you should first talk to us, and then AFCA (if necessary). The CCC will not consider your complaint if you are still trying to resolve it with us or within AFCA.'



Promontory notes it is unclear whether the use of the terms ‘complaint’ and ‘Alleged Breach’ are intended to be used interchangeably in this section of the Code or have been deliberately differentiated and recommends that the Code is clarified in this regard. There is clearly overlap between complaints and breach reports, but there are also important distinctions, including around available remedies – for example the CCC can apply sanctions that cannot be applied by AFCA.

A lack of clarity may inhibit customers and their representatives from reporting breaches to the CCC, including those that are independent of any complaints resolution process that is being undertaken through IDR or EDR. We heard from some consumer groups that the CCC will not accept a matter which is in IDR or EDR, even where it relates to a potential breach of the Code. Whilst it is reasonable that the CCC will not *investigate* a breach if it is still subject to IDR and EDR, receipt and acknowledgement of breach reports serves as important information to the CCC as a compliance monitoring function and can offer insights that might assist with improving practice across the sector.

To date, very few complaints and reports of Alleged Breaches have been considered by the CCC. According to the CCC’s annual report, during the period from 1 July 2021 to 30 June 2022, four complaints were reported to the CCC of which three were resolved through the Code Members’ IDR processes.<sup>56</sup> Over a similar period, AFCA received over 1,000 complaints about BNPL providers, most of which related to Code Members.<sup>57</sup> Promontory understands that in practice, the CCC will accept and seeks regular updates on complaints which have been reported whilst in IDR or EDR, but will not pursue investigation at that time.

This issue should be readily resolvable by making it clear that breaches of the Code can be reported at anytime and that this information is collected to improve Code Member practices, not to get an outcome for an individual customer. AFCA should be contacted for matters relating to individual customer compensation. The CCC could state that it may decide to investigate these breaches but notes that they can only investigate the issue if it isn’t currently being investigated by IDR or AFCA.

These clarifications should also include making it clear that *any* person or organisation, including a customer or its representative can report a breach of the Code to the CCC at *any* time. This is currently stated within the ToR and By-Laws but not within the Code itself. As part of this update, the definition of an Alleged Breach should be included in the Code document itself as a defined term as it is currently only defined in clause 10.1 of the ToR.

**Recommendation  
47**

Clarify the role of the CCC in regard to complaints and Alleged Breach reporting processes and more clearly distinguish the two terms.

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<sup>56</sup> AFIA, *Buy Now Pay Later: The First Year of Self-Regulation*, [https://afia.asn.au/files/galleries/Buy\\_Now\\_Pay\\_Later\\_The\\_First\\_Year\\_of\\_Self\\_Regulation\\_March\\_2022.pdf](https://afia.asn.au/files/galleries/Buy_Now_Pay_Later_The_First_Year_of_Self_Regulation_March_2022.pdf), 2022.  
<sup>57</sup> AFCA, *Annual Review 2021-2022: Code Compliance and Monitoring*, <https://www.afca.org.au/annual-review-code-compliance-and-monitoring>, 2022.

<b>Recommendation 48</b>	Clarify the Code and align with the ToR and By-Laws so it is clear that any person or organisation, including a customer or its representative can report breaches of the Code to the CCC at any time.
<b>Recommendation 49</b>	Include the definition of an Alleged Breach within the Code itself in addition to clause 10.1 of the ToR.

#### ***4.4.2 There may be circumstances where the CCC should consider and investigate Alleged Breaches that have been resolved through IDR or EDR***

While Promontory has seen some examples of the CCC monitoring and seeking updates on complaints which have been reported whilst in IDR or EDR, generally where a matter is resolved it will not be the subject of further consideration by the CCC. This creates a potential gap in the CCC's role in enforcing the Code and overseeing compliance. Additional consideration by the CCC may be required as there may be different issues to consider around sanctions or remediation. AFCA cannot impose sanctions for a breach (or breaches) of the Code, but in some cases it may be that a sanction is warranted - this is the role of the CCC.

In the majority of cases, it is likely that resolution through IDR or EDR will be sufficient and appropriate. However, resolving an individual customer complaint is not always the same as identifying and addressing a breach of the Code. There will be instances where AFCA has resolved an individual customer complaint but consideration is warranted as to whether the Code breach by the Member warrants a separate or additional sanction. The ability to impose a sanction beyond the rectification of the immediate customer problem is clearly contemplated in the CCC's powers.

For example, where AFCA assists a customer in negotiating a hardship arrangement, if a Code Member has been unresponsive or failed to provide adequate assistance, there may be a breach relating to timeframes set out in the Code. It would be particularly concerning if this had occurred on multiple occasions, even if each individual instance was resolved following complaints to AFCA, as it may indicate a systemic pattern of Code breaches. It is therefore important for the CCC to consider complaints alleging breaches of the Code, even where the immediate customer problem has been dealt with in IDR or EDR.

The role and purpose of the CCC differs from that of a complaints body and its primary role is to enforce compliance with the Code. This is distinct from the role of IDR or EDR which is to provide remedies to a customer. On this basis, Promontory recommends that as appropriate, CCC develop guidance around when it may take more action to consider and investigate matters (as appropriate) even where they may have been resolved through IDR or EDR to identify whether there has been a breach of the Code and if additional action is required. This could reflect, for example, the seriousness of the matter or whether it represents systemic conduct. As discussed in the section above, the role of the CCC in this regard would also benefit from being clarified within the Code.

<b>Recommendation 50</b>	The CCC develop guidance around when it may consider and investigate matters resolved through IDR or EDR to identify whether
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there has been a breach of the Code and if additional actions or sanctions are required.

#### **4.4.3 The structure and independence of the CCC should be clarified**

RG 183 states that for a code to work effectively, the body charged with overseeing the code must be independent of the industry that subscribes to the code.<sup>58</sup> The CCC has been set up with the intent of being an independent body, and its membership reflects this objective. Importantly, we did not see evidence of a lack of independence. However, there is scope to clarify the independence and/or the respective roles of the CCC from the AFIA Board in the Code, ToR and By-Laws.

The ToR describes the CCC as an independent function and requires its members to be independent, and we have observed independence in practice. However, there are opportunities to clarify this within the Code and supporting documents. Currently, the ToR and By-Laws outline circumstances where both the AFIA Board and the CCC have a role in investigating and enforcing compliance with the Code, and it is not clear how these overlapping roles interact.

Promontory's assessment of the ToR and By-Laws notes that the CCC can be required to undertake investigations at the direction of the AFIA Board (clause 10.3 ToR; 9.3 By-Laws) and an appeal from a decision by the CCC can also be made to the AFIA Board (clause 10.17 ToR; 12.2 By-Laws). The AFIA Board and the CCC are both given the ability to enforce sanctions. Clause 9.9 of the By-Laws includes that the 'Board or the CCC' may impose sanctions and clause 7.2(e) states that sanctions can be applied by the CCC until such time as the Board considers that the non-compliance has been rectified.

AFIA has advised Promontory that the responsibilities of the CCC and AFIA Board overlap to support effective enforcement practices and with the intent of fostering strong culture and professionalism. It is the AFIA Board that has the powers to cease membership and publicise actions under the current construct of the AFIA Constitution and By-Laws.

It is preferable to resolve respective roles before any confusion or inconsistency arises in relation to the respective roles and/or actions of the AFIA Board and the CCC in ways that create perceptions of a lack of independence. Promontory recommends that the Code documents are subject to a legal review in this regard so that requirements and roles to ensure independence are made clear and explicit. This review may consider, among other things, ensuring the appropriate information flow and consultation between the AFIA Board and CCC, and powers and responsibilities of each body.

#### **Recommendation 51**

Undertake a legal review of Code documents to ensure the CCC's independence from the AFIA Board is clear.

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<sup>58</sup> Ibid.

## Chapter 5: Recommendations

### Potential Regulatory Developments:

No.	Potential Regulatory development
<b>Potential Regulatory Development 1</b>	Revisit the issue of ASIC approval once the outcomes of the BNPL reforms are clear.
<b>Potential Regulatory Development 2</b>	Consider the implications of wider Code membership following the outcomes of BNPL regulatory reforms including harmonisation with other industry codes as relevant.

### Recommendations for the Code

Recommendation Number	Recommendation
<b><i>Chapter 2: Regulatory and Legal Status of the Code</i></b>	
<b>Recommendation 1</b>	Clarify clause 6 of the Code to ensure consistent protection is afforded to customers. This may be achieved by modifying the Code's language around contractual obligations to ensure that commitments will be incorporated in BNPL customer contracts.
<b>Recommendation 2</b>	Simplify the reference from 'Code Compliant Member' to 'Code Member' throughout the Code documents.
<b>Recommendation 3</b>	Update the Code to include a definition of 'customer'. Consideration should be given to the explicit inclusion of small business.
<b>Recommendation 4</b>	As the BNPL market develops, AFIA and Code Members should continue to assess whether there are any provisions that require scalability and/or that should be included to deal with particular new and emerging segments of the market.
<b><i>Chapter 3: We will focus on customers</i></b>	
<b>Recommendation 5</b>	Revise language in clause 8.3 to encourage Code Members to be proactive in dealing with vulnerability, such as to 'we will encourage you to tell us about your vulnerability'.
<b>Recommendation 6</b>	Clarify the definition of 'vulnerability' in clause 8.4 by setting out specific categories of vulnerability in a simple and non-exhaustive list alongside current 'vulnerability' factors set out in the Code.
<b>Recommendation 7</b>	Introduce specific and clear commitments to assist people experiencing vulnerabilities.
<b>Recommendation 8</b>	Outline consistent and comprehensive requirements on staff training through moving clause 14.2 to the relevant commitment covering customer vulnerability and replacing current clause 8.5.

<b>Recommendation 9</b>	Provide additional detail on what is meant and expected by ‘inclusive and accessible’ as part of clause 8.2.
<b><i>Chapter 3: We will be fair, honest, and ethical</i></b>	
<b>Recommendation 10</b>	Simplify and clarify the meaning of ‘act fairly, and honestly, be ethical and treat you reasonably’ in clause 9.1 of the Code through providing examples of actions to clarify the meaning of this commitment.
<b>Recommendation 11</b>	Amend clause 9.5 on unsolicited selling of BNPL so it reflects the commitment to act fairly, honestly and ethically in relation to selling as well as unlawful conduct. Clarify that the Code covers both the unsolicited selling of BNPL and the related issue of unsolicited, unfair, or unethical selling of products where the purchase is funded by BNPL.
<b>Recommendation 12</b>	Rationalise areas which cover unsolicited marketing or selling by moving provisions/expectations relating to merchants and retailers to Part C of the Code, and retaining provisions relating to Code Members within this commitment. These standards should be consistent and responsibilities distinct. Clause 9.6 should be deleted.
<b>Recommendation 13</b>	Provide concise detail on the objectives underpinning the commitment to comply with the ‘Australian Government’s Artificial Intelligence Ethics Principles’ in clause 9.4 to explain what the principles mean in practice.
<b><i>Chapter 3: We will keep you properly informed about our product and service</i></b>	
<b>Recommendation 14</b>	Provide additional detail or a measurable reference point on what is considered ‘fair, reasonable, and capped’ in relation to late fees in clause 10.1(g) of the Code.
<b>Recommendation 15</b>	Extend the requirement in clause 10.1(e) to include a commitment to provide access to information on repayment schedules as requested, not just prior to becoming a customer (10.1(c)).
<b>Recommendation 16</b>	Expand the list of documents that can be requested in clause 10.9 to include suitability assessments (as relevant) and formal transaction statements.
<b>Recommendation 17</b>	Relocate commitments by AFIA (currently clause 10.1(b)) instead of Code Members to the end of this commitment (end of section 10). Information relating to fees should also be made available via a link on Code Member websites.
<b>Recommendation 18</b>	Review provisions relating to disclosure and warning requirements (clause 10.1) following the BNPL law reform processes especially if more standardised requirements for BNPL fee disclosure and warning requirements are introduced. Alternatively, the Code should develop guidance for a more consistent disclosure and warning process which is tested with customers.
<b>Recommendation 19</b>	Enhance the provision in clause 10.7 relating to early repayments to include that these will be processed quickly and consider including a reasonable timeframe (following consultation with industry).

<b>Recommendation 20</b>	Introduce a commitment which requires a Code Member to enable their customers to reduce their credit limits easily and on request.
<b>Recommendation 21</b>	Provide concise additional detail on the intended objective of complying with ASIC’s best practice guidance on advertising in clause 10.2(a).
<b>Chapter 3: We will make sure our BNPL product or service is suitable for you</b>	
<b>Recommendation 22</b>	<p>Review the Code commitment ‘<i>We will make sure our BNPL product or service is suitable for you</i>’ as soon as possible following the introduction of reforms to BNPL regulation. In doing so, solutions should address the following:</p> <ul style="list-style-type: none"> <li>i) Clarifying what ‘suitability’ means for BNPL customers and ensuring there is a clear nexus between the information obtained by Code Members as part of the suitability criteria and how this is used to inform the suitability assessment.</li> <li>ii) Improving the visibility of customers with multiple BNPL accounts and/or other credit products.</li> <li>iii) Including commitments around unsolicited credit limit increases and clarifying the operation of the suitability assessment for existing customers to aggregate all BNPL transaction amounts (if the assessment remains tiered).</li> <li>iv) Clarifying the interaction between individual suitability assessments compared to assessments based on customer segments or whole of product assessments (i.e., clause 11.3(b)).</li> </ul>
<b>Chapter 3: We will undertake an ongoing review of the suitability of our products and services</b>	
<b>Recommendation 23</b>	Expand on the types of information included in clause 12.3 to identify those which are particularly relevant to the BNPL sector to assess suitability.
<b>Recommendation 24</b>	Clarify that section 12 relates to market wide suitability.
<b>Chapter 3: We will deal fairly with complaints</b>	
<b>Recommendation 25</b>	Clarify the reference to ‘ASIC standards’ in clause 13.2 with reference to RG 271 and RG 267 as relevant and consider where key provisions from RG 271 should be referenced explicitly within the Code to improve customer understanding, particularly the commitment to provide a final outcome response to a complainant in no later than 30 calendar days.
<b>Recommendation 26</b>	Introduce a provision within this commitment to state that complaints provisions will be flexible and offer multiple lodgement methods, consistent with RG 271.
<b>Recommendation 27</b>	Provide greater detail (building on clause 13.8) regarding a customer’s ability to choose to have the Code Member deal with a



	representative such as a financial counsellor and the way that this requirement operates. This includes explicitly recognising that customer representatives may raise complaints to the CCC and requiring Code Members to consider facilitating easier contact and communication for customer representatives.
<b>Chapter 3: We will offer financial hardship assistance</b>	
<b>Recommendation 28</b>	Extend provisions relating to timeframes in clause 14.6 to apply to an information request from a customer or nominated representative.
<b>Recommendation 29</b>	Consider introducing a provision within this commitment to comply with RG 271 under this section, to improve the accessibility of the hardship process to vulnerable customers.
<b>Recommendation 30</b>	Introduce clearer provisions within this commitment around identifying and recognising financial abuse (including improving staff training and awareness) and providing protection to customers where debts arise from financial abuse, including guidance around waivers and removing adverse information from credit reports.
<b>Chapter 3: We will comply with our legal and industry obligations</b>	
<b>Recommendation 31</b>	Reference the relevant law where the Code refers to specific legislation and regulation. Consider replicating the set of laws referenced in the AFIA-By Laws at the back of the Code to promote customer understanding of the application and meaning of the commitment. This includes referencing the Privacy Act 1988 and OAIC Privacy Principles within this commitment.
<b>Chapter 3: We will support and promote the Code</b>	
<b>Recommendation 32</b>	Introduce guidance on what constitutes adequate Code promotion in the By-Laws. Engagement with financial counsellors and other customer advisers should be part of this activity.
<b>Chapter 3: Minimum Standards for Merchants and Retail Partners</b>	
<b>Recommendation 33</b>	Consider how to promote better engagement between AFIA, the CCC and the merchant and retailer sector to promote awareness of the Code and merchant and retailer compliance.
<b>Recommendation 34</b>	Introduce a commitment to ensure that the Code is clearly referenced in documents and/or information provided as part of BNPL onboarding communications at the point of sale.
<b>Recommendation 35</b>	Introduce concise examples of indicators of unethical or unfair sales, such as pressure selling, or employing badgering techniques, as part of reflecting the revised commitments relating to sales practices and related minimum standards in Part C (recommendation 12).
<b>Recommendation 36</b>	Clarify the minimum standards for merchants and retailers to: <ul style="list-style-type: none"> <li>i) define a time threshold for responding to complaints, such as 21 days to enable the monitoring of the timeliness of complaints handling; and</li> <li>ii) subject to BNPL law reform, develop guidance to ensure merchants and retailers adopt a consistent approach to provide</li> </ul>



	customers with clear and upfront information about BNPL services and fees in an accessible format.
<b>Recommendation 37</b>	Subject to legal advice, identify additional monitoring and reporting requirements. Define materiality thresholds for Code Members to report to the CCC instances of material merchant and retailer non-compliance with minimum standards, supported by clear guidance. Materiality could consider, at a minimum, those suspended or terminated, repeat offenders and where customers have raised complaints. Additional reporting information should include details on the nature of non-compliance and proposed consequences or actions taken and merchants and retailers should be identified by name to assist with analysis of potential trends and systemic issues.
<b>Recommendation 38</b>	Update Part C of the Code to clarify which merchant and retailer related commitments can be enforced by AFCA or the CCC.
<b>Recommendation 39</b>	Relocate all merchant and retailer related commitments to Part C of the Code and cross-reference as required. Clause 9.6 should be deleted as per recommendation 12.
<b>Chapter 4: Code Compliance Monitoring, Reporting and the CCC</b>	
<b>Recommendation 40</b>	Enhance data collection and reporting to the CCC: <ul style="list-style-type: none"> <li>i) Collecting quantitative data on adherence to response timeframes commitments for hardship and complaints. Consideration should also be given to staff training rates, particularly with regard to vulnerability and merchant and retailer complaint numbers.</li> <li>ii) Developing qualitative data categories with consideration being given to frequency, these could be provided less regularly than quarterly such as six-monthly or annually.</li> <li>iii) Create guidance to clearly explain how data should be reported in the data collection template.</li> <li>iv) Establishing routine engagement with AFCA to share and obtain insights on trends and watch points in the BNPL sector.</li> <li>v) Updating clause 9.2 of the ToR to include the requirement to report complaint, hardship, merchant and retailer and other data routinely collected by the CCC.</li> </ul>
<b>Recommendation 41</b>	Review self-reporting of Code breaches following BNPL reforms. This review could consider: <ul style="list-style-type: none"> <li>i) how to ensure that reporting of self-identified breaches is made more explicit in the ToR and By-Laws (including a nil return) and this is clearly communicated to Code Members;</li> <li>ii) the timeframe for such reporting, e.g. on a six-monthly basis;</li> <li>iii) a materiality threshold for such reporting in consultation with Code Members; and</li> </ul>

	iv) alignment with any regulatory breach reporting requirements that may be introduced, so as to avoid unnecessary overlap or inefficiencies.
<b>Recommendation 42</b>	Develop policies, frameworks, and/or guidance in relation to the administration and implementation of the Code to assist the CCC in promoting a consistent approach and inform best practice. This includes demonstration of processes related to considering Alleged Breaches of the Code.
<b>Recommendation 43</b>	The CCC should consider how and when inquiries of its own initiative are undertaken.
<b>Recommendation 44</b>	Publish all CCC reports on the CCC and AFIA websites, as required by the ToR.
<b>Chapter 4: Accreditation and Ongoing Compliance Monitoring</b>	
<b>Recommendation 45</b>	Increase CCC efforts on ongoing compliance monitoring, with a rebalance from the effort and resourcing dedicated to the initial and re-accreditation process.
<b>Recommendation 46</b>	Ensure that the CCC is adequately resourced to implement recommendations related to enhanced monitoring practices.
<b>Chapter 4: Enforceability</b>	
<b>Recommendation 47</b>	Clarify the role of the CCC in regard to complaints and Alleged Breach reporting processes and more clearly distinguish the two terms.
<b>Recommendation 48</b>	Clarify the Code and align with the ToR and By-Laws so that it is clear that any person or organisation, including a customer or its representative can report breaches of the Code to the CCC at any time.
<b>Recommendation 49</b>	Include the definition of an Alleged Breach in the Code itself in addition to clause 10.1 of the ToR.
<b>Recommendation 50</b>	The CCC develop guidance around when it may consider and investigate matters resolved through IDR or EDR to identify whether there has been a breach of the Code and if additional actions or sanctions are required.
<b>Recommendation 51</b>	Undertake a legal review of Code documents to ensure that the CCC's independence from the AFIA Board is clear.

## Appendix A: Scope of Services

Promontory has been appointed by AFIA to consider the impact and effectiveness of the Code in achieving its objectives by examining the following matters:

### 1.1 Awareness of the Code

- a) The level of awareness of the Code among key stakeholders including consumer groups and other BNPL providers operating in Australia who are not signatories to the Code.
- b) The level of consumer understanding about the protections provided under the Code including the role of the Buy Now Pay Later Code Compliance Committee ('CCC') to consider alleged breaches of the Code.

### 1.2 Content of the Code Compared to Credit Legislation

- a) Whether the Code contains provisions that achieve broadly comparable consumer outcomes to the same provisions in the *National Consumer Credit Protection Act 2009* ('NCCP Act') that would have otherwise applied if a Code Member had been regulated under the NCCP Act.
- b) If there are perceived shortcomings in the consumer outcomes achieved by the Code and the outcomes that would have been achieved if a Code Member had been regulated under the NCCP Act, what those shortcomings are.

### 1.3 Accreditation as a Code Compliant Member of the Code

- a) The effectiveness of the accreditation process under which a BNPL provider becomes a Code Compliant Member of the Code.
- b) The adequacy of the Terms of Reference of the CCC in relation to accreditation, including but not limited to the matters the CCC may take into account when considering applications for accreditation.

### 1.4 Monitoring Compliance with the Code

- a) Whether the By-Laws and Terms of Reference provide an appropriate framework for monitoring compliance with the Code, including but not limited to the matters the CCC may consider and the adequacy of the sanctions the CCC may impose for alleged breaches of the Code compared to other Australian financial sector industry Codes of Practice.
- b) Whether the information required to be reported by Code Compliant Members to the CCC on a quarterly basis in accordance with the By Laws is sufficient for compliance monitoring purposes.
- c) Whether the process of annual attestation about compliance is equivalent to that of other industry Codes that operate in the financial sector in Australia.

- d) Whether the process for considering alleged breaches of the Code is sufficient to ensure any alleged breaches are appropriately examined and suitable outcomes are applied having regard to the scope of the sanctions the CCC may impose.

#### 1.5 Performance and Content the Code

- a) Whether the nine Key Commitments in the Code have enhanced the level of consumer protection in the BNPL sector in Australia, having regard to the objectives of the Code and the industry practices that have been implemented in response to the Key Commitments.
- b) If there are perceived gaps in the level of consumer protection provided by the Key Commitments, what those gaps are and the recommended additions to the Code to address those gaps.

## Appendix B: Non-confidential submissions

Promontory received the following non-confidential submissions, which will be made available on the AFIA website.

	Organisation
1.	Australian Finance Industry Association
2.	Afterpay
3.	Australian Small Business and Family Enterprise Ombudsman
4.	Australian Retail Credit Association
5.	Australian Retailers Association
6.	Cash Converters
7.	Consumer Federation Australia
8.	Shooting Industry Foundation

## Appendix C: Interview List

	Organisation
1.	Afterpay
2.	Australian Banking Association
3.	Australian Competition and Consumer Commission
4.	Australian Financial Complaints Authority
5.	Australian Financial Complaints Authority Code Compliance Team
6.	Australian Finance Industry Association (including joint BNPL Code Member Interview)
7.	Australian Securities and Investments Commission
8.	Australian Retailers Association
9.	Brighte
10.	Code Compliance Committee
11.	Consumer Credit Legal Services Western Australia
12.	Consumer Action Law Centre
13.	Financial Counsellors Australia
14.	Humm
15.	Indigenous Consumer Assistance Network
16.	Legal Aid NSW
17.	Plenti
18.	Treasury
19.	Zip

