

Buy Now Pay Later

The First Year of Self-Regulation

A report from the the Buy Now Pay Later
Code Compliance Committee

March 2022



Chair's Overview

The Buy Now Pay Later Code Compliance Committee (CCC) is pleased to present this report about the first year of self-regulation under the [Buy Now Pay Later Code of Practice](#) (the Code) which came into effect on 1 March 2021.

Buy Now Pay Later (BNPL) is generally a shorter term product or service for the purchase of goods or services sold to consumers where the consumer repays the purchase in instalments. Consumers are informed by the BNPL provider of the repayment amounts and payment schedule and will pay no interest charges for individual purchases if they pay within a specified period. Other activities such as pay day lending and wage access are not BNPL that is covered by the Code, even if they are marketed or described as BNPL.

In its first year of operation, the CCC has accredited eight BNPL providers as "code compliant members" of the Code.

The BNPL providers who are accredited represent an estimated 95% of the BNPL market in Australia by value of transactions. The code compliant members as at the date of this report are Afterpay, Brighte, humm BNPL, Klarna, LatitudePay, Openpay, Payright and Zip.

Only providers who are AFIA members are eligible to become signatories to the Code.

The CCC strongly encourages all firms that provide BNPL products and services as defined in the Code to become code compliant members to benefit from the substantial value of industry self-regulation and ensure they are operating their business in accordance with industry best practice.

Pleasingly, all BNPL providers who were initially accredited under the Code have been successfully re-accredited for the coming year. This demonstrates the commitment of the code compliant members to maintaining high standards of fairness and honesty in their interactions with customers.

BNPL is increasingly popular with both consumers and merchants as a means of payment. The role of the Code and the CCC in helping to ensure high levels of consumer protection will continue to grow in line with that popularity.

As with all industry codes of practice, compliance and enforcement are key elements but the CCC has high expectations that code compliant members will respond quickly to customer concerns when things do occasionally go wrong.

Under the Code model, customers can raise any concerns about their dealings with code compliant members in several ways. These are firstly through the provider's internal dispute resolution (IDR) processes, and then through external dispute resolution (EDR) such as the Australian Financial Complaints Authority, of which all code signatories are required to be members. Customers can also lodge a complaint with the CCC if they are not satisfied with the outcome of IDR and EDR.

Code compliant members report quarterly to the CCC about IDR and EDR matters. Members also report about business metrics although some of this data is delayed due to its market sensitive

nature and the disclosure obligations of members who are also listed companies. As at the end of Quarter 3 of the 2021 calendar year (the most recent reporting period for the delayed data) the number of IDR and EDR complaints per 1000 customers on an aggregated basis is low.

Similarly, only a small number of complaints were made to the CCC about alleged breaches of the Code in the 12 months since the Code came into effect. Of the five complaints received, four were referred to the member to be dealt with under their internal dispute resolution (IDR) processes, and one was investigated by the CCC after it was dealt with through external dispute resolution (EDR).

Further details about complaints and matters investigated by the CCC are set out in section 7.

During the year, the CCC has liaised with consumer groups, industry and regulators including ASIC and ACCC to promote the Code and ensure it continues to meet the expectations of external stakeholders. We will continue to build these key relationships in the coming year.

The BNPL sector in Australia continues to grow and transform, including through mergers of existing providers and the entry of new providers. Competition in the space will continue to be key in delivering innovative and efficient services for BNPL customers and merchants.

Going forward, the CCC intends to report at least annually to the community about its work to ensure that code compliant members provide high standards of service for customers and best build practices across the industry.

More information about becoming code compliant is available on AFIA's website or by contacting the Code Administrator at codes@afia.asn.au.

Consumers can also easily identify code compliant members by checking the AFIA website, or simply looking for the BNPL code compliant tick of approval. These are the firms who have made a commitment to industry best practice and consumer protection, and we urge you to seek this out when you are using a BNPL service.

Dr Michael Schaper, Chair

1. About the Code

The Code, the first of its type in the world, sets best practice standards for the sector and strengthens consumer protections. It does this while preserving customer choice to make purchases and payments in a way that suits their needs and preferences.

The Code is operated by the Australian Finance Industry Association (AFIA). AFIA believes that trust and integrity are the cornerstone of a sustainable finance industry and works together with members to develop industry standards and codes of practice to improve transparency, fairness and customer confidence. These practices assist members to meet community standards and their legal obligations, strengthens trust and good standing of the finance industry amongst stakeholders as well as lift practices for a better future for finance.

Strengthening consumer protections across the sector is a focus for AFIA and its BNPL members. The Code is explicitly consumer focused and has nine commitments that signatories make directly to the people that use their products and services.

2. Meet the Code Compliance Committee

The CCC is an independent committee (appointed by the Board of AFIA) and is responsible for the administration and enforcement of the Code. As part of its role in administering the Code, the CCC monitors and investigates compliance by code compliant members and can impose sanctions for non-compliance.

The CCC is comprised of experienced professionals with legal, consumer and industry backgrounds. The role of the Chair is critical to ensuring that oversight of the Code is administered in a fair, reasonable, independent and effective way. As another means to ensure independence, the CCC's consumer representative was nominated and appointed through the Consumers' Federation of Australia.



Dr Michael Schaper, Chair

Dr Schaper has extensive leadership and governance experience across business, government, industry and professional associations, and academia. He was formerly the Deputy Chairperson of the Australian Competition and Consumer Commission for ten years (2008-18), focusing on industry codes, small business, franchising, and industry associations. Prior to that, he also served as the Small Business

Commissioner for the ACT and President of the Small Enterprise Association of Australia and New Zealand. Michael's current board roles include co-chair of the Australian Taxation Office's Shadow Economy Advisory Forum; member of the University of Canberra governing council; and member of the national board of the Australian Institute of Company Directors.



Jillian Brewer, CCC Member

Jillian Brewer is an experienced lawyer, conciliator, investigator and trainer, with more than 20 years in alternative dispute resolution. Jillian has held senior roles with industry ombudsman schemes in banking and telecommunications. She has also worked in compliance roles at NAB and as a solicitor in private practice and government.

Jillian's career in the financial services industry, and particularly retail banking, gives her valuable experience as a consumer advocate with insight into consumers' perspectives, experiences and needs.



Craig Pudig, CCC Member

Craig Pudig has been a lawyer for more than 35 years, with his experience spanning the finance industry to large infrastructure and construction projects both in Australia and overseas.

In 2008, Craig joined Macquarie in a business role (working in Macquarie Capital) and four years later, was appointed the global head of disputes and litigation. Prior to joining Macquarie, Craig was the

Managing Partner of Clayton Utz Sydney for seven years. He has held a number of other board and advisory roles. Craig has experience in dispute avoidance and resolution and an understanding of the commercial law involved in the financial services industry.

The CCC maintains a conflicts of interest register to disclose and record other roles held by, and business activities of, CCC members. A CCC member cannot be or have been within the previous 12 months (a) a member of the AFIA Board; (b) an employee or officer of a code compliant member; or (c) have worked in the buy now pay later sector of the financial services industry in Australia.

3. Role of CCC

The establishment and operation of the CCC is governed by the [Buy Now Pay Later Terms of Reference](#) (ToR) and the [Buy Now Pay Later By Laws](#) (By Laws).

Under the ToR, the CCC is an independent committee established to administer and enforce compliance with the Code by code compliant members. The CCC's guiding principles include that it will act in a fair and effective manner with integrity and impartiality; be transparent and accountable; communicate with stakeholders and provide findings in AFIA's annual review and six-monthly report; and will promote the Code and its work.

The CCC has access to relevant information and documents to carry out its tasks and can seek additional information and explanations from code compliant members as it considers appropriate in the circumstances.

The CCC's functions and responsibilities include the following:

- (a) consider applications to become code compliant members
- (b) establish and maintain an up-to-date register of code compliant members
- (c) receive information and compliance reports from code compliant members, to enable the CCC to monitor and report on each code compliant member's adherence to the Code to standards determined by the CCC from time to time;
- (d) receive reports of alleged breaches of the Code;
- (e) investigate such reports that fall within its powers to do so;
- (f) make determinations in relation to alleged breaches investigated by it;
- (g) recommend action to remedy a breach, alleged breach or potential breach of the Code, taking into account any measures related to any such breach that have been agreed with or imposed on a code compliant member by any regulatory body;
- (h) oversee and monitor the implementation of any recommendation or any agreed measures imposed by it;
- (i) impose, at its discretion, sanctions for a breach of the Code that is not corrected by the code compliant member; and
- (j) exercise and perform such other acts as may be provided for from time to time in the By-Laws and or Code or which are incidental to any of the above functions and responsibilities.

4. Governance

During the first year of operation of the Code from 1 March 2021 to 28 February 2022, the CCC held eight meetings and each committee member attended all meetings.

5. Who Joins the Code?

One of the key roles of the CCC is to examine applications by AFIA members who are BNPL providers to become code compliant. As part of the accreditation process prospective signatories are required to demonstrate how they will meet the key commitments set out in the Code. This includes having relevant policies, procedures and other resources in place to satisfy the requirements of the Code, ensuring that staff are properly trained to enable the provider to meet its obligations under the Code, and ensuring that providers have minimum standards in place for their merchant and retail partners. The CCC also requires evidence of probity checks for officers of the company.

The CCC conducts a comprehensive review of applications for accreditation, assisted by the code administrator and external advisers as required. The CCC will discuss the application with the prospective signatory and seek any additional information that it requires in support of the application. If the CCC is satisfied with the information provided, it will accredit the applicant as a code compliant member.

In order to maintain its accredited status, a code compliant member must provide quarterly data to the CCC including information about business activities and internal dispute resolution (IDR) and external dispute resolution (EDR) matters. The CCC considers this data as part of its ongoing monitoring of compliance with the Code and seeks further explanation and information from members as required.

6. How Do BNPL Providers Stay Accredited?

Each year after initial accreditation, code compliant members must provide an attestation in accordance with the By Laws about their compliance with the Code, in such form as the CCC may require from time to time. The attestation must include a certification by a director or other appropriately authorised person that the code compliant member continues to comply with its obligations under the Code.

If any of the policies, procedures or other resources in place to satisfy the requirements of the Code have changed during the period since accreditation, the code compliant member must provide information about the changes for the CCC's review. The CCC will take this and any other information it considers relevant into account in deciding whether to re-accredit a member.

In the case of the BNPL Code, re-accreditation must take place prior to the end of February each year, and accreditation remains valid for the period 1 March to 28 February the following year.

All code compliant members have been successfully re-accredited by the CCC for the period 1 March 2022 to 28 February 2023.

In the course of the re-accreditation process for this year, the CCC considered several issues related to compliance with the Code and in some cases required members to take additional steps to ensure they remain compliant going forward. Some of those issues include:

- Implementation of additional automated controls in relation to information about a customer's financial position as part of the upfront assessment process¹ for transaction amounts above a particular threshold;
- Improved access to information about hardship and financial assistance² on a BNPL provider's website; and
- More timely responses to CCC requests for information and data.

¹ See clause 11 of the Buy Now Pay Later Code of Practice

² See clause 14 of the Buy Now Pay Later Code of Practice

7. Complaints and alleged breaches of the Code

7.1 Complaints data

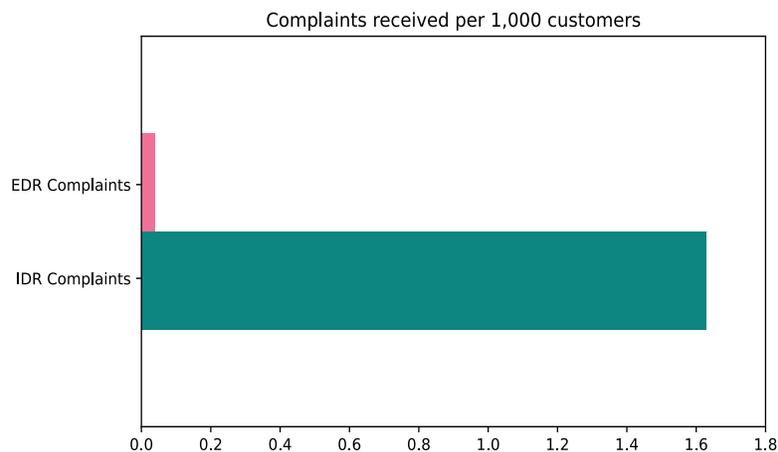
Code compliant members are required to provide data each quarter to the CCC about IDR and EDR matters. Complaints data is a key tool to help the CCC monitor how well code compliant members are meeting their key commitments under the Code. The CCC gives careful attention to the level of complaints that members receive and how quickly these matters are resolved. The CCC also examines the trends in complaints over time, albeit that this information has been collected only since the Code came into effect on 1 March 2021.

Members also report to the CCC about business metrics although some of this data is delayed due to its market sensitive nature and the disclosure obligations of members who are also listed companies.

Graph A, which has been prepared based on data provided by members, shows the aggregated rate of IDR and EDR complaints per 1000 customers. As at the end of Quarter 3 of the 2021 calendar year (the most recent reporting period for the delayed data) the rate of complaints shows that IDR and EDR complaints received by code compliant members is low on a per customer basis. The EDR complaints data has been verified against publicly available information from the Australian Financial Complaints Authority data cube to ensure its accuracy.

GRAPH A – IDR and EDR complaints per 1000 customers as at Quarter 3 of calendar year 2021

Source: Australian Finance Industry Association



The CCC will continue to carefully monitor complaints data and will raise queries with members as needed about their IDR and EDR processes and any trends in complaints that emerge in relation to the subject matter or the time taken to resolve complaints, or any other issue.

The CCC expects that the number of IDR complaints reported by code compliant members will increase in the next survey, not because of an increase in problematic behaviour or business practices, but rather to reflect the requirements of *ASIC Regulatory Guide 271: Internal dispute resolution* which came into effect on 5 October 2021. In accordance with RG 271, going forward any “expression of dis-satisfaction” by a customer is to be recorded as a complaint, which may materially increase the number of IDR matters reported.

7.2 Alleged breaches of the Code

Under clause 10.1 of the ToR the CCC may commence an investigation of Code compliance:

- (a) in response to an allegation from any person that a code compliant member has, or may have, breached the Code;
- (b) in response to a referral or report from an external stakeholder that a code compliant member has, or may have, breached the Code;
- (c) in response to an allegation raised by an existing code compliant member that a code compliant member may be guilty of conduct which is unbecoming of a member of AFIA and/or the BNPL group of members or prejudicial to the interests of AFIA and/or the BNPL group of members or otherwise has failed to comply with its obligations under AFIA’s Constitution; or
- (d) as an outcome of the CCC’s monitoring process, if the CCC has reason to suspect that a code compliant member may have breached the Code (including in circumstances where a code compliant member has self-identified a breach or potential breach).

Under clause 10.2 of the ToR, the CCC must not consider an alleged breach in any of the following circumstances:

- (a) Where the person complaining of the alleged breach (or another person acting on their behalf) is also seeking compensation or other redress for loss or detriment allegedly suffered by them arising from substantially the same facts. In these situations, the alleged breach must be referred to the code compliant member’s internal dispute resolution and/or external dispute resolution schemes; or
- (b) Where an alleged breach is also the subject of a dispute under an EDR or conciliation scheme or the subject of an investigation by any regulatory body. In these situations, the CCC must await the final determination or findings under the relevant dispute resolution or conciliation scheme or of the relevant regulatory body before commencing any investigation. In this situation, on completion of the proceedings under the relevant dispute resolution or conciliation scheme, the CCC can consider whether to undertake its own investigation of the alleged dispute and whether or not it will have regard to any determination made in relation to such dispute resolution or conciliation scheme.

During the period 1 March 2021 to 28 February 2022, the CCC did not commence any investigations under ToR 10.1(b), (c) or (d) above as it did not receive a referral or report from an external stakeholder, did not receive any allegation from another code compliant member, and did not have reason to suspect a member had breached the Code as a result of the CCC's monitoring processes.

During the period 1 March 2021 to 28 February 2022, the CCC received five allegations under ToR 10.1(a) that a code compliant member has, or may have, breached the Code.

Four of those allegations were referred to the code compliant member's IDR process in accordance with ToR 10.2(a).

The CCC investigated the fifth allegation as the matter had been resolved through EDR before the complainant contacted the CCC.

The complaint related to alleged maladministration of a customer's account. Amongst other things the complainant asked the CCC to require the BNPL provider to re-open the customer's account. Closure of the account had been part of the agreed terms of resolution of the matter at EDR.

In this case, the CCC determined that the allegations did not constitute a breach of the Code. Furthermore, the CCC did not ask the code compliant member to re-open the customer's account as this is not one of the actions or sanctions that is available to the CCC under the ToR.

However, the CCC required the code compliant member to review its compliance with the Disability Discrimination Act and the Privacy Act, and to ensure it had a clear credit policy in relation to disability support pensioners.

The CCC was satisfied with the actions taken by the code compliant member in response to the above and no further action was required.