



29 January 2021

Secretariat
Payments System Review
The Treasury
Langton Crescent
PARKES AC T 2600
By email - PaymentsReview@treasury.gov.au

Thank you for the opportunity to provide a submission to the **Payments System Review Issues Paper**.

Cuscal welcomes the Treasury consultation and review into the regulatory architecture of the payments system. We look forward to discussing our submission during the upcoming consultation period.

Overview of Cuscal

Cuscal is an end-to-end payments specialist that services more than 100 established and challenger brand clients within Australia's financial system, including the majority of the mutual banking sector, and a growing number of FinTech and 'PayTech' enterprises. We enable their market connectivity so they can provide innovative products, business models, and drive improved customer outcomes. We are an Authorised Deposit-taking Institution (ADI), the holder of an Australian Financial Services Licence, and an Australian Credit Licence for Securitisation purposes. Cuscal has a seat on the Board of eftpos*, NPPA, the APN* and are involved in numerous industry bodies and committees. We are also the founder and majority shareholder of 86400 (www.86400.com.au), a new fully licenced digital bank.

The services that we provide to our client institutions include: card scheme sponsorship for issuing and acquiring, payment card issuing, card production services, digital banking applications, product compliance and access to domestic payment and services including direct entry, BPAY and the New Payments Platform (NPP). We also act as settlement agent for many of our clients through our Exchange Settlement Account with the Reserve Bank of Australia (RBA). As a fully PCI-DSS accredited ADI, Cuscal is uniquely placed to provide secure and robust capabilities that facilitate access to markets that would otherwise be beyond the reach of some organisations. For further information on Cuscal and our services please refer to our website at www.cuscalpayments.com.au

*Board seat is shared on a rotation basis with another member institution.

Background comments

Prior to addressing the questions posed in the Issues Paper, we have provided some background commentary on the industry. These are important points in the context of our recommendations around regulatory architecture and industry coordination.

The current regulatory landscape for the payments industry

- ❑ Australia is amongst the leading countries for adoption and innovation of digital payments. This naturally increases the complexity and pace of change in the industry. It presents both challenges and opportunities across regulators and the industry.
- ❑ The interrelated involvement of Government, Regulators, Industry, Business and Consumer/Community groups in the development and management of the payments ecosystem, has supported the sector and economy very well, however more structured and timely coordination is now required.
- ❑ The increasing pace of change and speed of developments in payments continues to highlight the need for:
 - enhanced co-ordination;
 - greater clarity of regulatory and supervisory roles and powers;
 - regular and more timely revision and production of regulation; and





- an increased publication of roadmaps and strategy papers to help improve co-ordination of regulation, products and innovation.
- Fine tuning the variety of roles and responsibilities of Government and Regulators will only enhance the oversight and self-regulation models that operate today.
- The increasing integration of digital payments deeper into consumer and business products and platforms requires a different approach to regulatory co-ordination. Tackling the “Digital Divide” in prevailing legislation should be a priority.
- Continually reviewing current legislation and creating new legislation in a timely fashion are equally as important. Too often, reviews of prevailing legislation or codes take too long or endeavour to cover too much ground, rather than addressing the key short-term issues that require change.
- Efficient phasing of regulatory change allows industry to mobilise resources and sequence projects on items that matter most.
- Regulatory overlaps are to be expected on occasions given the ongoing mix of products, consumers, participants, legislation and regulators – it is how regulators manage, coordinate and communicate within that normal environment that matters.
- The creation of an integrated overall vision and strategy for the payments industry should be a key short-term goal and founding artefact for the newly appointed Minister for the Digital Economy.

Investment drives growth and stability – an important factor for stability and regulation

- It should be recognised that ongoing investment and planning around underlying infrastructure is required to allow the industry to maintain the constant pace of change and evolve legislation.
- Most of the central payments industry investment, resources and planning has been funded by long-term industry participants who naturally require payback over time, particularly because there are no specific Government subsidies, or research and development initiatives for the payments industry.
- Future investment and developments in payment infrastructure can only be funded where a fair economic return exists for the participants investors, while balancing the need to price transactions to attract volume and create reach.
- Safety of consumer deposits and certainty of payment flows are critical for the industry and to maintain consumer trust – particularly in a 24/7 model.
- Access for new entrants must always balance the competing objectives of furthering competition, while upholding safety and stability in the ecosystem.





The Issues Paper questions

1. A regulatory architecture for the future

Questions	Cuscal comments/recommendations
<ol style="list-style-type: none"> 1. Does the regulatory architecture appropriately facilitate the development of an overall vision, strategy and principles for the Australian payments system? 2. How should our regulatory architecture be designed in order to balance the management of risk and efficiency in the payment system with the need for effectiveness for end-users? 3. What is the appropriate balance between self-regulation, formal regulation and government policy to ensure the payment system continues to work in the best interests of end-users? 4. Are there gaps (or duplication) in the current architecture that need addressing to ensure the system continues to work in the best interests of end-users? 5. How should the regulatory architecture be designed to best facilitate the coordination of participants and regulators to meet the requirements of end-users? 	<ul style="list-style-type: none"> ❑ We recommend Treasury be tasked to coordinate an integrated end to end payments industry roadmap, that ties together the present and future material work of the industry and regulators. This will help provide clarity around roles, priorities and timing of key initiatives including regulation, key products and development. The roadmap will leverage existing roles and responsibilities and support the work of the newly appointed Minister for the Digital Economy. ❑ To support the roadmap, a combined MOU between regulators should be implemented, which supplements and supports existing regulatory bilateral MOU arrangements. The roadmap will need appropriate funding and resourcing to be successful. ❑ In line with the roadmap, a review of roles and responsibilities for the ongoing review and creation of payments legislation and codes should be undertaken. The appropriate balance between self-regulation, formal regulation and Government policy will be apparent from the integrated roadmap. ❑ Current industry bodies are well placed to support the roadmap. Current industry Boards are also well placed, as long as they continue to enhance their skills and refresh their Directors. ❑ Industry self-regulation, with appropriate regulatory oversight, has served the industry and end user best. The roadmap will assist self-regulation by guiding industry investment and the type and length of regulatory consultations. ❑ Payment information as a form of data and then data attached to payments will be increasingly central to CDR. An effective consent framework for both will be critical to each initiative reaching their potential. We would expect to make more progress as an industry if one regulator oversees both payments and CDR. ❑ If a single regulator is not possible in the medium term, and the ACCC is to continue to be the key regulatory and development body for CDR, a specific CDR MOU is required with all industry regulators (e.g. Banking, Utilities, etc etc) as CDR will eventually bring together many facets of end user payment regulation in one channel. Well defined and documented co-ordination via an MOU is probably a compromise to the single regulator model. ❑ Austrac should have end to end regulatory authority and oversight of all matters relating to Sanctions, AML/CTF and KYC. As part of that transition a review of reporting and legalisation across various industries should be performed to harmonise legislation and its interpretation. An example being the misalignment between the Australian Privacy Principles and





Questions	Cuscal comments/recommendations
	sections of the <i>Anti-Money Laundering and Counter-Terrorism Financing Act</i> .

Developments in the payments system

Questions	Cuscal comments/recommendations
<p>6. What are the required features of a future regulatory architecture to ensure it is well-placed to meet the needs of end-users in relation to emerging innovations in the payments system such as those discussed above? Are changes needed to existing structures, roles and mandates involved in the governance of the system?</p> <p>7. What regulatory architecture is needed to provide support and clarity for businesses – particularly new entrants – to invest and innovate in our payments system?</p> <p>8. How can the regulatory architecture enable participants in the payments system to make better use of data to improve cross-border payments and other payments that benefit end-users?</p> <p>9. Given rapid changes to the system, what need is there for education for end-users (including consumers and businesses) about payments and who should provide that education?</p>	<ul style="list-style-type: none"> ❑ Given different regulatory mandates, legislation and powers, each regulator requires varying skillsets and culture to effectively address their role in the market. This uniqueness should continue to be leveraged through sharper ongoing co-ordination – not via a major revamp of prevailing roles. ❑ A legislative simplification program should form part of the integrated roadmap by choosing the ten key areas for reform and setting a timeline for key deliverables. ❑ A large number of new industry entrants often lack the early capital and resources to access the payments ecosystem and meet the ongoing compliance and environment developments. The cost of 24/7 operations and the ongoing need to develop software and product, naturally creates recurring fixed cost in their business model. Given changes in technology, it is often cheaper for these entrants to connect to the payments infrastructure through third party participants. There are numerous industry examples of the industry enabling efficient and effective access for new entrants (using prevailing legislation) to access all main payment channels. ❑ To help regulatory oversight, innovation and competition a time bound tiered licensing regime should be introduced to account for eligible new entrants that need a bridge between an AFSL and more complete market Licensing. Similar to the limited ADI licence regime introduced by APRA, any regime should balance the need for safety for the end user and the industry generally, including the need for the entity to periodically renew the licence against set criteria. ❑ The key to any tiered licence system is the safety of data and consumer funds. To that end, certain parts of the value chain (e.g. market clearing and settlement) should not be opened for tiered access as sound capital and liquidity arrangements are critical to these functions. ❑ With an integrated industry roadmap in place, new or developing products (such as BNPL, cross border payments, digital products etc) would have required industry and regulatory input early or in parallel with their lifecycle. The key is for regulators to agree and communicate as early as possible what (if anything) needs to change for the benefit of the end user and the safety of the product and industry. ❑ Consumer education should reside with each regulator who has the appropriate skillset to inform the campaign and adjust it to market feedback. The real challenge is for these initiatives to be properly funded and be delivered in sync with the requirements derived from the integrated roadmap.





2. International comparisons

Questions	Cuscal comments/recommendations
<p>10. How does Australia's regulatory architecture compare with that of other jurisdictions, particularly as it relates to the encouragement of innovation and competition?</p> <p>11. Are there are lessons from international experiences that can improve Australia's regulatory architecture to ensure it responds effectively to new developments in the future for the benefit of end-users?</p>	<ul style="list-style-type: none">❑ In contrast to most other markets, Australia has relied on (and been well served by) a high degree of self-regulation in the payments industry, with appropriate regulatory oversight.❑ While some International markets have endeavoured to introduce centralised bodies to shape and guide industry regulation and development, Australia has mobilised quickly on local and international developments. The efficiency and effectiveness of how we achieve that as a market and industry could be better, so hence our recommendation of the integrated roadmap. While Treasury should have carriage of the creation of the roadmap we do not see the need for an extra body to oversee its implementation – this should be left to respective regulators via the combined MOU and the participation of existing industry bodies and Boards.

We look forward to discussing our submission with you as part of the upcoming consultation process. In the interim should you have any question or require further information please feel to contact me.

Yours sincerely
Cuscal Limited


Kieran McKenna,
Chief Risk Officer

