

Secretary
Senate Economics Legislation Committee
PARLIAMENT HOUSE
CANBERRA ACT 2600
economics.sen@aph.gov.au

15th November 2018

Dear Sir/Madam

REPORT INTO THE TREASURY LAWS AMENDMENT (DESIGN AND DISTRIBUTION OBLIGATIONS AND PRODUCT INTERVENTION POWERS) BILL 2018

I am writing to you with some alarm concerning the above mentioned report that was tabled by the Committee on Friday 9 November.

The final report contains a significant, material error which we request be immediately corrected. We specifically request that both the electronic version of the final report, and all printed copies have the correction made.

The relevant extract is in para 2.7 (copy below)

*"2.7 ASIC, consumer groups **and AfterpayTouch Group** all called for the bill to cover all products regulated by ASIC. This would mean that the design and distribution obligations would cover credit products, buy-now-pay-later products, and products that are substitutes for products regulated under the Corporations Act and the Credit Act."*

We request the bolded words be deleted. This assertion is the complete opposite to Afterpay Touch Group's position – and it is completely inconsistent with our submission.

The point is sourced to footnote 13. This, in turn, references page 1 of our submission. Page 1 of the submission says no such thing, and neither does any other part of our submission.

Disturbingly, it shows a complete misunderstanding of the Bill. There are 2 new regulatory regimes proposed in the Bill as the title confirms. The Design and Distribution Obligations (DADO) and the Product Intervention Powers (PIP). These are discrete powers.

Our position on the legislation is very clear:

- We are not regulated under this Bill either through the DADO or the PIP.
- We should *not* be regulated like the other financial products will be under the Bill because we are not in any way similar to any of them. The design and distribution obligation functions are relevant to financial products – not to stand-alone payment options such as Afterpay.
- This legislation is aimed at attempting to stop the mis-selling of financial products which is the main conflict of interest in the financial services sector. Our products are not sold – there is no

conflicted remuneration model to overcome as there is no remuneration, as there are no salespeople. The DADO is completely irrelevant to our product.

- However, we are willing to countenance the product intervention powers (PIPs) applying to the Buy Now Pay Later (BNPL) sector *in the future* – if they are appropriately designed. That is, if some BNPL products could amount to a genuine consumer threat.
- We are confident in our product and the inherit consumer protections in place, however, there are other product designs in the BNPL segment which may need regulation.
- In our view, the PIP system is the best mechanism to do this if deemed necessary by ASIC. As we explicitly state in our submission at page 3 (bold added for emphasis):

*“In summary, Afterpay is supportive of the general sentiments underpinning the proposal for ASIC to be given **product intervention powers** in recognition of the need for strengthened consumer protection measures in relation to products that fall within ASIC’s regulatory responsibility but are not regulated by either the Corporations Act or the National Credit Code (i.e. “ASIC Act only products”). We are also supportive of the concept outlined in ASIC’s subsequent proposal (in their August 2018 submission to the revised exposure draft) for **this power** to be extended to cover all (rather than specified only) “ASIC Act only” products - which would include Afterpay. **However, we request further information and consultation on the detailed design of the intervention powers in order to determine our final position on the proposal.**”*

- You would be aware that a References Committee Inquiry has just commenced and the BNPL sector is specifically within the terms of reference of this Committee Inquiry.
- Afterpay has provided a submission to that Inquiry. A comprehensive examination will also provide a much better context to assess the relative merits of the different financial products. In addition, the ASIC review of the BNPL sector should be available for consideration by the Committee as well.
- As you can see, the Report’s assertion is in very serious error and needs immediate correction. Whilst we cannot understand how this has occurred we assume it has been inadvertent. That said, this matter is very material to our business and needs to be addressed. We are a listed company and fear that the Committee’s report may lead to a misunderstanding of the company’s position on a key regulatory matter.

I look forward to your early advice concerning this matter.

Yours sincerely

Damian Kassabgi
Public Policy
Afterpay