



23 December 2022

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## **Submission from Afterpay to Independent Review of the Buy Now Pay Later Code of Practice**

Afterpay welcomes the opportunity to provide a submission to the Independent Review (Review) of the Buy Now Pay Later Code of Practice (Code).

The Code is a globally-recognised example of how self-regulation can protect consumers and generate positive social outcomes through the creation of international best practice standards that reflect the nature and design of the products they oversee. As a core part of Australia's broader regulatory framework for Buy Now Pay Later (BNPL), the Code enshrines clear, high standards that prioritise consumer protection and financial inclusion while also supporting innovation and competition in an emerging industry.

We fully support the regular review of the Code to ensure it continues to promote high standards of service for customers, generate strong consumer outcomes, and uphold best practices across the industry.

### **About Afterpay**

Afterpay is an Australian financial technology company and a wholly owned subsidiary of Block, Inc. (NYSE: SQ). We are a founding member of the Code and a leading international player in the BNPL sector.

Afterpay is a no cost service to the customer, if instalment payments are made on time. Responsible spending rules and consumer protections are built into the service – these rules help ensure customers never revolve in debt. In circumstances where the customer does not pay their instalment payments on time, their service is immediately suspended until any overdue payments are met, and late payment fees can be applied. Notably, late payment fees are fixed, capped and do not accumulate or compound over time.

Merchants benefit significantly by being part of the Afterpay ecosystem, as it delivers them value, reduced risk, and deeper engagement with customers. Merchants invest in providing the Afterpay service to their customers because Afterpay provides a powerful marketing platform for reaching consumers, as well as reducing their operational costs. As a result, the cost of Afterpay is not borne by the consumer which in turn drives positive merchant outcomes.

## **Executive summary**

As a founding member of the Code, and a proponent of its efficacy and strong track record, Afterpay strongly supports the Review. It provides an important opportunity to ensure the Code is achieving its objectives, including promoting a customer-centric approach to the design, marketing and distribution of BNPL products, promoting high industry standards of service for customers, and supporting compliance with legal and industry obligations.

Achieving these objectives remains our priority, and as an industry, we have worked hard to see them reflected in our daily operations and in every engagement with consumers. Importantly, the Review also provides an opportunity to develop a robust evidence base to strengthen the Code where appropriate, ensuring it remains fit-for-purpose, adaptable to innovation, and flexible enough to meet the evolving expectations of Australian consumers.

In this submission, we provide specific responses to the questions raised in the consultation note. In addition, the following information is provided to help frame these responses and provide additional context and evidence, reflecting both our experience as a member of the Code and as a global BNPL provider that engages with regulatory frameworks around the world, including in the United States, United Kingdom, New Zealand and the European Union.

### ***The Code protects consumers by focusing on outcomes, not processes***

One of the most important foundations underpinning the Code, which must not be underestimated, is its focus on delivering positive consumer outcomes. This approach recognises how consumers actually use a product, rather than whether a product is *capable* of being used safely and *capable* of delivering good value to customers. Afterpay has always been a strong advocate for this approach to regulation and is proud to see it reflected in the Code.

Many existing financial services and credit laws, however, are based on disclosure or aim to regulate processes rather than outcomes. For example, disclosure is about providing consumers with information about a financial product in the expectation that they are able to make an informed decision about whether to use that product. Disclosure comes in many forms – in financial services guides or credit disclosure guides, in product disclosure statements and terms and conditions, and in marketing and advertising. Similarly, regulation might require that a process be performed – for example, that a point-in-time affordability assessment be conducted when initially providing a loan product to a customer. In this example, the regulation aims to ensure that lending decisions do not result in consumers being provided with unaffordable loans.

However, for both disclosure and process regulation, good consumer outcomes are not guaranteed. Instead, how a product is designed plays a much more significant role in influencing consumer outcomes.

The Code, by comparison, focuses on the important design principles at the heart of BNPL. A key example of this is how responsible spending rules and consumer protections are codified. The Code commits members to “not provide any additional [products] or increase the Transaction Amount of the current [product] if you are behind in payments”. This ensures customers cannot overextend themselves when they are already experiencing difficulty meeting their existing obligations. The Code also caps fees at reasonable levels and requires providers to conduct “in life” checks to ensure their BNPL product remains suitable for each consumer.

These important and effective consumer protections are supporting Australian consumers who have embraced BNPL. Many of these consumers have lost trust in traditional credit products and continue to switch to safer and more transparent options, such as Afterpay. Consumers choose Afterpay during times of uncertainty as well as stability, while avoiding a cycle of debt they might face from other products. As more consumers use BNPL, they are accessing a safer payment option and being protected by a fit-for-purpose and effective Code, supplemented by formal regulations and regulatory oversight. Research by RFI Global and BIS Oxford,<sup>1</sup> sponsored by the Australian Finance Industry Association (AFIA), reveals this shift:

- The number of BNPL users in Australia with active accounts has grown, reaching approximately 5.9 million active accounts in FY21.
- BNPL users in Australia gained \$264 million in gross benefits from using BNPL services in FY21, driven by savings in interest and fee costs (relative to credit cards) surcharge savings and the benefits to consumers of delaying payment, and allowing for more effective budgeting.
- More than 135,400 Australian businesses now accept BNPL, delivering nearly \$2.8 billion in gross benefits, helping them generate new revenue, gain deeper insights and a better understanding of customer preferences and transaction activity, and decrease operating costs – with small businesses gaining greater benefit from BNPL.
- In FY21, BNPL helped create or retain some 99,200 jobs throughout Australia and contributed \$14.3 billion in Gross Domestic Product to the Australian economy.

By being fit-for-purpose, tailored and flexible enough to account for a range of different BNPL models, the Code is enabling members to deliver these outcomes.

### ***The Code is delivering strong consumer outcomes by reflecting how BNPL products work***

The Code generates strong outcomes because it represents a regulatory model that is fit-for-purpose and proportionate to the risks and benefits of BNPL products. BNPL’s inherent consumer protection features also means there is limited potential for consumer harm. For example, an instalment-based BNPL product with a low limit (for example, less than \$1,000); with strict controls around on-time payments; late fees that are low and

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<sup>1</sup> Australian Finance Industry Association, [The Economic Impact of BNPL in Australia](#), 2022.

capped; and guarantees that debt is not legally enforced, has limited negative consequences for a consumer who cannot pay back on time. These products allow customers to access very low-cost credit with minimal risk and prevent customers falling into more predatory loan arrangements.

Afterpay's product model, and BNPL products more generally, were not envisaged by existing legislation, like the *National Consumer Credit Protection Act 2009* (NCCP Act), which was designed to curtail practices that potentially harmed consumers in the consumer credit industry that developed over decades.

There are a number of important distinctions between BNPL and traditional credit products that are reflected in the Code – but not in the NCCP Act. These differences reflect the inherently more consumer-centric product design of Afterpay, which are in turn, captured by the Code. This includes that Afterpay:

- Prevents customers from spending as soon as they are in arrears
- Starts a customer on a low initial spending limit that only increases gradually with proven on-time repayment behaviour.
- Provides dynamic spending limits, which may increase or decrease depending on the customer's repayment performance.
- Requires new and many existing customers to make their first repayment upfront.
- Does not provide a guaranteed line of credit.
- Does not perform a one-off assessment of a customer's capacity to pay.
- Is used for regular, relatively small-value transactions.
- Caps late fees at a low level.

Afterpay is not subject to the NCCP Act because we do not charge consumers interest or other credit fees for accessing our service. This is not a trivial matter: high cost credit impacts financial wellbeing and reduces the capacity of consumers to withstand financial shocks. The NCCP Act's focus on interest and other credit charges is therefore appropriate: the cost of credit, and the manner in which debts are enforced, are the most important determinants of the risk to consumers. The regulation of traditional credit products reflects this: traditional credit products can charge interest rates of 20% or more and trap consumers into a cycle of revolving debt, while payday lending products are subject to additional regulation due to the even higher costs associated with these products. Recognising these important differences, the Senate Economics References Committee in 2019 recommended the development of the Code as a strong first step for the industry to take.

By recognising these differences and adopting a proportionate approach, the Code has consistently delivered positive outcomes for consumers and generated very low levels of harm:

- Since its launch in early 2021, there have been consistently low rates of internal dispute resolution (IDR) and external dispute resolution (EDR) complaints in relation to Afterpay and across the sector more broadly.

- During the 2020-21 financial year, the Australian Financial Complaints Authority (AFCA) received 767 complaints about BNPL products, representing only 0.01% of the 5.9 million active accounts during that period.<sup>2</sup>
- For Afterpay, total hardship arrangements represent just 0.49% of our active customer base. These figures demonstrate a low level of hardship as a result of consumers using BNPL products, which is consistent with our product design and highlights the effectiveness of the Code.

Putting these figures into further context, despite a growth in popularity over the past decade, BNPL remains a very small proportion of overall consumer spend. According to research by RFI commissioned by AFIA, BNPL transactions accounted for less than half of one percent (0.48%) of all transactions processed under the Australian payments system and accounts for only 0.08% of transaction values.

In addition to remaining a very small part of the broader payments system, BNPL also represents a small proportion of consumer debt. The Australian Treasury's BNPL Options Paper notes that according to the Australian Financial Security Authority, while around a third of personal insolvencies (34.2%) had at least one BNPL debt, by value BNPL debts only represented 0.3% of all unsecured debt in personal insolvency cases.<sup>3</sup> Meanwhile, AFIA's research found that the average BNPL transaction value across all transactions in FY21 was \$151.48 and this includes where BNPL is used to fund higher value purchases, such as solar system installations or home improvement related purchases and more considered purchases, such as photography and education.

### ***The Code can be improved by making it mandatory for all BNPL providers and reassessing spending limit thresholds***

Afterpay recognises that work can be done to evolve the Code, and this Review represents an important opportunity to capture stakeholder feedback and develop robust data and evidence to support potential changes.

We believe there are changes that would immediately improve the Code's effectiveness, many of which are outlined in this submission. These include making the Code mandatory for all providers of a BNPL product. Since the Code's establishment, there have been a number of new providers of BNPL products, including major Australian banks (Commonwealth Bank of Australia and National Australia Bank) and global payments providers and technology companies (PayPal and Apple, the latter of which has yet to launch its BNPL product in Australia). These companies must be subject to the Code to ensure all consumers have access to the same strong protections.

We also acknowledge that there may be room for the BNPL Code to be improved by reassessing current spending limit thresholds – including that new BNPL customers being able to access up to \$2,000 in credit. We are supportive of changes being made to reduce the \$2,000 threshold to \$1,000. We believe the lower threshold, coupled with the

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<sup>2</sup> Australian Finance Industry Association, [The Economic Impact of BNPL in Australia](#), 2022.

<sup>3</sup> Australian Treasury, Regulating Buy Now, Pay Later in Australia - Options Paper, November 2022, p 12.

product design safeguards that have been built into our product (such as the default requirement to make the first 25% instalment payment upfront, and the fact that we prevent customers from undertaking additional spending when they are in arrears) provide a robust framework for consumer protection.

Afterpay and other members of the Code are committed to always improving and adapting the regulatory framework and we look forward to continuing engaging with the Promontory Group and other stakeholders to understand and consider what other changes may be needed, noting the need for a robust evidence base and the need to preserve the underlying principles that have led to the Code's success.

## **Consultation questions**

### **1. 'We will focus on customers'**

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

The Code contains clear information about how providers should support customers with a vulnerability, which reflects established regulatory guidance and best practice.

Sections 8.1-8.6 of the Code commit members to provide “an inclusive and accessible service” to vulnerable customers. These sections adopt the description of vulnerability set out by ASIC and make specific reference to documentation by AFCA on dealing with vulnerabilities. In addition, the Code goes into specific detail about the types of vulnerabilities that could face a customer, ranging from actions taken by the BNPL provider to “specific life events or temporary difficulties”. The Code goes further, outlining a number of specific examples of these factors in practice.

The cumulative effect of these provisions creates clear guidance for members about how to deal with customers with a vulnerability, which mirror existing frameworks developed by ASIC and other regulatory bodies. The Code serves to reinforce these protections by acknowledging the fact that for BNPL, issues of vulnerability are most important when it comes to customers who find themselves in financial difficulty. To that end, the Code requires members to offer accessible and robust hardship policies that treat customers fairly and respectfully and account for each customer's specific circumstances.

Afterpay's hardship program shows these provisions in practice. Our hardship policy is generous, accessible and flexible to meet the circumstances of each individual customer (for example, flexible payment timelines with no additional fees or costs can be agreed upon). We encourage customers to contact us at the first sign of distress. We strongly believe that customers in financial difficulty should be treated sensitively, and that there is a need for a consistent approach to treating customers in financial difficulty across all credit agreements and instalment products. Unlike traditional credit providers, we do not require customers to provide evidence of their financial hardship – we accept our customers on face value, and work with them to develop a tailored solution. We also do not participate in the credit reporting system. This means that customers do not

experience the harm that can ordinarily arise (e.g. pressure to pay to avoid negative impacts on a credit score, aggressive debt collection practices, legal enforcement of debts) when they find themselves unable to meet their repayment obligations.

Underpinning our approach to hardship is our product design, which is inherently safe for consumers and which is well understood and transparent. Responsible spending rules and consumer protections are built into the service. Unlike traditional credit or other BNPL providers, our built-in consumer protections ensure average transaction values remain low, payment terms are strictly short-dated (6-8 weeks versus up to 60 months) and customers cannot revolve in large or accumulating amounts of debt. Customers are immediately suspended from using Afterpay until any overdue payments are met.

Unlike others, Afterpay does not rely on customers to drive revenue, generating the majority of revenue from merchants, with the late fees paid by consumers on Afterpay comprising less than 10% of total Afterpay income.<sup>4</sup> This low number, viewed in the context of Afterpay's global success (and the widespread popularity of BNPL among consumers), evidences consumer belief that Afterpay's fees and charges are proportionate, fair and transparently applied.

We also provide clear and consistent communications over the lifecycle of each transaction so that customers understand what they have to pay and when, and therefore avoid any default. If a customer does miss a payment, we contact them to notify them, provide them with notice that fees may apply after a certain date, as well as a short period of time to make this payment to avoid a late fee. If a customer is unable to pay, we encourage them to make contact with our customer service team who are trained to sensitively manage cases of customers in financial difficulty. These agents follow our hardship policy, which as already noted, gives them the power to modify payment plans (without ever imposing additional fees or costs on the customer) to suit a customer's financial circumstances and signpost them to the appropriate charities and agencies that support consumers in financial difficulty, if necessary. This approach is designed to achieve the best outcomes for our customers.

## **2. 'We will be fair, honest and ethical'**

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

Code members are required to always act fairly and honestly, be ethical, and treat customers reasonably and with transparency in all our dealings. Members must take all reasonable steps to ensure their products are not used or suggested in relation to unlawful unsolicited marketing or selling of BNPL products, and providers may take action against any merchants or retail partners found to be engaging in such behaviour, including reporting the merchant partner to the Code Compliance Committee (CCC). These requirements work in conjunction with the other parts of the Code (including the

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<sup>4</sup> Afterpay Limited [FY21 Annual Report](#).

suitability and assessment process, and complaints and hardship processes) to ensure that good customer outcomes are prioritised.

Afterpay's commitment to act ethically, honestly and fairly is evident in our product design, which is inherently consumer-centric. Our interests are aligned with the customer's – Afterpay is designed to be a transparent and affordable product for consumers – which is completely different from other traditional credit providers that rely on a certain portion of their customer base revolving in debt and fees to support their business model. This is made clear in our Target Market Determination, which states that our product has been designed for consumers who would like an alternative to traditional credit products, who would benefit from a product which can function as a budgeting tool which provides them with the flexibility of paying by instalments, and who would be comfortable with the ease and efficiency of using a digital-only product.

We market our product to those for whom it has been designed and do not participate in sectors that engage in door-to-door selling. We also adhere to strict marketing principles in our communication with the public, whether through direct campaigns or through pre-approved assets used by merchants on their own platforms. Merchants must agree to obtain pre-approval for any bespoke advertising and Afterpay conducts checks on advertising to monitor compliance.

The Code's provisions requiring members to be fair, honest and ethical, and Afterpay's own practices, are supporting good consumer outcomes. Of Afterpay's active consumer base, 95% of instalments are paid on time and 98% of all purchases incur no late fees, which demonstrates that Afterpay consumers understand the product and use the service to manage their spending and budgeting in a responsible manner.

Likewise, we receive very few complaints from consumers about the marketing or selling of Afterpay, or the responsible use of the product. In fact, our research has shown that vulnerable customers benefit the most from using a product like Afterpay when compared with revolving credit products such as credit cards. This is demonstrated in research by Accenture, commissioned by Afterpay, which showed that our product helped 2.7 million Australians, or 90% of Afterpay users, to budget during 2020. Afterpay users saved \$110 million in fees when using Afterpay instead of credit cards – with vulnerable users enjoying the greatest benefit from avoiding revolving debt incentives built into credit card products. The most vulnerable credit card users pay up to seven times more in fees compared to Afterpay users.<sup>5</sup>

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<sup>5</sup> Accenture, [The Economic Impact of Afterpay in Australia](#), 2020, p 38.



### **3. We will keep you properly informed about our product or service'**

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

The Code's provisions relating to informing consumers of key product features, fees and other information, reflects Australian and international best practice. They ensure that customers are kept fully informed and up-to-date, allowing them to make informed decisions for their personal circumstances.

Section 10 of the Code requires members to communicate in a "fair, clear and transparent" manner and in "plain language", ensuring that prior to becoming a customer, we provide "clear and prominent information about... scheduled repayment obligations... and fees we charge." The Code also requires providers to give their customers substantial notice in writing ("at least 40 days") of the introduction of new fees or the increase of existing fees in addition to "at least 30 Days notice" where other material changes are made to terms and conditions. This allows customers to adjust their usage of the product and repayments accordingly.

Afterpay is proud of the way we communicate with our customers. We use plain English and provide the most salient information before a customer decides to formally engage with the product, and at the time of every transaction.

We provide clear and comprehensive information to consumers about the product before asking them to confirm acceptance of our Terms of Service. This includes information on the terms under which Afterpay is offering the service, and the conditions that the consumer has to meet, including payment dates and costs, and any fees associated with missed payment. We believe this model provides consumers with the relevant information at the most suitable point in the consumer journey, without providing too much information that risks overwhelming the customer.

Afterpay presents information to customers in an easy to understand and engaging way. We adopt an approach that uses the communication channels they are most comfortable with – email and text – and provide the most important information readily, with links to further information, conditions and FAQs that are easily navigable on our website and in the app. At every transaction the consumer is provided with:

- Information on the full cost of the purchase;
- The repayment schedule including dates and exact payments due on those dates;
- Essential information about the nature of the product and any rights and responsibilities associated with the agreement including the risk of late fees; and
- A link to the full terms and conditions.

These details are also sent to customers via email after a transaction has been confirmed, and we send email and text message reminders prior to every instalment payment falling due.

Furthermore, customers wishing to find out more information about their transaction – including a reminder of payments due, the returns process and our terms and conditions – can locate these very easily via the Afterpay app or our website. In this way, customers have access to the relevant information instantly and continuously, and can use the opportunity to check payments, request to move payment dates, or notify us of a return at the click of a button. We have a clear and comprehensive communications schedule in place to remind customers about upcoming payments and if they miss a payment, notice of when a late fee will apply if they are unable to make payment within a certain time frame.

Importantly, Afterpay's clear information and disclosures are underpinned by having a product that is inherently simple and straightforward for consumers to understand. This further reinforces the importance of product design: it is easier for a provider to engage a consumer with clear and effective communication when the product that is the subject of that communication is, in and of itself, easy to understand.

- 4. 'We will make sure our BNPL product or service is suitable for you'**
- a. Are the provisions of the Code dealing with the new customer assessment process clear and effective?**
  - b. Are the provisions of the Code dealing with the existing customer assessment process clear and effective?**

The Code contains clear and effective criteria for assessing new customers that reflects the concepts of proportionality, the importance of product design in regulation, and supporting financial inclusion in the economy.

The Code requires members to satisfy a number of upfront criteria to confirm that the product is suitable for a customer, including being reasonably satisfied that the customer is not vulnerable, meets the Suitability Assessment criteria in clause 12, and is able to make an initial payment upfront. Providers must also be reasonably satisfied with the information they have obtained about the customer, in addition to conducting verification requirements in accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

Proportionality is then applied to the suitability assessment by partitioning transaction amounts into four categories and requiring appropriate checks at each tier (see clauses 11.4-11.6). Under the Code, transaction amounts of less than or equal to \$2,000, require customers to meet a minimum set of criteria. Of critical importance is a customer's ability to make the first repayment upfront. If a customer is unable to satisfy this initial requirement, we believe that our product is not suitable for that customer and we do not allow them to transact.

The Code's graduated approach to suitability ensures that providers continue to apply appropriate checks at all stages of the customer journey. Like the new customer assessment process, the criteria for assessing new transaction amounts for existing customers ensures the product remains suitable for them on an ongoing basis.

Key commitments include preventing members from providing “any additional [products] or increas[ing] the Transaction Amount of the current [product] if you are behind in payments”. This mirrors another key customer protection, which requires providers to suspend a customer's account if they are in arrears. Together, these highly effective consumer protections ensure customers cannot overextend themselves when they are already experiencing difficulty meeting their existing obligations. The Code also dictates that before members provide a customer with a new transaction amount, they must be satisfied that the customer has shown appropriate repayment ability and is not vulnerable, that the repayment term is still determined as appropriate, and that internal in-life data shows the customer is not using our product inappropriately.

In accordance with the Code, Afterpay provides new customers with low spending limits – just \$600, with the first instalment payment always due upfront for new customers. This initial spending limit is dynamic – it starts low, and only increases with a positive repayment history. Spending limits are not guaranteed and may go down. The availability of low initial spending limits is an important – and deliberate – product design choice. It means that consumers are exposed to very little risk when they first open an Afterpay account. And because it is relatively straightforward for a consumer to open an Afterpay account, consumers are not incentivised to seek high-cost and predatory alternatives.

By only increasing a customer's spending limit after they have demonstrated strong repayment behaviour, Afterpay ensures that lending responsibly is built into our business model. In Afterpay's own experience, previous repayment behaviour is the best predictor of future behaviour. In recognition of this, a customer's proven repayment history for a BNPL product must remain a crucial input, as outlined in the Code.

Our research shows that the majority of customers are mindful of their purchasing habits. Customers use Afterpay as a tool to help them spread the costs of items and better manage their finances.<sup>6</sup> Furthermore, it is clear that when customers are unable to access other forms of credit, due to our product design, Afterpay offers significant benefits in allowing them to access short-term, interest-free credit to meet their everyday needs. In 2020 alone, Afterpay customers saved over \$110 million when compared to traditional credit cards.<sup>7</sup>

With Afterpay, a customer's spending limit can never exceed certain thresholds, with the ceiling currently set at \$3000. Very few customers reach this upper limit. We believe it is important to have spending limit caps in this range because of how our product is designed (four instalments over six to eight weeks, depending on whether the first

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<sup>6</sup> Accenture, [The Economic Impact of Afterpay in Australia](#), 2020.

<sup>7</sup> Accenture, [The Economic Impact of Afterpay in Australia](#), 2020.

instalment is paid upfront) and how our product is used (the majority of our customers use Afterpay for discretionary purchases across different retail verticals).

Our approach, supported by the Code, produces far better outcomes than traditional credit products that comply with existing regulations in the NCCP Act. Key outcomes include that:

- 95% of Afterpay instalments are paid on time and 98% of all purchases incur no late fees. The overwhelming majority of Afterpay transactions are from repeat customers who have shown positive repayment behaviour.
- Afterpay's loss rate remains one of the lowest in the industry at less than 1%.
- Afterpay's IDR and EDR complaints remain very low and as an industry, during the 2020-21 financial year, BNPL complaints to AFCA represented just 0.01% of the 5.9 million active accounts during that period.
- Total hardship arrangements with Afterpay represent just 0.49% of our active customer base.
- From analysing our own data against that of a credit bureau, we see that those that may have performed badly with traditional credit or have had an incident in their lives, like a bankruptcy, actually perform well on a safer product like Afterpay.

Unlike credit card providers, we do not make one-off decisions to approve customers with large spending limits. For example, a credit card company might have complied with the suitability requirements under the NCCP Act when it provided a consumer with a \$10,000 credit card limit, however, this assessment applies at a 'point in time' only and encourages credit providers to provide a consumer with the largest credit limit possible based on a one-time assessment. This is because providing a consumer with a low credit limit reduces the profitability of a credit card account.

By contrast, the approach taken by Afterpay and outlined in the Code has proven to consistently deliver better results than one-off credit checks that discriminate against more vulnerable consumers, with Afterpay having significantly lower credit losses and impairment charges, compared to traditional credit and other BNPL competitors.

In terms of improvements to the Code, Afterpay supports a reduction in the total amount that new BNPL customers may be able to access from \$2,000 to \$1,000. We believe the lower threshold, coupled with the product design safeguards inherent to BNPL, delivers strong consumer protection outcomes and will help bolster confidence in the Code.

- 5. We will undertake an ongoing review of the suitability of our products or services'**
  - a. Are the factors set out in the Code relating to the ongoing suitability assessment of BNPL Products and Services (Suitability Assessment) effective?**
  - b. Are there limitations to how these factors are applied in practice which impact the effectiveness of the suitability review?**

The Code provides a strong framework for assessing the ongoing suitability of our product that is driven by rigorous monitoring of relevant internal and external data. Importantly, our product has embedded consumer protections – guardrails that ensure it remains suitable for consumers.

The Code's suitability framework requires members to monitor how customers are using our product, identify whether it is meeting their needs, and whether it remains suitable. An example outlined in the Code is a situation in which a customer is incurring late fees on a repeated basis. We monitor, for example, how many times a customer changes their payment date, requests extensions of payment, requests hardship support, or incurs late fees. Monitoring for this class of consumers with common characteristics allows us to then proactively engage with such customers to determine what support we can provide and ultimately whether Afterpay is a suitable product for the customer moving forward.

The Code also requires members to take reasonable steps and establish processes that will likely result in the appropriate distribution of their product, and to monitor and review on an ongoing basis the outcomes of these distribution arrangements, including how merchants use and market our product. Afterpay monitors a range of internal data sources in addition to feedback from merchants and information collected and reported by industry bodies and consumer advocates. To date, these processes have shown that Afterpay remains a suitable product for our customers while allowing us to proactively intervene when appropriate. These provisions have ultimately been very effective in generating positive consumer outcomes.

- 6. We will deal fairly with complaints'**
  - a. Are the internal dispute resolution procedures that Code Compliant Members must follow for complaints sufficiently clear and effective?**
  - b. Are the internal dispute resolution procedures in place among Code Compliant Members effective in dealing with complaints in practice? Do they lead to fair and timely resolutions for consumers?**
  - c. Is the ability for consumers to take complaints to AFCA clear and effective in practice?**
  - d. Is the ability to take alleged breaches to the Code Compliance Committee ('CCC') clear to customers?**
  - e. Is there a sufficiently clear distinction between the matters that AFCA and the CCC will deal with?**

The Code's approach to handling complaints and managing dispute resolution reflects existing regulatory guidance. It commits members to comply with "the same ASIC standards and requirements that Australian Financial Service Licensee holders must comply with" while leaving space for members "to improve on those standards and requirements" where appropriate. The Code requires all providers to be members of AFCA and refer complainants to AFCA when delivering a response to a complaint. A further layer of consumer review is provided by the Code, giving complainants the opportunity to refer a complaint to the CCC for review if they are unsatisfied with the IDR resolution and AFCA's handling of their complaint.

In line with these obligations, Afterpay commits to deal with every complaint in a fair, open and transparent manner and seeks to resolve complaints as quickly as possible. Our complaints policy complies with ASIC's Regulatory Guide on dispute resolution (RG 271) and aims to:

- Acknowledge all complaints within 1 business day or as soon as reasonably practicable.
- Resolve complaints within 5 business days. If a complaint takes longer to resolve, we must provide the complainant with an initial response within 10 business days.
- Resolve all complaints within 21 days. If we can't resolve the complaint within 21 days, we commit to notifying the complainant as soon as possible of the reason for the delay and let them know when we expect to be able to resolve the complaint.
- When we have completed our investigation of the complaint, we will provide the complainant with a written response which will include the outcome of our investigation, their right to take their complaint to AFCA and AFCA's contact details.

We also acknowledge that there may be some circumstances where (unless otherwise required to do so) we will not provide a written response to a complainant because we have either resolved the complaint to their satisfaction within 5 business days or given them an appropriate explanation and / or apology and there are no further actions we can take to reasonably address the complaint. This approach is consistent with RG 271.

Our complaints team is trained to triage complaints to ensure the most urgent issues are addressed as quickly and sensitively as possible. Complaints can be made via our website, app or via post, and we ensure our customer touch points are highly visible and easily accessible. On our website, we provide the contact details of the CCC in addition to a copy of the Code and our hardship policy. We also note that if a customer has a specific dispute with us that involves a breach of the Code, they should contact us in the first instance and then contact AFCA, if necessary. Details on how to raise a dispute with us or contact AFCA are also provided.

We provide complaints data on a quarterly basis to the CCC. As of FY21, our complaints remain very low as a proportion of our total transactions and customers. Our latest quarterly reporting to the CCC showed that our complaints represented 0.24% of active customers. Of these complaints, 99% were resolved. There were 133 new complaints

during this period that went through external dispute resolution. Of these, 94% were resolved, with the vast majority being resolved by Afterpay directly.

Analysis of our EDR complaints provides important context and insight into the issues consumers are raising. For example, the most frequent complaint raised with Afterpay relates to a consumer's interaction with a merchant. This often involves customers being dissatisfied with a merchant's dispute resolution process, customers not receiving their item from the merchant or there being a delay, and requests for refunds. Less frequent issues that result in complaints include product issues (for example, in-store payment declined), alleged unauthorised account activity, and customers being declined the use of services.

These themes and data points demonstrate that consumers are largely satisfied with the Code's IDR and EDR complaints processes, and that Afterpay has been effective in dealing with complaints by generating fair and timely outcomes for our customers.

Although consumers may be dissatisfied with the inability of AFCA to assist them with a complaint relating to the conduct of a merchant, the fact that a large proportion of Afterpay's EDR complaints are made up of these types of complaints indicates that our customers are well aware of their ability to make a complaint to AFCA.

## **7. 'We will offer financial hardship assistance**

- a. Are the provisions relating to customers experiencing financial difficulty adequate?**
- b. Are these provisions being appropriately and consistently applied by Code Complaint Members?**

The Code includes robust hardship practices that ensure customers are treated fairly and respectfully, and lead to appropriate outcomes for BNPL customers.

The hardship policies contained in the Code are commensurate with those outlined in the NCCP Act, which necessitate that credit providers respond sensitively, quickly and appropriately to customers experiencing financial difficulties. Both the Code and NCCP Act dictate specific timeframes for providers to respond to hardship requests (21 days) and timeframes for providers to inform customers of their decision or request further information (21 days). The BNPL Code also ensures that providers cease normal collection activity during this process and late fees are frozen during this period. In addition, providers must not list defaults on customer credit files while considering requests for financial hardship, and if providers enter into a financial hardship arrangement with a customer, they must retain them as a customer and not refer them to a third-party debt collection agency. Customers can also nominate a representative to communicate on their behalf. These clear timelines and important consumer protections provide certainty and clarity for consumers engaging in this process.

Furthermore, the Code ensures that information about financial hardship assistance is communicated to all customers and is easily accessible on provider websites, including information on how to request hardship and who to contact. Members must train staff to

treat their diverse and vulnerable customers with sensitivity, respect and compassion, including the ability to identify signs of vulnerability, such as where there may be mental health or domestic and family violence concerns. Training must also be provided for staff who regularly assist customers from diverse cultural backgrounds including First Nations people.

As already outlined in this submission, Afterpay offers a generous and accessible hardship program that has been proven to support customers. Importantly, Afterpay does not decline hardship requests. According to our latest quarterly reporting to the CCC, total hardship arrangements with Afterpay represented just 0.49% of our active customer base. The average time for these hardship applications to be resolved was one calendar day.

In addition to the significant scope of our hardship policy, it is important to recognise how a financial services product is designed to reduce consumer harm and the actual impact of the product on a consumer's financial circumstances.

Afterpay's product design bolsters our capacity to respond in real-time to customers who may be in financial difficulty. If a customer thinks they may not be able to make a payment, they may request to reschedule the payment date to a more suitable date. If a consumer misses a payment, their Afterpay account is frozen until they are up to date. If the consumer does settle a missed Afterpay payment, they may re-access the platform, but their indicative spending limit will have been reduced to reflect this missed payment. Customers must then demonstrate a consistent pattern of repayment behaviour over a period of many months before their indicative spending limit will increase. In this way, we are able to act at the first sign of financial distress, and introduce measures to provide customers with the space and time to address any financial challenges before they are able to access any further spending with Afterpay. If consumers are persistently missing payments, our hardship policy is in place to support them, including where appropriate, signposting to the relevant charities and agencies that can provide guidance to customers with debt problems.

This approach is in stark contrast to the business models of some regulated running-account credit providers that carry out initial affordability assessments, but then permit consumers to spend significant sums of money as part of their credit card agreement, with little oversight or intervention from the provider other than the initial credit check. These business models, despite complying with formally regulated hardship policies, generate substantial revenue from interest and other charges.



## **8. 'We will comply with our legal and industry obligations'**

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

Afterpay believes the Code's provisions relating to our compliance with legal and Code obligations are sufficiently clear for consumers, merchants and BNPL providers, and that the provisions relating to the protection of personal information, disclosure, and privacy are adequate.

According to ASIC, industry codes are expected to "raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers".<sup>8</sup> They are not expected to replicate legislation. The Code instead represents a tailored regulatory framework for the industry while supporting and referring to existing legislation where appropriate. For example, the Code exceeds existing credit laws in some areas by committing members to stronger consumer protections than would otherwise be available under the NCCP Act. At the same time, Afterpay and other BNPL providers are also expected to comply with ASIC's DDO regime. These regimes are complementary and support an outcomes-based approach to consumer protection.

Likewise, given the diverse nature of the BNPL sector, different providers with different business models may be subject to different legal regimes depending on a range of circumstances (for example, they offer products other than BNPL). To that end, the Code sets out obligations that commit all Code members to high standards with respect to issues affecting all BNPL providers and their customers. This includes protecting customer information and privacy, treating personal and financial information confidentially, and complying with relevant unfair contract laws.

## **9. 'We will support and promote this Code'**

- a. Overall, is there an adequate level of awareness of the Code including how it applies and the protections it offers?**
- b. How does the current level of awareness of the Code impact its effectiveness as a mechanism for consumer protection? What level of awareness is needed to ensure the Code is effective? How can this best be achieved?**
- c. Is there adequate awareness of the BNPL CCC and its role?**

Afterpay has been a strong proponent and supporter of the Code since its establishment because it represents a tailored, proportionate and globally-recognised self-regulatory framework that has been proven to generate strong consumer outcomes for consumers while operating in support of formal regulatory regimes.

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<sup>8</sup> Australian Securities and Investments Commission, Regulatory Guide 183: Approval of financial services sector codes of conduct, March 2013, p 4.

The Code exists to protect consumers, and this is being achieved by members complying with it and consumers having a free and accessible venue to make complaints. We do not expect our customers to have read the Code in its entirety or be fluent in its detail. Instead, our customers are relying on us to comply with the Code and via our membership of AFCA, and the CCC, be held accountable to it.

While awareness is not an outcome in and of itself, it is important that consumers are aware of their rights under the Code and the obligations of BNPL providers, particularly in circumstances where they intend to raise an issue, like a complaint or hardship request. To that end, we display easily understandable information about the content of the Code on our website and provide the details and processes to follow in relation to how to make complaints and hardship requests, in addition to providing the contact details of the CCC and AFCA. Providing clear information and raising awareness about these and other aspects of the Code are important because they can lead to a positive consumer outcome and customer experience.

## **Other issues and questions**

### **10. Protections offered by the Code compared with Credit Legislation**

- a. Does the Code contain provisions that deliver comparable consumer outcomes to the relevant provisions in the NCCP Act that would have applied if BNPL products were formally regulated under the NCCP Act?**
- b. Are there additional consumer protections under the NCCP which should be afforded under the Code?**

The Code contains a number of provisions that provide far stronger protections and generate more positive consumer outcomes than the NCCP Act and the regulated consumer credit sector.

If the BNPL sector had simply been required to comply with the NCCP Act instead of the Code, consumers would be worse off. This is because the Code goes above and beyond what is required by the law. The Code prevents consumers from making additional purchases when they are not up-to-date on their repayments and caps late fees at reasonable levels. These are key protections against the risk of a debt spiral.

Traditional forms of credit, such as credit cards, on the other hand are not required to reach this high bar. This is because traditional credit products rely on consumers who do not repay their outstanding balances in full each month, and thus incur interest rates of 20% or more. These 'revolvers' subsidise customers who pay on time and avoid fees and interest. More importantly, despite NCCP Act regulation, credit cards have continued to generate both strong profits and poor consumer outcomes from a business model driven by these revolving debt cycles. According to research from respected not-for-profit debt help service, Way Forward, the average credit card debt of the vulnerable consumers that they assist is over \$37,000.

While credit cards may already be subject to responsible lending obligations, there is clearly much more work to be done to ensure that credit cards do not expose consumers to this level of harm. Further, despite official interest rates falling to effectively zero in recent years, credit card providers failed to pass on interest rate reductions to consumers over many years. This is because banks understand that their “revolving” credit card customers are trapped in a cycle of high interest debt.

## **11. Monitoring and enforcing compliance with the Code**

- a. How effective are the mechanisms in place to monitor and ensure compliance with the Code?**
- b. Are the sanctions and actions that the Code Compliance Committee may take in response to an alleged or confirmed breach of the Code adequate?**
- c. Is the reporting relating to compliance with the Code, complaints, and breaches sufficient?**

Overall, Afterpay believes the mechanisms to monitor and ensure compliance with the Code work well. There are, however, some improvements that could be made.

Firstly, the Code could include clearer reporting requirements around hardship and complaints that go beyond the raw numbers of hardship requests received and declined and complaints received and resolved. To enhance AFIA and the CCC’s understanding of these important issues, the Code could include obligations around providing information about the trends and themes of complaints and hardship requests. Mandating qualitative material that supports these raw numbers would create a stronger understanding of industry trends that may lead to targeted consumer outcomes.

Secondly, the goal of quarterly reporting, which is to monitor and ensure compliance with the Code, does not strongly align with the information which is requested, most of which does not relate to Code compliance (for example, number of customers and number transactions). It is not clear how the information requested assists with the duties of the CCC and the Code to promote high industry standards of service for customers and build best practices across the BNPL Industry.

Finally, Afterpay believes that the sanctions and actions available for the CCC are appropriate. The remedies available cover a range of actions. The CCC is authorised to investigate any activities within its Terms of Reference and in carrying out its administrative, compliance and investigative roles. It is also given the power to escalate issues to the AFIA Board in circumstances where there has been serious, egregious or systemic compliance failure.

## **12. Standards for Merchants and Retail partners**

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

Afterpay believes the minimum standards for merchants and retail partners are appropriate and are being monitored effectively.

Afterpay has a dedicated merchant risk team and effective processes and policies to monitor these minimum standards and ensure all our merchant partners act lawfully, fairly and ethically in their dealing with consumers, including in their advertising and marketing. This team is overseen by a rigorous governance framework that requires them to meet on a weekly basis with cross-functional teams to review trends and manage issues.

In addition, we have a range of other monitoring in place to ensure these minimum standards are being met. This includes monitoring for spikes in chargebacks, monitoring to ensure there is no discretionary pricing (i.e. non-transparent surcharging), and social media monitoring in some circumstances. These policies go above and beyond what is required by the Code, which at a minimum requires fit-for-purpose monitoring of merchant conduct and practices.

Supporting this framework is a strict process for onboarding new merchants to ensure Code compliance, awareness and best practice standards for merchant engagement and communication with consumers.

### **13. Performance and Content of the Code**

- a. Overall, has the Code, including the nine 'Key Commitments', been effective in delivering an enhanced level of consumer protection in the BNPL sector in Australia and in meeting its objectives?**
- b. In addition to the issues raised above, are there any other aspects of the nine 'Key Commitments' which could be improved upon or better articulated within the Code?**
- c. Are there any additional commitments, or apparent gaps in coverage, that should be considered for inclusion within the Code?**
- d. Are there any industry developments which have not been appropriately considered within the Code?**

The Code has been highly effective in delivering an enhanced level of consumer protection for Australians. As detailed throughout this submission, the BNPL sector has generated enormous benefits for consumers by offering a low-cost and transparent alternative to traditional credit. This alternative has been embraced by millions of Australians (there were approximately 5.9 million active accounts in FY21) and delivered more than \$264 million in gross benefits (driven mainly by savings in interest and fee costs, surcharge savings, and the benefits to consumers of more effective budgeting).

Importantly, the Code has played a vital role supporting these Australians by lifting standards for the BNPL industry and enshrining protections that go beyond what is required by law – which is the fundamental role of a self-regulatory initiative. This enhanced level of consumer protection is working every day to support consumers and businesses.

As the industry expands and matures, however, it is now necessary for the Code to be made mandatory. This will give certainty to all BNPL consumers and enhance its credibility as an effective and world-leading self-regulatory framework.

#### **14. Accreditation as a Code Compliant Member**

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

The Code's accreditation and re-accreditation process is rigorous. Currently, many of the obligations far exceed the requirements for similar legislative regimes, including application for an Australian Credit Licence from ASIC.

#### **Conclusion**

Thank you for the opportunity to make this submission. We look forward to the outcomes of the Review. Please do not hesitate to contact us if you require further input or clarification.

Yours sincerely