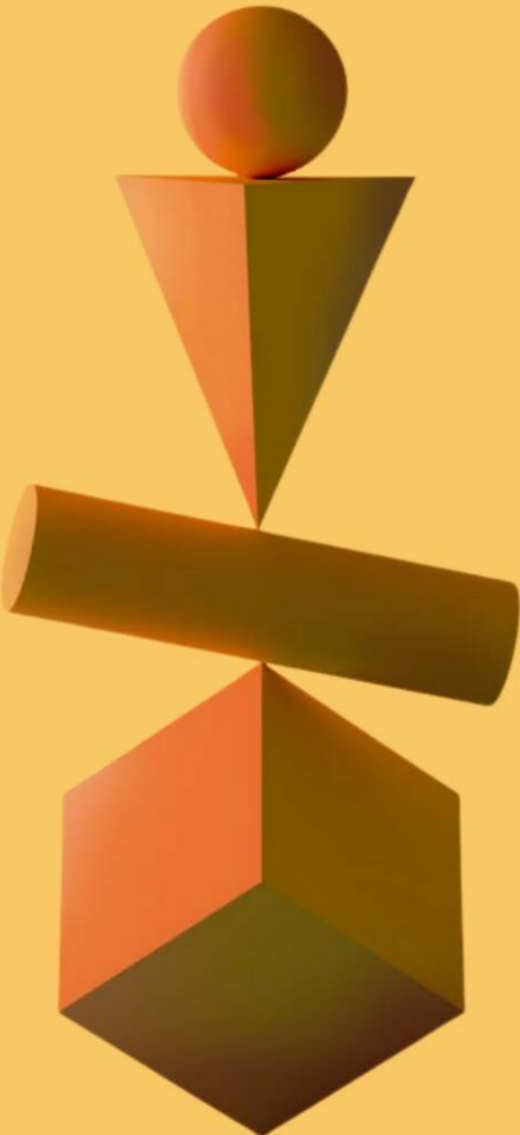


Review of the Buy Now Pay Later Code of Practice Industry Response



Australian
Finance
Industry
Association

Introduction

The Australian Finance Industry Association ('AFIA') welcomes the release of Promontory's independent review of the Buy Now Pay Later Code of Practice ('the Code' or 'BNPL Code') dated March 2023.

On 14 October 2022, AFIA brought forward and announced the independent review of the BNPL Code, appointing Promontory Australia to conduct the review. The industry committed to bringing forward the review with the aim of assessing the impact and effectiveness of the Code in achieving its objectives. We recognise that the Code is a living document and the importance of it keeping pace with broader regulatory developments across the market.

Promontory's approach involved a combination of interviews with key stakeholders, desk research, documentation review and a public consultation. The report considered both the content and performance of the Code, and supporting processes and frameworks, and contains 51 recommendations.

Our commitment

AFIA is committed to building a more resilient economy through a safe and transparent financial system. We believe self-regulation is an important part of the regulatory framework, providing a mechanism for industry to work collaboratively to achieve customer-centric operating models. Introducing – and just as importantly, regularly reviewing – industry codes is key to driving best practices in industry.

The BNPL Code is a world-leading example of self-regulation in the Buy Now Pay Later sector, giving customers the confidence they need to engage with a diverse, innovative, and low-cost product that meets their preferences and expectations. The BNPL Code is working well to set industry standards and provide consumer protections. The design of the Code was informed by Australia's financial services, credit, and payments laws, augmented with additional protections to create a self-regulatory framework fit for the future. It provides a meeting point between consumer expectations about financial safety and customer preferences regarding financial products, as these two concepts evolve over time.

AFIA will continue to work constructively with the Federal Government on the propositions following their consultation on the future regulatory framework for Buy Now Pay Later. Like other sectors within the financial services industry which have long-standing codes of practice, the BNPL Code will continue to play a role in protecting consumers and setting industry standards as the regulatory framework for the sector evolves. As noted by Promontory in their independent report (page 7):

'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.'



Response to recommendations

The industry has considered the review report and supports all the recommendations. In particular:

- we support two of the recommendations in principle and provide further information which will need to be considered.
- we have set out seven recommendations which we support but will be impacted and are dependent on the outcome of the Government’s consultation on the future regulatory framework for BNPL. It is important that we do not pre-empt the outcome of the Government’s review. Where possible, we will move quickly to address Promontory’s recommendations, for example introducing industry guidance on vulnerable customers.
- eight of the recommendations are for the BNPL Code Compliance Committee (‘BNPL CCC’) to consider further.

The following tables summarise the industry’s response:

AFIA response	Total
Support	34
Support in principle	2
Support, pending outcome of Government review	7
Support, but for BNPL Code Compliance Committee response ¹	8
Do not support	0

Code theme and related recommendation(s)	Support	Support in principle	Support, pending outcome of Government review	Support, but for BNPL CCC response	Do not support
Regulatory, legal status and coverage of the Code (1, 2, 3, 4)	1, 2, 3, 4				
We will focus on customers (5, 6, 7, 8, 9)	5, 6, 7, 8, 9				
We will be fair, honest and ethical (10, 11, 12, 13)	10, 11, 12, 13				
We will keep you properly informed about our product	15, 17, 19, 21		14, 16, 18, 20		

¹ AFIA supports these recommendations being addressed in the manner indicated in the detailed response to the recommendations, outlined in the table below.



and service (14, 15, 16, 17, 18, 19, 20, 21)					
We will make sure our BNPL product or service is suitable for you (22)			22		
We will undertake an ongoing review of the suitability of our products and services (23, 24)	24		23		
We will deal fairly with complaints (25, 26, 27)	25, 26, 27				
We will offer financial hardship assistance (28, 29, 30)	28, 29, 30				
We will comply with our legal and industry obligations (31)	31				
We will support and promote the Code (32)	32				
Minimum Standards for merchants and retail partners (33, 34, 35, 36, 37, 38, 39)	34, 35, 38, 39	37		33, 36	
Code compliance monitoring, Reporting and the CCC (40, 41, 42, 43, 44)		40	41	42, 43, 44	
Accreditation and ongoing compliance monitoring (45, 46)				45, 46	
Enforceability (47, 48, 49, 50, 51)	47, 48, 49, 51			50	



Detailed response to the recommendations

The below table summarises Promontory’s recommendations and potential regulatory developments from Chapter 5 of Promontory’s independent review of the BNPL Code, along with AFIA’s detailed industry response.

Number	Recommendation	AFIA response
<i>Regulatory, legal status and coverage of the Code</i>		
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.	Support The industry agrees that Clause 6 be reviewed to provide further clarity. We are committed to ensuring the Code is written in a clear and accessible manner. Further work will be required to define and scope this recommendation.
Recommendation 2	Simplify the reference from ‘Code Compliant Member’ to ‘Code Member’ throughout the Code documents.	Support The industry agrees that the reference to ‘Code Compliant Member’ can be simplified to ‘Code Member’ throughout the Code documentation. We are committed to ensuring the Code is written in a clear and accessible manner.
Recommendation 3	Update the Code to include a definition of ‘customer’. Consideration should be given to the explicit inclusion of small business.	Support The industry supports the inclusion of a definition of customer within the Code and will consult on appropriate drafting to ensure the definition is relevant and appropriate.
Recommendation 4	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.	Support The industry supports AFIA and Code Members assessing the Code as the BNPL market develops to ensure it remains fit for purpose. We will need to consider relevant legal obligations, including competition law. The Code is a living document and is adjusted to keep pace with broader regulatory changes and developments across the market. This is demonstrated through the inclusion of commitments reflecting Design and Distribution Obligations (DDOs) before they became effective for financial service providers on 5 October 2021, as well as changes to clarify the definition of BNPL, reflecting the emergence of other products being marketed as BNPL.
<i>We will focus on customers</i>		
Recommendation 5	Revise language in clause 8.3 to encourage Code Members to be proactive in dealing with vulnerability,	Support



	such as to ‘we will encourage you to tell us about your vulnerability’.	<p>The industry supports revising the language in Clause 8.3 of the Code to ‘we will encourage you to tell us about your vulnerability’.</p> <p>The industry is committed to providing guidance on the interpretation of this clause and is currently in the process of implementing industry guidance on supporting vulnerable customers to complement this part of the Code.</p>
Recommendation 6	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.	<p>Support</p> <p>The industry supports the inclusion of a definition of vulnerability within the Code and will consult on drafting to ensure the definition is relevant and appropriate.</p> <p>The industry is committed to providing guidance on the interpretation of this clause and is currently in the process of implementing industry guidance on supporting vulnerable customers to complement this part of the Code.</p>
Recommendation 7	Introduce specific and clear commitments to assist people experiencing vulnerabilities.	<p>Support</p> <p>The industry is committed to ensuring the requirements in the Code are specific, clear, and accessible, to assist people experiencing vulnerabilities.</p> <p>Specific and clear commitments to assist people experiencing vulnerabilities will require further work to define and scope so that solutions for supporting customers are workable and do not result in unintended consequences for accessibility. We will consult on drafting to ensure commitments are relevant and appropriate.</p> <p>The industry is committed to providing guidance on the interpretation of this clause and is currently in the process of implementing industry guidance on supporting vulnerable customers to complement this part of the Code.</p>
Recommendation 8	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.	<p>Support</p> <p>The industry supports moving Clause 14.2 to the relevant commitment covering customer vulnerability and replacing current Clause 8.5. We are committed to ensuring the Code is drafted in a consistent manner.</p>
Recommendation 9	Provide additional detail on what is meant and expected by ‘inclusive and accessible’ as part of clause 8.2.	<p>Support</p>



		The industry supports providing additional detail on the interpretation of ‘inclusive and accessible’ as part of Clause 8.2 of the Code. We are committed to ensuring the Code is clear and accessible.
<i>We will be fair, honest, and ethical</i>		
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.	<p>Support</p> <p>The industry supports the simplification and clarification of the meaning of ‘act fairly, and honestly, be ethical and treat you reasonably’ in Clause 9.1 of the Code. We recognise the need for clarity of the meaning of this commitment.</p> <p>The industry is committed to ensuring the Code is clear and accessible and will consult on appropriate drafting to ensure Clause 9.1 is relevant and appropriate.</p>
Recommendation 11	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.	<p>Support</p> <p>The industry supports the clarification of Clause 9.5. We will need to consider our legal obligations and existing legislation and/or regulatory requirements, including the scope and powers of the Code.</p> <p>The industry will clarify, with examples, how we expect third party merchants and retailers to have in place their own commitments to ensure good selling practices. It is important that merchants can offer BNPL as a payment option.</p>
Recommendation 12	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.	<p>Support</p> <p>The industry is committed to ensuring consistency within the Code and supports moving provisions relating to merchants and retailers to Part C, while retaining provisions relating to Code Members within Part B. The industry supports the deletion of Clause 9.6 to ensure this consistency.</p>
Recommendation 13	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.	<p>Support</p> <p>The industry agrees with providing detail on the commitment to complying with the ‘Australian Government’s Artificial Intelligence Ethics Principles’ in Clause 9.4. We are committed to enhancing clarity and accessibility of the Code and will consult on appropriate and relevant drafting.</p>



<i>We will keep you properly informed about our product and service</i>		
Recommendation 14	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.	<p>Support, pending outcome of Government review</p> <p>We will need to consider relevant legal obligations and existing legislation and/or regulatory requirements, including competition laws.</p> <p>The inclusion of any provision of this nature may require regulatory approval, as well as consideration of the outcome of the Government consultation on the future regulatory framework for BNPL arrangements.</p>
Recommendation 15	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)).	<p>Support</p> <p>The industry is committed to ensuring that commitments within the Code are consistent and clear. We will need to consider how this requirement could be carried out on a practical basis.</p> <p>The industry will consult on drafting to ensure the requirement in Clause 10.1(e) is relevant and appropriate.</p>
Recommendation 16	Expand the list of documents that can be requested in clause 10.9 to include suitability assessments (as relevant) and formal transaction statements.	<p>Support, pending outcome of Government review</p> <p>The industry supports providing customers with clear and concise information to help them understand and manage their BNPL product. We will consider what additional disclosures can assist in helping customers better understand and manage their BNPL account and will consult on drafting to ensure the requirement is relevant and appropriate.</p> <p>The industry will need to consider this recommendation further following the outcome of the Government review of BNPL.</p>
Recommendation 17	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.	<p>Support</p> <p>The industry agrees that AFIA and Code Member obligations can be separated to enhance consistency and clarity of the Code.</p> <p>We note that Clause 10.1(b) of the Code states 'we will include information about features and fees of different BNPL Products and Services on the AFIA website.'</p>
Recommendation 18	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	<p>Support, pending outcome of Government review</p> <p>The industry recognises the need for consistent provisions relating to disclosures and warning requirements, and supports providing customers with</p>



	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.	clear and concise information to help them understand and manage their BNPL product. The industry will need to consider this recommendation further following the outcome of the Government review of BNPL.
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).	Support The industry supports enhancing Clause 10.7 to include that early repayments will be processed quickly. We recognise the need to include a reasonable timeframe and will consult with industry members on an appropriate and relevant provision.
Recommendation 20	Introduce a commitment which requires a Code Member to enable their customers to reduce their credit limits easily and on request.	Support, pending outcome of Government review The industry recognises the need for customers to be able to make changes to how they access and use their BNPL product, where this does not reduce below the amount they may owe. Depending on the nature of the BNPL product, some BNPL providers already provide this option. The industry notes that credit limits are included in the Government consultation, and therefore, we will need to consider this recommendation further following the outcome of the Government review of BNPL, as well as relevant statutory obligations.
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).	Support The industry recognises that further guidance on the objective of complying with ASIC’s best guidance on advertising in Clause 10.2(a) would enhance the clarity and accessibility of the Code.
<i>We will make sure our BNPL product or service is suitable for you</i>		
Recommendation 22	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:	Support, pending outcome of Government review The industry recognises the importance of this Code commitment being clear, consistent, and accessible. We will need to consider this recommendation further following the outcome of the Government review of BNPL, as well as relevant statutory obligations, such as competition laws.



	<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>	
<i>We will undertake an ongoing review of the suitability of our products and services</i>		
Recommendation 23	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.	Support, pending outcome of Government review The industry is committed to the Code being clear, consistent, and accessible. We will need to consider this recommendation further following the outcome of the Government review of BNPL.
Recommendation 24	Clarify that section 12 relates to market wide suitability.	Support The industry is committed to the Code being clear, consistent and accessible and will consult on clarification of Section 12.
<i>We will deal fairly with complaints</i>		
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	Support The industry agrees with ensuring the Code is aligned to relevant regulatory requirements and guidance. We



	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.	support providing clarification to the reference to ASIC standards in Clause 13.2.
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.	Support The industry supports the introduction of a provision to state that complaints provisions will be flexible, with multiple lodgement methods, to be consistent with ASIC RG 271. The industry agrees with ensuring the Code is aligned to relevant regulatory requirements and guidance.
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.	Support The industry supports building on Clause 18.3 and providing further clarification. We are committed to ensuring the Code is clear and accessible for customers with representatives, such as financial counsellors.
<i>We will offer financial hardship assistance</i>		
Recommendation 28	Extend provisions relating to timeframes in clause 14.6 to apply to an information request from a customer or nominated representative.	Support The industry supports providing clarification to timeframes in Clause 14.6 to enhance the clarity and accessibility of the Code. We will need to consider our legal obligations in this context.
Recommendation 29	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.	Support The industry agrees with ensuring the Code is aligned to relevant regulatory requirements and guidance, including ASIC RG 271. The industry supports the consideration of introducing a provision and recognises the importance of improving accessibility of financial hardship processes for vulnerable customers. We will consult on drafting to ensure any provision included is relevant and appropriate.



<p>Recommendation 30</p>	<p>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.</p>	<p>Support</p> <p>The industry supports this recommendation. We will require time to consider the practical aspects of this recommendation and will consult on drafting to ensure provisions included are relevant and appropriate.</p> <p>The industry is committed to providing guidance on the interpretation of this clause and is currently in the process of implementing industry guidance on supporting vulnerable customers to complement this part of the Code.</p>
<p><i>We will comply with our legal and industry obligations</i></p>		
<p>Recommendation 31</p>	<p>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.</p>	<p>Support</p> <p>The industry is committed to ensuring that the Code is clear and accessible. We support referencing relevant laws, where appropriate and relevant, and will consult on drafting.</p>
<p><i>We will support and promote the Code</i></p>		
<p>Recommendation 32</p>	<p>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.</p>	<p>Support</p> <p>The industry supports promotion of the Code and engagement with financial counsellors, and other consumer advocates. We will consult with customer representatives on how we can better promote the Code, including introducing a Code compliance symbol.</p>
<p><i>Minimum standards for merchants and retail partners</i></p>		
<p>Recommendation 33</p>	<p>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.</p>	<p>Support</p> <p>The industry supports lifting engagement between AFIA and retailer representatives. We will consult with members and retailer representatives on how we can better promote the Code.</p> <p>The industry notes that AFIA and the BNPL CCC will require time to consider how best to promote engagement between them and the merchant/retailer sector.</p> <p>The role of the BNPL CCC will potentially need to be taken into account, including that it is not a regulator and does not have the same powers. We will consult with the BNPL CCC on what could be workable and appropriate,</p>



		including further consideration of legal obligations in this context and the scope of their jurisdiction.
Recommendation 34	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.	<p>Support</p> <p>The industry supports the inclusion of a commitment to ensure that the Code is referenced in documents and/or information provided as part of a BNPL onboarding communications at point of sale. We will consult on drafting to ensure any provision is relevant and appropriate.</p>
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).	<p>Support</p> <p>The industry supports clarification and the provision of examples of unethical or unfair sales.</p> <p>We will need to consider our legal obligations and existing legislation and/or regulatory requirements, including the scope and powers of the Code. The industry notes that the Code is not designed to consider the conduct of third parties and merchants and the BNPL CCC is not constituted to do so.</p> <p>The industry will clarify, with examples, how we expect third party merchants and retailers to have in place their own commitments to ensure good selling practices.</p>
Recommendation 36	<p>Clarify the minimum standards for merchants and retailers to:</p> <p>i) define a time threshold for responding to complaints, such as 21 days to enable the monitoring of the timeliness of complaints handling; and</p> <p>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.</p>	<p>Support, pending outcome of Government review</p> <p>The industry supports clarification of the standards for merchants and retailers, including appropriate upfront and clear information about the BNPL product (i.e. features, fees, etc.). We will need to consider this recommendation further following the outcome of the Government review of BNPL.</p> <p>The industry notes that the Code is not designed to consider the conduct of third parties and merchants and the BNPL CCC is not constituted to do so.</p>
Recommendation 37	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	<p>Support in principle</p> <p>The industry supports clarification on the wording in the Code related to merchants and retail partners. The industry notes that the Code is not designed to consider</p>



	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.	<p>the conduct of third parties and merchants and the BNPL CCC is not constituted to do so.</p> <p>The role of the BNPL CCC will potentially need to be taken into account, including that it is not a regulator and does not have the same powers. We will consult with the BNPL CCC on what could be workable and appropriate, including further consideration of legal obligations in this context.</p>
Recommendation 38	Update Part C of the Code to clarify which merchant and retailer related commitments can be enforced by AFCA or the CCC.	<p>Support</p> <p>The industry supports updating Part C of the Code to add further clarification about customer rights and how they can make complaints, including external dispute resolution through AFCA, or (where a complaint relates to a retailer) a relevant State-based authority.</p> <p>The role of the BNPL CCC will potentially need to be taken into account, including that it is not a regulator and does not have the same powers. We will consult with the BNPL CCC on what could be workable and appropriate, including further consideration of legal obligations in this context.</p>
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.	<p>Support</p> <p>The industry supports relocating all merchant and retailer related commitments to Part C of the Code to enhance consistency and clarity.</p>
Code compliance monitoring, reporting and the CCC		
Recommendation 40	<p>Enhance data collection and reporting to the CCC:</p> <p>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.</p> <p>ii) Developing qualitative data categories with consideration</p>	<p>Support in principle</p> <p>The industry supports the principle of enhanced data collection and reporting to the BNPL CCC where relevant and appropriate. We will need to give further consideration to existing legal and regulatory obligations, as well as data and reporting capabilities in this context.</p> <p>We will also give consideration to the identification of appropriate reporting metrics and the purpose of information collection. AFIA will consult with the BNPL CCC and industry members.</p>



	<p>being given to frequency, these could be provided less regularly than quarterly such as six-monthly or annually.</p> <p>iii) Create guidance to clearly explain how data should be reported in the data collection template.</p> <p>iv) Establishing routine engagement with AFCA to share and obtain insights on trends and watch points in the BNPL sector.</p> <p>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.</p>	
<p>Recommendation 41</p>	<p>Review self-reporting of Code breaches following BNPL reforms. This review could consider:</p> <p>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;</p> <p>ii) the timeframe for such reporting, e.g. on a six-monthly basis;</p> <p>iii) a materiality threshold for such reporting in consultation with Code Members; and</p> <p>iv) alignment with any regulatory breach reporting requirements that may be introduced, so</p>	<p>Support, pending outcome of Government review</p> <p>The industry agrees with the importance of self-reporting of Code breaches.</p> <p>The industry notes that additional regulatory and reporting obligations are included in the Government consultation, and therefore, we will need to consider this recommendation further following the outcome of the Government review of BNPL.</p>



	as to avoid unnecessary overlap or inefficiencies.	
Recommendation 42	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.	The industry supports this recommendation being considered by the BNPL CCC. AFIA will consult with the BNPL CCC and industry members.
Recommendation 43	The CCC should consider how and when inquiries of its own initiative are undertaken.	The industry supports this recommendation being considered by the BNPL CCC. AFIA will consult with the BNPL CCC and industry members.
Recommendation 44	Publish all CCC reports on the CCC and AFIA websites, as required by the ToR.	The industry supports this recommendation being considered by the CCC. AFIA will consult with the BNPL CCC and industry members.
Accreditation and ongoing compliance monitoring		
Recommendation 45	Increase CCC efforts on ongoing compliance monitoring, with a rebalance from the effort and resourcing dedicated to the initial and re-accreditation process.	The industry supports this recommendation being considered by the BNPL CCC. AFIA will consult with the BNPL CCC and industry members.
Recommendation 46	Ensure that the CCC is adequately resourced to implement recommendations related to enhanced monitoring practices.	The industry supports this recommendation being considered by the BNPL CCC. AFIA will consult with the BNPL CCC and industry members.
Enforceability		
Recommendation 47	Clarify the role of the CCC in regard to complaints and Alleged Breach reporting processes and more clearly distinguish the two terms.	Support The industry supports enhanced clarification of the role of the BNPL CCC in regard to complaints and alleged breach reporting.
Recommendation 48	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.	Support The industry supports the Code aligning with the ToR and By-Laws, and clarity within the Code as to who can report breaches to the BNPL CCC.
Recommendation 49	Include the definition of an Alleged Breach in the Code itself in addition to clause 10.1 of the ToR.	Support The industry supports the inclusion of a definition of an “alleged breach” within the Code.



<p>Recommendation 50</p>	<p>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.</p>	<p>The industry supports this recommendation being considered by the BNPL CCC.</p> <p>AFIA will consult with the BNPL CCC and industry members.</p>
<p>Recommendation 51</p>	<p>Undertake a legal review of Code documents to ensure that the CCC’s independence from the AFIA Board is clear.</p>	<p>Support</p> <p>The industry supports AFIA and the BNPL CCC undertaking a legal review of the Code to ensure the status of the BNPL CCC is clear.</p> <p>We believe that it is important for the BNPL CCC to maintain its independence as well as for the AFIA Board to maintain its role in promoting professionalism, best practices, and a culture of integrity, transparency, and fairness in the industry.</p> <p>The industry notes that it will be important for the AFIA Board to retain the ability to end any membership of AFIA, if the BNPL CCC and/or another party identifies systemic non-compliance with a relevant code and/or egregious behaviour.</p>

Potential Regulatory Developments

Number	Potential regulatory development	AFIA response
<i>Regulatory, legal status and coverage of the Code</i>		
<p>Potential Regulatory Development 1</p>	<p>Revisit the issue of ASIC approval once the outcomes of the BNPL reforms are clear.</p>	<p>Support</p>
<p>Potential Regulatory Development 2</p>	<p>Consider the implications of wider Code membership following the outcomes of BNPL regulatory reforms including harmonisation with other industry codes as relevant.</p>	<p>Support</p>





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