AFIA

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Mr Scott Farrell
Payments Systems Review
The Treasury
Langton Crescent
PARKES ACT 2600
Email: PaymentsReview@treasury.gov.au

Dear Mr Farrell

AFIA SUBMISSION ON PAYMENTS SYSTEM REVIEW ISSUES PAPER

The Australian Finance Industry Association (AFIA) appreciates the opportunity to respond to the Payment System Review Issues Paper.

As context for our submission, AFIA is a leading advocate for the Australian financial services industry. Our role[1] is to support our members to finance Australia's future. We believe that our industry can best support Australia's economy by maximising choice in and access to consumer and business finance, fostering competition and innovation in financial services, and facilitating greater financial, and therefore social, participation across our community.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, and fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

OUR SUBMISSION

AFIA supports the objectives of the review of the regulatory architecture of the Australian payments system. We believe the Issues Paper clearly and correctly articulates that the system should ensure it 'remains fit-for-purpose and is capable of supporting continued innovation for the benefit of consumers, businesses, and the broader economy'.

We have made a number of specific recommendations in response to the Issues Paper, detailed below. However, we would like to set these in the context of the following principles, which we believe are fundamental in undertaking this Review.

[1] Australian Finance Industry Association (afia.asn.au)

A payments system architecture should:

- Support a continued emphasis on a principles-based approach to industry self-regulation, regulation and legislation as these are critical to achieving the objectives of this Review.
- Monitor markets and customer demand because if supported by evidence-based policy, these will drive competition and innovation.
- Regulate only in the advent of a market failure, or when interventions are required to deliver balanced outcomes for customers, businesses the financial system, and the broader economy without creating barriers to entry.

We also emphasise that in implementing of any reforms resulting from this Review, resource constraints, suffered by many businesses during the COVID-19 pandemic, are taken into account. This will ensure that access to credit is not limited and innovation and competition is not stifled. Therefore, we suggest that because of the substantial economic and regulatory change being managed in the finance industry, where changes are proposed, there needs to be careful consideration of the timing of the next steps of this Review. This will ensure that the final recommendations have a stable foundation to support economic recovery and focus on contemporary issues.

OUR RECOMMENDATIONS

1. Maintain the current regulatory model with clarification of each of the regulators' mandate.
2. Ensure better coordination between regulators.
3. Define 'payments' as function based.

RECOMMENDATION 1 – MAINTAIN THE CURRENT REGULATORY MODEL WITH CLARIFICATION OF EACH OF THE REGULATORS' MANDATE

More detail is provided in Attachment B, but in summary we recommend that:

- All regulators have competition and innovation included in their mandate, to ensure they consider these issues in the course of exercising their primary mandate as defined and in administering their laws in this evolving landscape.
- The RBA's mandate should be reviewed to move its focus on the implications for all participants in the payments system, and in particular end user outcomes, rather than predominantly merchants and merchant costs. This will help to ensure that the needs and preferences of payments providers, consumers and businesses are appropriately balanced and factored when making decisions. It will also ensure that educating consumers on system changes is prioritised.
- There should not be a move to combine regulators into a form of 'super regulator' as there would be a significant risk of diluting the specific focus and expertise currently residing in the existing regulators.

RECOMMENDATION 2 – ENSURE BETTER COORDINATION BETWEEN REGULATORS

More detail is provided in Attachment B, but in summary we recommend that:

- Clarification is provided where there is regulatory overlap or where multiple regulators have an interest in a certain function or behaviour of a financial institution. In such occurrences, the regulators should look to coordinate responsibilities and avoid duplication via, for example, formal and clear articulation of individual and collective activities through the Statement of Intent, Statement of Expectations, and various Memorandum of Understandings.

- The Council of Financial Regulators should coordinate the different regulatory priorities to ensure that timeframes are realistic and reasonable when looked at holistically across the payments system. Given the cumulative impact of the vast array of changes underway in the industry, including in legislation, regulation, compliance systems, technology, new industry standards, better coordination will be vital. Additionally, the Council should expand on its communications, i.e. meeting communiques, and provide additional detail regarding their discussions and the basis of their decisions. Greater transparency will assist the industry.
- There is better coordination and sequencing of major industry consultations between regulators to avoid confusion and uncertainty, for example, where there is collective interest in a particular area of the system, efforts are coordinated and/or where a regulator is engaging with particular financial institutions and seeking data and information, these requests are coordinated and aligned to avoid duplication and/or double handling.
- A single data collection process for standard reporting be developed across the regulators.

RECOMMENDATION 3 – DEFINE 'PAYMENTS' AS FUNCTION BASED

More detail is provided in Attachment B, but in summary we recommend that:

- A 'function based' definition of payments is used. This would ensure a fit-for-purpose regulatory architecture that is responsive to advances in payments technology and changes in consumer demand, and would support efficient and effective regulation going forward.
- When looking to define 'payments,' it will be key to look at the functions that take place in the payments ecosystems, rather than the types of entities that are seen as payment providers.
- In the absence of market failure, policy settings should be driven by Government, rather than by regulators. Regulators are there to exercise their mandates and should only be using their enforcement tools to address public interest concerns that the industry is unable or unwilling to address themselves.
- Treasury be given a greater role in setting overall policy within the payments system, including in defining what systems are subject to regulatory oversight and review.

CLOSING REMARKS

A continued focus on improving efficiency, competition, and innovation within the payments sector will support Australia's economic recovery. If implemented, we believe our recommendations will:

- Promote access and choice to consumer and business finance
- Drive competition and innovation in Australia's financial services industry
- Support economic and social participation across our community.

AFIA would appreciate the opportunity to discuss our recommendations and provide further information about the specialised products, services, and technologies offered across our diverse membership and the expectations of their customers.

Should you wish to discuss our submission or require additional information, please contact me or Chalisa Parekowhai, Associate Director Policy at [redacted]

Yours sincerely

Diane Tate
Chief Executive Officer

ATTACHMENT A: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- Major, regional and mutual/community owned banks
- Providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers
- Providers of land finance, including residential and commercial mortgages and bridging finance
- equipment financers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing
- Motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance
- Fleet leasing and car rental providers, and
- Providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see here.

ATTACHMENT B

RECOMMENDATION 1 – MAINTAIN THE CURRENT REGULATORY MODEL WITH CLARIFICATION OF EACH OF THE REGULATORS' MANDATE

The current regulatory architecture has served the Australia economy well and has allowed for continuous innovation over the past 20 years.

AFIA consider that the Reserve Bank of Australia (RBA) has effectively exercised its powers with respect to the payments system and that it is meeting its current obligations in relation to controlling risk in the financial system, promoting the efficiency of the payments system, and promoting competition in the market for payment services. In exercising its duties, we believe the RBA leverages its extensive experience and knowledge to navigate the complexities of the industry.

In particular, we support the RBA's approach to the regulation of the payments system, which favours self-regulation, with intervention only where the industry is unable to address a public interest concern, if the industry is unable or unwilling to address the RBA's concerns, or there is evidence of a market failure.

AFIA has consistently advocated for the importance of self-regulation within the regulatory framework. We believe industry codes are a useful way to raise standards, promote consumer protection, and facilitate competition and innovation.

Relevant to the discussion of regulation in the payments system, AFIA is currently finalising the Industry Code of Practice for the Buy Now, Pay Later (BNPL) sector due to be published on 1 March 2021. The RBA, ASIC and the ACCC have all acknowledged the importance of our new BNPL Code, as well as the economic benefits of this sector, particularly the ACCC's instance of supporting the acquisition and finance of new energy technology products by Australians.

Self-regulation has two key advantages over legislation and regulation:

- It can be tailored to a sector, products or services, and
- It can be much more agile at addressing emerging issues than legislation or regulation, which often encompasses of 'whole of entity' view in its application.

By factoring in self-regulation as a prominent tool in the regulatory architecture, we believe it will allow the government to maintain a principles-based regime that is future-focused, and supportive of efficiency, innovation, and competition.

We note that while the overall regulatory architecture has been effective, there is concern in the industry about the lack of clarity in the different regulatory mandates. As a result, as the financial services industry continues to innovate and evolve at a rapid place, it will be vital that the mandates of each regulator are clear so as to provide stability and efficiency in the system.

We recommend that:

- All regulators have competition and innovation included in their mandate, to ensure they consider these issues in the course of exercising their primary mandate as defined and in administering their laws in this evolving landscape
- The RBA's mandate should be reviewed to move its focus to end user outcomes rather than predominantly merchants and merchant costs. This will help to ensure that the needs and preferences of consumers and businesses are appropriately factored in when making decisions and that educating consumers on system changes is prioritised.
- There should not be a move to combine regulators into a form of 'super regulator' as there would be a significant risk of diluting the specific expertise currently residing in the existing regulators.

RECOMMENDATION 2 – BETTER COORDINATION BETWEEN REGULATORS

A key concern of the current regulatory architecture is the lack of clarity on how the different regulators intersect in the payments lifecycle. Improved coordination between regulators will be important to support and enhance efficiency, competition and innovation.

As the payments ecosystem evolves and becomes more complex, it will be critical for financial entities to understand where and when they will come under a regulator's remit. For example, a financial services provider that is licensed by ASIC, could also be regulated in the payments lifecycle by AUSTRAC, the ACCC, and the RBA.

There is currently substantial overlap in regulations and consumer protections and this can cause confusion for industry participants and discourage innovation and participation.

We recommend clarification is provided where there is regulatory overlap or where multiple regulators have an interest in a certain function or behaviour of a financial firm. In such occurrences, the regulators should look to combine responsibilities and avoid duplication. There should be formal and clear articulation of individual and collective activities through the Statement of Intent, Statement of Expectations, and various Memorandum of Understandings. Resolving this issue will be critical to ensuring efficiency and stability in our payments sector, and overall financial system.

Alongside this, we recommend the Council of Financial Regulators coordinates the different regulatory priorities to ensure that timeframes are realistic and reasonable when looking holistically across the payments system. This will be vital, given the cumulative impact of the vast array of changes underway in the industry, including legislation, regulation, compliance systems, technologies, and new industry standards.

Coordination of sequencing between regulators is also critical as it can avoid confusion and uncertainty in the industry. For example, although this Issues Paper is focusing on the regulatory architecture as a whole, the upcoming RBA review of the retail payments system regulations may be impacted. Should a recommendation emerge from this Issues Paper, it could mean there needs to be a significant change to the current regulatory structure and mandate of the RBA. In practice, this could mean there is a shift in the work that is soon to be undertaken on the RBA's consultation.

The significant increase in reporting across the industry means that it is essential now for there to be better co-ordination between regulators on their data collection – for example, better alignment in defining data sets, formatting templates, and record-keeping arrangements, etc.

This will create efficiencies and a consistent understanding and interpretation for both financial firms and regulators, and easier analysis and collaboration.

Finally, we recommend that a single collection process be developed across the regulators, rather than firms having to lodge multiple reports.

RECOMMENDATION 3 – DEFINE 'PAYMENTS' AS FUNCTION BASED

The payments and credit landscapes are dynamic, and we expect there will continue to be an evolution in products, services, and providers.

We believe a 'function based' definition of payments would support efficient and effective regulation going forward. When looking to define 'payments' it will be key to look at the functions that take place in the payments ecosystems, rather than the types of entities that are seen as payment providers.

Rapid innovation in technology and data has seen organisations, like Apple and Google, build functionalities (such as Apple Pay and Google Pay) that are part of the payments ecosystem. We recommend that a definition would support consideration of appropriate regulation of functions that replicate or replace banks accounts, such as digital wallets.

At the same time, it is important for the policy settings to be driven by Government, rather than by regulators, who are there to exercise their mandates. Regulators should only implement policy settings when using an enforcement tool to address public interest concerns that the industry is unable or unwilling to address themselves.

In this regard, we would urge consideration of the UK approach, where the designation of payments systems is undertaken by the Government and the UK Payments System Regulator's mandate is confined to those systems that have been designated. In contrast, the RBA's Payments System Board has the power to designate and regulate payments systems.

We recommend that the Treasury be given a greater role in the setting overall policy within the payments system, including in defining what systems are subject to regulatory oversight and review.