



PayPal Australia Pty Ltd  
GPO Box 351  
Sydney NSW 2001  
Email: [siedwards@paypal.com](mailto:siedwards@paypal.com)

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The Manager  
Banking, Insurance and Capital Markets Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**By email: [bear@treasury.gov.au](mailto:bear@treasury.gov.au)**

Thank you for the opportunity to provide comments and feedback on the matters included in the July 2017 Consultation Paper on the proposed Banking Executive Accountability Regime (BEAR).

PayPal Australia Pty Ltd (PayPal) is a limited Authorised Deposit-Taking Institution (ADI) that has obtained an authority from APRA to provide purchased payment facilities (PPFs). PayPal is the only PPF authorised by APRA since the introduction of the PPF regime over 10 years ago. PPF providers are not authorised to conduct general banking business and are not permitted to accept deposits. PayPal is required by APRA Prudential Standard APS 610 to hold a minimum Tier 1 capital requirement, hold, at all times, high quality liquid assets equal to its stored value liabilities and to meet certain operational risk requirements, including compliance with the terms of Prudential Standard CPS 520 which deals with the fitness and propriety of individuals to hold positions of responsibility within PayPal.

PayPal notes that Treasury has proposed in the draft of ***Treasury Laws Amendment (2017 Measures No.8) Bill 2017*** that APRA will retain its ability to restrict the use of the term 'bank' in certain circumstances and cites as an example where a purchased payment facility is an ADI but does not conduct traditional 'banking' business. The draft explanatory materials for this Bill at 1.10 expressly calls out 'purchased payment facilities' as an example of ADI's which "do not have the ordinary characteristics of banks" and should thus be prohibited from using the terms 'bank', 'banker' or 'banking'.

PayPal is not currently regulated as a bank. It is clearly the intention of the Government that PayPal, as it currently functions, should not be considered or permitted to describe itself or operate as a bank. PayPal does not have depositors. PayPal's operations are regulated or supervised by APRA, ASIC, the RBA, and AUSTRAC. It is generally accepted that PayPal's operations are not systemically influential or critical to the Australian economy. In these circumstances, it is our submission that it would be incongruous, unreasonable and regulatory overreach to impose upon the executives of PayPal the proposed obligations of the Banking Executives Accountability Regime.

It is our submission that the significant concerns expressed in Chapter 1 of the Consultation Paper do not reflect the experience of customers of PayPal. There is no evidence of a poor, endemic or systemic culture or behaviour in PayPal such as would warrant the imposition of the significant regulatory burden anticipated in the Regime. This submission is supported by the evidence of PayPal's customers' experience before the Financial Ombudsman Service (FOS) where consumer complaints predominately relate to the commercial application of PayPal's user agreement terms and not to issues dealing with the conduct of individuals or the culture of the company in general. Indeed in the financial year 2016-17, FOS closed 1018 cases relating to PayPal. Of those 11 were resolved in favour of the complainant.

Furthermore, as PayPal currently operates no customer is required to hold or use a product provided by the company. There is no cost to consumers in taking up the PayPal service and the consumer can close their account at any time of their choosing. PayPal is, in this context, effectively a pay-per-use offering that customers can choose not to use at any time. There is no direct financial incentive for PayPal executives or staff to 'push' products to consumers and PayPal does not proactively engage consumers to take up accounts. As PayPal's product is global, Australian executives are not in a position to alter the product in a way that would *'incentivise a short-term focus or excessive risk-taking'*.

Any sales activity conducted by PayPal typically applies to merchants. As is the case for consumers, merchants can choose to use or cease using PayPal's products at any time without penalty. There have been no suggestions by any of PayPal's regulators of any systemically inappropriate behaviours by PayPal staff or executives that would constitute cultural behaviour warranting the imposition of a behavioural regime such as the BEAR.

Finally it should be noted that PayPal executives are remunerated substantially on the basis of the company's global performance as measured by a range of key performance indicators. These measures reflect consumer and merchant **voluntary use** of PayPal's products and services. Executives are not rewarded for behaviours that create risk-taking with either consumers or merchants. Managing risk is a key objective for PayPal and Australian executives operate within a strict risk policy and practical framework.

To clarify the definitional uncertainty that arises because of PayPal's status as a limited ADI, it is our submission that the proposed terms of the Banking Executives Accountability Regime should be appropriately restricted. In our submission the Regime should not apply to non-deposit taking ADIs or alternatively the scope of ADIs should exclude those that are PPFs and regulated pursuant to APS 610.

PayPal would welcome the opportunity to further discuss the terms of this submission. Please feel free to contact our Director of Government Relations via email [siedwards@paypal.com](mailto:siedwards@paypal.com)

Yours sincerely,



Simon Edwards  
Director Government Relations  
PayPal Australia Pty Ltd