

9 December 2022

By email: BNPLCode@promontory.com

Dear Sir or Madam

Independent Review of AFIA Buy Now Pay Later Code of Practice

Thank you for the opportunity to provide a submission in response to the independent review of the AFIA Buy Now Pay Later Code of Practice ('the Code').

ARCA is the peak industry association for businesses using consumer information for risk and credit management. Our Members include Australia's leading banks, credit unions, finance companies, fintechs and credit reporting bodies and, through our Associate Members, many other types of related businesses providing services to the industry. Collectively, ARCA's Members account for well over 95% of all regulated consumer lending in Australia.

ARCA has significant experience in relation to BNPL products that has been gained through engaging with Members who are BNPL providers or who are looking to develop such products. Importantly, ARCA through its key role in developing and improving the credit reporting system has been working with credit providers, credit reporting bodies and other stakeholders to ensure that the credit reporting system can readily facilitate the reporting of BNPL products (see our further discussion below).

ARCA feedback to the review

We note that the consultation material for this review raises broad questions regarding the effectiveness of the Code in delivering consumer outcomes compared to the *National Consumer Credit Protection Act 2009* (NCCP). Fundamentally, ARCA's position is that BNPL products are credit and – like other forms of consumer credit – should be regulated under the NCCP. Essentially, we consider that the provisions relating to suitability do not deliver comparable consumer outcomes to the relevant provisions in the NCCP. However, we have not sought to provide detailed submissions on issues related to the regulation of BNPL in this submission; we will provide our detailed feedback on that issue to Treasury in response to their options paper *Regulating Buy Now, Pay Later in Australia* (BNPL options paper).

Accordingly, we have limited our detailed feedback to:

- the Code's current approach to the use of credit reporting by signatories; and
- how that approach is being applied in practice by Code signatories.

Our feedback is given in respect of two of the key commitments binding on Code Compliant Members:

- We will focus on customers
- We will make sure our BNPL product or service is suitable for you

In short, we believe that in both design and – for the majority of signatories – in operation, the current Code’s approach to credit reporting fails to give effect to those key commitments. In the same way, we do not consider the approach to credit reporting takes a ‘customer-centric approach to the design, marketing and distribution’ of BNPL products (as per paragraph 1.1(a) of the Code).

Finally, we have clarified some apparent misconceptions from AFIA regarding the way in which BNPL products can be reported in the credit reporting system; particularly the view that the system “hasn’t adapted to new and emerging finance products, in particular those with high frequency transactions and/or using flexible payment arrangements (i.e. weekly, fortnightly or other frequency or combination of frequencies).” (AFIA submission to the 2021 [Independent review of the Privacy \(Credit Reporting\) Code 2014](#), page 2).

We will focus on customers / consumer-centric approach

A robust credit reporting system is essential to improving financial inclusion for all Australians. At an individual level, consumers with a ‘thin file’¹ may find it harder to be approved for mainstream credit products compared to those with a fuller file.

In 2014, the Australian credit reporting system was expanded to allow for the inclusion of ‘positive’ data (otherwise known as ‘comprehensive credit reporting’). Of particular note, those changes allowed for the reporting of ‘consumer credit liability information (‘CCLI’)² and ‘repayment history information’ (‘RHI’)³.

Together, those changes allow consumers to demonstrate to prospective lenders their positive behaviour with their existing credit products, which can in turn help those consumers to access further credit and on better terms. For example, first time home buyers will benefit from being able to demonstrate to their prospective home loan provider a strong history with their existing credit (which could include credit cards or personal/car loans, or, subject to their providers participation, BNPL accounts).

We recognise that BNPL providers that do not hold an Australian Credit Licence are not permitted to disclose or receive RHI due to the restrictions within the Privacy Act (see subsections 20E(4) and 21D(3)(d)). However, they are still able to disclose and receive CCLI. For consumers of BNPL products who would otherwise have a thin credit file, that information would still be highly valuable in developing a strong credit file (particularly given the short term/high frequency nature of many BNPL products).

In this respect, participation in the comprehensive credit reporting system (whether by sharing CCLI and RHI or just CCLI) is as much about improving a customer’s financial

¹ That is, a credit report with little or no information regarding the consumer’s previous credit history.

² Which includes details such as the open/close date for credit accounts, name of the credit provider, type of credit account.

³ A 24-month history of whether the individual has met their monthly payment obligations on time.

inclusion and credit health, as it is about protecting a prospective credit provider from credit losses.

The current Code does not require participation in the comprehensive credit reporting system by Code signatories. Instead, the Code establishes limited circumstances in which a signatory *may* be expected to perform a 'credit check' (as one option to obtain information on a consumer's "existing debts and liabilities"). The Code (para 3.5) also establishes an expectation that signatories consider developments in comprehensive credit reporting (amongst other matters) as a "means of undertaking a process of continuous improvement and developing a more holistic view" of customers.⁴

However, both of those expectations are established in the context of avoiding credit losses for the credit provider through inappropriate lending. They do not reflect the benefits to the consumer of participation within the comprehensive credit reporting system.

As noted in Treasury's BNPL options paper (at page 25), BNPL products "are more popular amongst consumers aged below 35". That cohort of consumers is more likely to have thin credit files than other age groups because they are less likely to hold credit products from providers that participate in the comprehensive credit reporting system. For many of those in that age group, their BNPL product(s) – and potentially a post-paid mobile phone contract – will be the only credit that they hold.

Outside of the BNPL sector, the comprehensive credit reporting system has now been widely adopted by providers of traditional credit products (i.e. regulated credit). Over 23 million accounts representing 94% of regulated credit accounts are being reported. This means that the holders of those credit accounts now see their good credit behaviour reflected on their credit report.

Currently, only three of the nine Code signatories participate in the comprehensive credit reporting system, i.e. the majority of Code signatories do not participate. On that basis, the proportion of BNPL accounts being reported in the comprehensive credit reporting system is significantly less than is being reported for regulated credit.⁵

BNPL providers that do not participate within the comprehensive credit reporting system are doing their customers a disservice. Likewise, by not placing any expectation on signatories to participate in the comprehensive credit reporting system, the Code is not giving effect to the key commitment of "We will focus on customers". Nor is it taking a consumer-centric approach to the design, marketing and distribution of BNPL Products and Services (as per 1.1(a) of the Code).

Recommendation 1: The Code include an expectation that signatories participate within the comprehensive credit reporting system by sharing credit information at the

⁴ Despite the maturity of the comprehensive credit reporting system and widespread adoption by traditional credit provider there has been limited adoption of that system amongst Code signatories (i.e. 3 of 9 signatories). This may suggest that this provision in the Code needs to be considered further.

⁵ To be clear, this refers to the credit provider disclosing CCLI and, if permitted, RHI for the credit product to credit reporting bodies. It does not mean simply undertaking a credit inquiry or 'credit check' before issuing the credit (although, we also note that BNPL providers undertake those credit inquiries at a significantly lower rate than traditional credit providers).

highest level they are legally able to in order to ensure that consumers receive the benefit of their good credit behaviour reflected on their credit report.

We will make sure our BNPL product or service is suitable for you

i. Signatories' use of 'credit checks' to understand 'existing debts and liabilities'

To be clear, other than the three signatories that currently participate in the comprehensive credit reporting system, no other Code signatories are undertaking “credit checks” to obtain information about the “existing debts and liabilities” for any prospective or existing customers.

We can say this with certainty because, to access the only material pool of comprehensive credit reporting information in Australia, a credit provider must be a signatory to the Principles of Reciprocity and Data Exchange (PRDE). That is, information about a customer’s “existing debts and liabilities” (i.e. CCLI) is only available to PRDE signatories⁶; only the three Code signatories mentioned above are also PRDE signatories.

Some Code signatories may perform “credit checks”, however those checks will only show previous credit inquiries and ‘negative’ information from the last 5 years (or 7 years for bankruptcy information). While those credit checks will provide some benefit in assessing the customer’s existing financial situation, they will not show the customer’s outstanding credit liabilities.

Numerous government reviews have identified the benefits of using the credit reporting system to understand a potential borrower’s existing financial situation.⁷ In light of that commentary, we consider that it is odd that the majority of Code signatories have failed to utilise the most comprehensive and well-developed source of information regarding a prospective customer’s “existing debts and liabilities”. This, in turn, makes us question whether those providers are doing all that they can do to give effect to this key commitment.

ii. Non-participation in CCR can lead to poorer consumer outcomes

Treasury’s BNPL options paper (at page 13) notes feedback that potential consumer harm from BNPL products is limited by “restricting further use of the BNPL services following missed payments” and that this “combined with low spending limits, capped late payment fees, and no compound interest, means the consequence of default on BNPL debt is generally less significant than regulated credit products, such as credit cards”.

That position cannot be supported unless the significant majority of the BNPL sector participates in the comprehensive credit reporting system by (i) sharing their credit account information with credit reporting bodies; and (ii) accessing the information held by credit reporting bodies when making significant credit decisions in relation to a customer’s BNPL account (i.e. when opening the account and at other relevant trigger points, such as when the available spend limit is increased beyond set thresholds).

⁶ It is possible for other data pools to exist using data from non-signatories. However, we are not aware of any such alternate pools existing and, if they were to be developed, credit providers accessing those data pools would not be able to access information from PRDE signatories (which represent the overwhelming number of credit accounts in Australia).

⁷ See, for example, Financial System Inquiry, Financial System Inquiry: final report, ([Murray Report](#)), 2014, pp190-192; Productivity Commission (PC), Data availability and use, [Inquiry report](#), 2017, Recommendation 5.5, p. 38 (see also [Draft Report](#), pp 165 – 184)

While it may be true that a single BNPL account issued by a particular Code signatory has a low spending limit⁸, across numerous BNPL providers, a consumer may incur a significant total debt.⁹ CreditSmart research shows that 31% of BNPL users have two or more BNPL accounts, with 11% having three accounts and 5% have four.¹⁰

If Code signatories do not participate in comprehensive credit reporting, they will have no visibility of the consumer's total debt position, including other BNPL accounts. Likewise, other BNPL providers will have no visibility of the customer's account with that first provider. This places the consumer at a higher risk of over-indebtedness, and may lead to poor outcomes not necessarily ascertainable by considering each BNPL account in isolation.

To that end, a lack of participation within the comprehensive credit reporting system means that the restriction on further use following missed payments provides no real protection against a consumer becoming further indebted with other providers (especially where those other providers are not subject to specific assessment or suitability obligations). We understand that consumer representatives often see consumers taking out additional BNPL products from new providers once their access to credit has been stopped by an existing provider. Unless the new provider is aware of the existing BNPL products, there is no prompt for that provider to make inquiries about the status of those existing products.¹¹

Recommendation 2: Further to Recommendation 1, the Code include an expectation that signatories participate within the comprehensive credit reporting system by:

- sharing credit information at the highest level they are legally able to do so; and
- undertaking a credit check at origination for all new accounts and at other relevant trigger points for existing accounts (e.g. where the available spend limit is to be increased beyond set thresholds).

How BNPL products are reported in the credit reporting system

As noted, AFIA has previously raised concerns that the credit reporting system:

...hasn't adapted to new and emerging finance products, in particular those with high frequency transactions and/or using flexible payment arrangements (i.e. weekly, fortnightly or other frequency or combination of frequencies).

AFIA's submission to the Independent review of the Privacy (Credit Reporting) Code 2014 (page 2), also stated that:

...new and emerging finance products do not easily fit within the CR Code or the monthly repayment hierarchies attached to it.

⁸ This, however, is not always the case as some BNPL providers offer loans of \$30,000 or more. Additionally, even amounts that are consider 'low' for many consumers can cause significant financial and emotional stress for some customers.

⁹ Where the consumer could end up paying late payment fees across numerous providers.

¹⁰ CreditSmart/YouGov research, August 2022. CreditSmart is a

¹¹ Of course, it would be preferable for BNPL providers to be able to access RHI (and financial hardship information) through the credit reporting system so that they have visibility of whether the customer has been meeting their monthly repayment obligations. However, even having visibility of existing BNPL accounts (through accessing CCLI) will help to act as a prompt to understand the status of those accounts; particularly if there are numerous accounts opened in quick succession.

We are unsure how AFIA has formed this view.

The comprehensive credit reporting system in Australia does – and always has – catered for various payment frequencies and payment types. In addition to the usual frequencies of monthly, fortnightly and weekly, the system accommodates quarterly and annual payment frequencies (and would allow for any other frequencies if they existed). It also accommodates event-based payment obligations, such as those that apply to overdraft and certain other line-of-credit products, e.g. where the payment obligation is only triggered if the balance of the account exceeds the credit limit.

As noted above, three Code signatories are also signatories to the PRDE at the ‘comprehensive tier’ (i.e. which includes RHI and CCLI). This demonstrates that the comprehensive credit reporting system supports payment frequencies under BNPL products.

The credit reporting system can accommodate all those different payment frequencies and payment types within the existing concept of a “monthly payment” due to regulation 12 of the *Privacy Regulation 2013*:

...an individual will be taken to have not met an obligation to make a monthly payment that is due and payable in relation to consumer credit if the individual misses any or all repayments due in a month, irrespective of the actual payment cycle for that obligation.

That is, regardless of the payment frequency or payment type, an individual will be deemed to have met their ‘monthly obligation’ if they meet all the payments that are due within that month (and vice versa).

In relation to the broader question of whether the credit reporting system is responsive to new and emerging finance products, we note that work has already been undertaken by ARCA, credit providers and credit reporting bodies to accommodate BNPL products within the Australian Credit Reporting Data Standards (ACRDS), which was updated in February 2021 to explicitly allow for BNPL product types to be identified in the system.¹²

ARCA continues to work with its Members, PRDE signatories and other stakeholders to consider whether there are any additional changes or improvements to better accommodate BNPL products within the credit reporting system. For example, this includes considering how BNPL transaction-based accounts should be reflected on an individual’s credit report.¹³ In response to the Independent review of the Privacy (Credit Reporting) Code 2014 ([page](#)

¹² The ACRDS defines the requirements for reporting of credit data between credit providers and credit reporting bodies that are signatories to the PRDE and, by doing so, helps to ensure the data reported into the credit reporting system is consistent, accurate and compliant. Even before these changes, BNPL products could have been reported under the existing data standards, however allowing for BNPL products to be explicitly identified as such assists users of the data to incorporate the credit information received from a credit reporting body more readily into their credit decisioning processes.

¹³ A BNPL transaction-based account is one where each purchase constitutes a separate credit account (as opposed to a ‘facility’ based account which operates in a similar way to a credit card). Such transaction-based accounts are already able to be accommodated under the current credit reporting system (as they are essentially an unsecured amortising loan, just like a standard personal loan). However, given the potential for an individual to open many dozens of these accounts in a two-year period (being the retention period for CCLI and RHI), industry is considering ways in which the record of those loans may be consolidated when presented on an individual’s credit report.

[14](#)), we have also noted the potential to review alternative methods of reporting a BNPL's 'credit limit' under the CR Code.

If any of the Code signatories have questions regarding how BNPL products can be reported in the credit reporting system, we encourage them to contact us.

If you have any questions about this submission, please feel free to contact me on [REDACTED] or at [REDACTED]

Yours sincerely,