



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

09 DECEMBER 2022

Promontory, IMB Consulting

Level 17, 259 George Street

SYDNEY NSW 2000

*via email: [BNPLCode@promontory.com](mailto:BNPLCode@promontory.com)*

Dear Sir/Madam,

### Review of the 'Buy Now Pay Later Code of Practice'

We welcome the opportunity to comment on the independent review of the Australian Finance Industry Association's (AFIA) 'Buy Now Pay Later' ('BNPL') Code of Practice (the Code).

As the Code will be the starting point for new BNPL product and service regulation under the National Consumer Credit Protection Act (NCCPA), the Code should determine best practice standards of conduct for code signatories. As such, we provide the following comments.

- 1. Improve acknowledgement of small business (merchant) customers.** The Code sets 'Minimum Standards for Merchant and Retail Partners', but it does not capture any commitments specific to dealings with merchants. To raise the bar of industry practice and facilitate a balanced relationship between BNPL service providers and their merchant customers, consideration should be given to at a minimum (where possible), aligning the Code with the Australian Banking Association and Customer Owned Banking Association Codes of Practice.
- 2. Clarify how authorised deposit-taking institution (ADI) BNPL products interact with the Code and the Australian Financial Complaints Authority (AFCA).** ADI BNPL offerings are considered credit products under the NCCPA and are covered by the relevant Banking Code of Practice. To prevent confusion for merchants about their rights and where to lodge complaints once BNPL regulation is finalised, clarification should be given as to which code covers commitments to merchant customers for ADI BNPL and non-ADI BNPL products.
- 3. Improve awareness of the Code.** We recommend Part B – "We will support and promote this Code", subparagraph 16.1 is amended to clearly state 'The Code of Practice will be provided to merchant and consumer customers in conjunction with any product terms and conditions or disclosure documents when offering a BNPL service'.
- 4. Improve transparency of merchant service fees.** Unlike Australian Prudential Regulation Authority (APRA) regulated entities, BNPL merchant fees are not accessible on the AFIA or BNPL provider websites, limiting merchant's ability to compare BNPL services. We recommend Part B – "We will keep you properly informed about our product or service", subparagraph 10.10(d) is amended to clearly state 'We will provide information on our website that sets out our merchant and consumer fees'.
- 5. Review of merchant complaints by ASBFEO.** We recommend Part B – "We will offer financial hardship assistance", subparagraph 15.2 is amended to clearly state 'If you have a merchant complaint about a lender that is not a signatory to the Code (and a non-AFCA member) you can contact ASBFEO for dispute resolution support and assistance'.



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ASBFEO can recommend a process that parties could follow to help resolve a dispute such as participating in an Alternative Dispute Resolution process.

- 6. Membership of the Code Compliance Committee (CCC).** We recommend that the CCC include a merchant customer representative to strengthen customer confidence in the application of the Code. This will assist in demonstrating a strong commitment to consideration of customer perspectives in decision making and continuous improvement activities.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Ms Sarah Blyton on 02 5114 6128 or at [sarah.blyton@asbfeo.gov.au](mailto:sarah.blyton@asbfeo.gov.au).

Yours sincerely

**The Hon. Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman