



BNPL Code Compliance Committee  
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### **Regulating BNPL in Australia**

We note the *Regulating Buy Now, Pay Later in Australia – Options Paper* which has recently been published.

This submission is a joint one put forward by the three inaugural (and still current) members of the BNPL Code Compliance Committee (CCC). The independent Committee consists of a consumer representative (nominated by the Consumers Federation of Australia), an industry representative, and an independent chair (a former deputy chair of the Australian Competition & Consumer Commission), each with substantive experience in their respective fields.<sup>1</sup>

Since its formation in November 2020, the Committee has met 18 times to date. Its work has involved overseeing the introduction and implementation of the Code (which commenced on 1 March 2021), accreditation and re-accreditation of Code members on an annual basis, data collection, and determination of consumer complaints. It has also instituted twice yearly meetings with both of the principal consumer protection regulators (ASIC and the ACCC), to keep them informed of its work. In March 2022 it published its first public report, *Buy Now Pay Later: The First Year of Self-Regulation - A report from the the Buy Now Pay Later Code Compliance Committee*.<sup>2</sup> The CCC has also been invited to speak at a number of stakeholder forums, including the AFIA annual conference, the Global Impact Fintech Forum, and to emerging fintech providers in Southeast Asia.

As such, we believe this provides us with a unique set of insights into the effectiveness of the current Code, and the possible next steps forward.

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<sup>1</sup> See [BNPL CCC Role & Members \(afia.asn.au\)](https://afia.asn.au) for more particulars on Committee member backgrounds.

<sup>2</sup> Available online at [AFIA welcomes BNPL Code Compliance Committee report on first year of self-regulation](#).

## *Consultation with Key Parties*

The Committee is extremely keen to work with Treasury to assist in the continued development and codification of the industry. We believe the unique position the Committee has can help ensure that the final form will be based on prior regulatory experience and consumer protection in this emerging market, and draw upon data and facts which are materially correct.

## *A Future Model*

BNPL is clearly an evolving product. It has already changed in a number of key dimensions since its inception, and is likely to do so again in future. The challenge for regulators, then, if the current system is to be changed in some way, is to provide a system which meets the desired level of consumer protection and oversight whilst leaving firms sufficient capacity to adapt over time. A degree of regulatory flexibility is necessary for emerging products.

Experience in a number of other industries has shown that, once a baseline level of regulation has been introduced, new issues and problems are likely to emerge which will in turn need to be dealt with. Formal legislative review and amendment is often a slow and resource-intensive process which may not deliver a solution until years after the problem in question has emerged. This is obviously a negative for the consumers who want to use the product and the industry which wants to continue its development. In contrast, an industry code has the capacity to more flexibly and quickly deal with such issues. It provides a means to regulate and yet to adapt as needed.

To be effective, the Committee believes that such a code must:

- Contain a clear definition of what does (and does not) constitute a BNPL product
- Be mandatory for all participants in the BNPL industry
- Contain meaningful penalties for breaches
- Be administered by, and enforceable by, a body empowered with the necessary authority under the code (such as ASIC or other appropriate entity)
- Contain the principal elements already contained in the voluntary Code (in particular, the hardship and dispute resolution provisions which the Committee has worked with Code member firms to entrench)
- Incorporate any other critical factors which the current review identifies as necessary.

This approach would also allow a seamless segue of regulation from the current model to a structure with federal regulation in the manner suggested below. Essentially, this is an evolutionary approach, incorporating the existent consumer protection, dispute resolution, disclosure and sanction elements which Code member firms have already adopted.

In future, reviews of the Code and its operations could also allow the Code to be updated more easily and promptly than legislation. Delegated legislation is typically easier to amend more quickly than are principal statutes.

A similar approach has been adopted in the past by regulators dealing with particular industries that require bespoke or unique oversights which more generalised laws cannot cover. For example, as the franchising business model became more widely entrenched in Australia, the Franchising Code of Conduct initially began life in the 1990s as a voluntary industry code administered by industry, evolved into a basic mandatory industry code

administered by the ACCC under the *Competition and Consumer Act* in 1998, and has since that time been subject to regular independent reviews which have resulted in a number of changes to deal with changing issues and the concerns of both franchisees and franchisors.

Similarly, the National Privacy Principles began in 1997 as a voluntary code, before being incorporated in a schedule to the *Privacy Act* four years later, in substantially the same format. The Principles required mandatory obligations for some private sector organisations and were updated after a major review in 2014. Credit reporting laws are set out in the *Privacy Act*, but the credit reporting codes that have operated since 1991 have been (and remain) the main source of guidance for credit providers, credit bureaus and regulators. The codes have been reviewed and updated on numerous occasions in response to emerging issues.

### *Transition*

Finally, the Committee would also like to put on record that we are willing to assist government in any emergent transition issues. It is likely that any final changes decided upon as a result of the current review will still take time to implement and, during that process, both the old and the new frameworks should work co-operatively together. The Committee is keen to work closely with those who are likely to be involved in any emergent framework.

Regards

A handwritten signature in black ink, appearing to read 'M Schaper', written in a cursive style.

Dr Michael Schaper  
Chair  
BNPL Code Compliance Committee

Jill Brewer  
Member

Craig Pudig  
Member

09 December 2022