

TERMS OF REFERENCE FOR INDEPENDENT REVIEW OF THE AFIA BUY NOW PAY LATER CODE OF PRACTICE

1. Scope of the Independent Review

The independent review (review) of the AFIA Buy Now Pay Later Code of Practice (the Code) will consider the impact and effectiveness of the Code in achieving its objectives, by examining the following matters and report to the AFIA Chief Executive Officer no later than 1 March 2023.

1.1 Awareness of the Code

- (a) The level of awareness of the Code among key stakeholders including consumer groups and other BNPL providers operating in Australia who are not signatories to the Code.
- (b) The level of consumer understanding about protections provided under the Code including the role of the Buy Now Pay Later Code Compliance Committee (CCC) to consider alleged breaches of the Code.

1.2 Content of the Code Compared to Credit Legislation

- (a) Whether the Code contains provisions that achieve broadly comparable consumer outcomes to the same provisions in the National Consumer Credit Protection Act (NCCP Act) that would have otherwise applied if a BNPL provider had been regulated under the NCCP Act.
- (b) If there are perceived shortcomings in the consumer outcomes achieved by the Code and the outcomes that would have been achieved if a BNPL provider had been regulated under the NCCP Act, what those shortcomings are.

1.3 Accreditation as a Code Compliant Member of the Code

- (a) The effectiveness of the accreditation process under which a BNPL provider becomes a Code Compliant Member of the Code.
- (b) The adequacy of the Terms of Reference of the CCC in relation to accreditation, including but not limited to the matters the CCC may take into account when considering applications for accreditation.

1.4 Monitoring Compliance with the Code

- (a) Whether the By Laws and Terms of Reference provide an appropriate framework for monitoring compliance with the Code, including but not limited to the matters the CCC may consider and the adequacy of the sanctions the CCC may impose for alleged breaches of the Code compared to other Australian financial sector industry codes of practice.
- (b) Whether the information required to be reported by Code Compliant Members to the CCC on a quarterly basis in accordance with the By Laws is sufficient for compliance monitoring purposes.
- (c) Whether the process of annual attestation about compliance is equivalent to that of other industry codes that operate in the financial sector in Australia.
- (d) Whether the process for considering alleged breaches of the Code is sufficient to ensure any alleged breaches are appropriately examined and suitable outcomes are applied having regard to the scope of the sanctions the CCC may impose.

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1.5 Performance and Content of the Code

- (a) Whether the nine Key Commitments in the Code have enhanced the level of consumer protection in the BNPL sector in Australia, having regard to the objectives of the Code¹ and the industry practices that have been implemented in response to the Key Commitments.
- (b) If there are perceived gaps in the level of consumer protection provided by the Key Commitments, what those gaps are and the recommended additions to the Code to address those gaps.

2. Personnel and Resources

The independent review will have access to the following personnel and resources for purposes of carrying out the review.

- 2.1 AFIA personnel including the Chief Executive Officer and the Director Industry Standards, and AFIA's books and records related to the Code.
- 2.2 The BNPL Code Compliance Committee, including information that is relevant to the CCC's role to oversight and enforce compliance with the Code.
- 2.3 AFIA members who are Code Compliant Members of the Code, including key personnel and information that is relevant to demonstrating compliance with the code.

[Note the above does not limit who the independent reviewer may seek feedback from – rather it is the minimum level of co-operation to be provided by AFIA, its members and the Code Compliance Committee].

3. Matters not in Scope

The following matters are not in the scope of the independent review.

- 3.1 Assessment of any aspect of the commercial performance of BNPL providers who are Code Compliant Members, or the general economic conditions in which they operate.
- 3.2 Analysis of or recommendations about the form, content or obligations of any statutory regulation of the BNPL sector in Australia that the Government is considering or may adopt.

¹ See Clause 1 of the BNPL Code of Practice