

BNPL Senate hearing – questions on notice

Question 1: How is industry placed to implement the proposed reforms? What is required to ensure an ordered transition?

The Buy Now Pay Later (BNPL) industry is a diverse industry that includes startups, FinTechs and established financial institutions. The BNPL reforms represent a significant and complex regulatory uplift, even for companies with well-resourced and sophisticated product, legal, regulatory and compliance teams that may be familiar with the requirements of the National Consumer Credit Protection Act (NCCPA) and credit reporting and reciprocity obligations.

Many BNPL companies, however, do not have this level of technical expertise. Others will be constrained by capital and human resources, like the availability of software engineers to design and implement internal product changes and integrate external requirements, including affordability and suitability assessment processes. Many providers will also need to conduct commercial due diligence processes for the procurement of many business-critical services to support various aspects of the new regime, including technical design work. BNPL providers will need time to adequately scope and implement this work.

To ensure an ordered transition to these new reforms, and to acknowledge the complexity and resources required to implement these reforms and the diversity of BNPL providers in the Australian market, the legislation should provide a twelve month transition period for BNPL providers to comply with the new regime.

We also note that BNPL providers face additional regulatory uncertainty and potential new obligations under several reforms to Australia's payments system currently before the Parliament. The timing of these significant reforms can have significant implications for the BNPL sector, and can limit innovation and competition in the market if reforms are not appropriately staggered to avoid a significant regulatory compliance burden.

Question 2: What else needs to be done to support fintech and innovation in financial services, like BNPL, once this regulation is in place?

A key priority of the Tech Council is to ensure Australia is a place for tech companies to scale and grow, driving competition across the economy, and delivering major benefits for Australian consumers, businesses and productivity. The BNPL reforms acknowledge that Australia's BNPL sector has generated significant competitive tension by disrupting traditional sources of consumer credit, generating more choices and savings for consumers and growth for Australian retailers. We support regulatory models that maintain this competitive tension, striking the right balance between market intervention, consumer protection and enabling competition and innovation.

We support initiatives and approaches to grow and enhance Australia's tech, fintech and startup community, including:

- Allowing for the long-term creation and administration of self-regulatory regimes for new and innovative sectors models, while ensuring they are accountable, outcomes focused and evidence-based. The Australian BNPL market is a key example of this working in practice. The BNPL Code of Practice has been in place since 2021 and

has been successful in establishing high standards that in many cases exceed the requirements of law.

- Proactive engagement from regulators and policymakers with emerging businesses and companies to discuss and monitor consumer and business outcomes before regulatory intervention.
- Clear, harms-based regulation and the avoidance of prescriptive regulation which cannot keep pace with disruption and innovative products.
- Government can also take a variety of other actions to support tech companies starting and scaling in Australia, such as in relation to funding, improvements to the R&DTI system, and ensuring that Australia has a pipeline of skilled talent to ensure that we can meet current and future demands in Australia's tech sector.

Question 3: A lot of detail is left to delegated legislation. Do you think it would've been better had it been put in the primary legislation?

Ongoing consultation is required for the BNPL regulations, as they contain critical obligations and substantive information that have a significant impact on the BNPL sector.

The requirements in the delegated legislation cover late fees, ongoing fees, and the scalability of the modified responsible lending obligations. These requirements cannot be debated in the Parliament, however, they contain significant obligations and represent some of the most concerns raised by industry. For example, the current drafting of the late fee caps are unworkable for many BNPL providers while the modified responsible lending obligations lack scalability, particularly for lower value BNPL products.

We support the BNPL industry's call for a more detailed consultation on a final version of the regulations. We would also reiterate the positions made in our submission to the Committee in respect of these issues, including:

- Significantly amending or removing the late fee cap in the draft regulations given the operation of a range of existing consumer protections that already exist that apply to late fees. In particular, BNPL contracts are subject to consumer protection legislation (for example, the unfair contract terms regime in the ASIC Act), the unjust transaction provisions of the National Credit Code and the BNPL Code of Practice, overseen by AFIA, which requires late fees to be 'fair, reasonable and capped'.
- Amending the proposed affordability requirements to require BNPL providers to conduct a partial credit check rather than obtaining self-declared information about the customer's income, expenses and other debts.
- Remove the requirement for BNPL providers to conduct suitability assessments on spending limits under \$5000, better aligning with the regulatory approach taken in New Zealand.