



Australian Government

Payments system review

From system to ecosystem

June 2021



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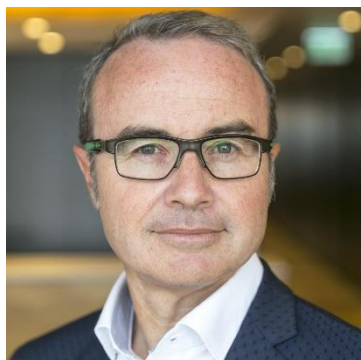
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Foreword



The future is set to fundamentally reshape the way we make payments and the way organisations provide payment services.

Payments are part of everyday life. In purchasing groceries at the supermarket, receiving a salary, or sending money to a friend, we all use a payment system that has kept our money safe, and made transfers of value efficient and effective. But new technologies, business models, participants, and even new forms of money are transforming the old system, forcing it to grow and adapt. The emergence of this new *ecosystem* has already begun, with developments such as digital wallets, buy-now pay-later and cryptocurrencies showing the way. And there will be many more to come.

The evolution of the nature and methods for payments will provide convenience for consumers and opportunities for businesses, but it will also increase complexity and risk. Our regulatory architecture therefore needs to support the payment system through this transformation, so that Australians can enjoy the benefits with confidence.

This review has found that our regulatory architecture needs to progress in three aspects:

- *Enhanced payments leadership.* The Government's role in providing overarching strategic direction, vision and oversight should be enhanced with new obligations and powers to protect the payments system and to establish an inclusive, specific, and dynamic strategic plan for its development.
- *Aligned payments regulation.* The coordination between payments regulators should be strengthened and a functional perspective on payments regulation implemented to improve consistency and certainty in regulatory outcomes and better align with the strategic direction.
- *Simplified payments licensing.* The government should establish a single, integrated licensing framework for payment services that scales up with businesses as they grow, provides clear consumer protection, and facilitates transparency in access to payment systems.

Taking this approach with our regulatory architecture will encourage collaboration between the public sector and private sector participants to plan for new developments, respond to new challenges and improve the way that consumers and businesses are served. It should also:

- enable greater adoption of faster payment services by consumers and governments, broader innovation, and improved engagement with economy-wide payments challenges
- support the creation of new digital infrastructure, allowing our payments system to better integrate with the digital economy and innovations like the consumer data right and digital identification

- assist Australian businesses who participate in payments to offer their services internationally
- ensure Australian customers can safely benefit from the payment services developed overseas.

We cannot delay. It has been more than twenty years since Australia updated its regulatory architecture for payments, and many other countries have already modernised their approaches to the benefit of their consumers and businesses. Although what we have has served us well, it is now time for an upgrade. A world-class digital economy needs a world class payments ecosystem.

It has been a distinct privilege to lead this inquiry. I am very grateful to the many people who took the time to contribute submissions and (virtually) meet with me. Payments can be an arcane area of great complexity and many experts who have invaluable and irreplaceable expertise and experience have devoted considerable time and effort to assisting me with this review. Finally, I want to extend my warmest thanks to the professional, patient, and tireless staff of my secretariat, whose support and hard work made conducting this review possible.

A handwritten signature in black ink, featuring a stylized 'S' and 'F' with the name 'SCOTT' written in capital letters across the middle.

Scott Farrell

Executive summary

What was the Review asked to do?

The Prime Minister, the Hon Scott Morrison MP and the Treasurer, the Hon Josh Frydenberg MP announced on 29 September 2020 the JobMaker Digital Business Plan, which included a suite of measures designed to accelerate Australia's recovery from the economic impacts of the COVID-19 pandemic. A key element of this package included reviewing the regulatory architecture of the Australian payments system.

The payments system plays a key role in the Australian economy. It facilitates Australia's economic activity by providing a safe, efficient and effective way for Australians to exchange money for goods and services. Over time, the payments system has expanded in size and complexity to such an extent that it should be thought of as the payments *ecosystem*. Technology has enabled new methods of payment and has led to the entry of a range of new providers offering new services using traditional payment infrastructures. Consumers are also adopting digital payment methods in record numbers, further accelerating the transformation in the payments ecosystem towards greater digitalisation.

Despite significant changes to the payments ecosystem, the regulatory architecture, which includes a range of regulatory agencies, industry bodies and the government, has remained relatively unchanged for over two decades. It is vital that the regulatory architecture supporting our payments system can continue to instil confidence and protect the security of the system while promoting innovation and competition in a way that enhances the user experience.

The Review was asked to investigate whether the regulatory architecture of the Australian payments system remains fit-for-purpose and responsive to advances in payments technology and changes in consumer demand. This includes investigating whether the regulatory framework adequately accommodates new and innovative services and its effectiveness in facilitating the implementation of government policy.

The Review was also tasked with examining how the regulatory architecture could create more productivity-enhancing innovation and competition, increase the understanding of alternative payment methods, and ensure government agencies are well-placed to take advantage of new payment functionalities to enhance service delivery.

Overview of findings and recommendations

Payments have evolved well beyond the systems that existed at the turn of the new millennium when the current regulatory architecture was established. Participants in the payments ecosystem have grown in number and variety, and incumbents are changing the way they operate in response to evolving consumer preferences and technological developments.

The Review provides findings and recommendations in the following parts:

- **Part 1** describes the nature of payments and the evolution of Australia’s payments system into an ecosystem.
- **Part 2** examines the role of regulation in the context of Australia’s payments ecosystem. It outlines Australia’s current regulatory architecture and explores how the need for regulation has evolved.
- **Part 3** sets out four principles that the regulatory architecture should be built upon and evaluates the current regulatory architecture against them.
- **Part 4** makes recommendations for the regulatory architecture to ensure it is well-positioned to respond to future developments and ensure the payments ecosystem continues to meet the needs of consumers and businesses.
- **Part 5** discusses critical issues in the payments ecosystem and the ways that a modernised regulatory architecture may address them.

Additional information on Review-related matters and background material are dealt with in the appendix.

Part 1 – The payments ecosystem

A payment is a transfer of monetary value between parties. The network of arrangements – methods, procedures, standards, and technological infrastructures – that support the transfer of monetary value is a payment system. Innovation has led to the emergence of new payment services and the growth of new providers and business models offering those services. These payment service providers, together with payment systems and the providers of technology and other support services to them, now form part of a broader payments ecosystem.

Part 2 – Regulating payments

Regulation plays a key role in ensuring the safety and effectiveness of payments. Changes to the way we make payments and the way payment services are provided have presented new risks to the safety, efficiency, and effectiveness of payments. Australia’s regulatory architecture should evolve to address these risks and ensure consumers and businesses can continue to make payments in a safe and efficient way.

Part 3 – Evaluating the regulatory architecture

The regulatory architecture for Australia’s payments ecosystem should be built upon four principles:

- **Service** – the regulatory architecture should serve the consumers, businesses, and governments that rely on the payments ecosystem for their day-to-day activities.

- **Strategy** – the regulatory architecture should ensure the payments ecosystem is agile and strategically positioned so that it delivers for consumers and businesses, while being able to respond to and encourage innovation.
- **Safety** – the regulatory architecture should ensure that payments made by consumers, businesses, and governments will be received by the intended person or entity.
- **Simplicity** – the regulatory architecture should not be unnecessarily complicated for consumers, businesses, and payment service providers to navigate.

The Review has found that the safety and service principles have been met more successfully than the principles of strategy and simplicity. It is evident that the regulatory architecture needs to provide a clear strategic direction for the payments ecosystem and be simplified to encourage innovation and support the uptake of new payment services by consumers and businesses.

Part 4 – Preparing for the future

The Review makes several recommendations to ensure the regulatory architecture is fit-for-purpose for the years to come. These include:

- a greater role for the government, through the Treasurer, in setting the strategic direction of the payments ecosystem in collaboration with regulators and industry
- the development of a strategic plan for the payments ecosystem, supported by the introduction of a payments industry convenor and an enhanced payments function within Treasury
- greater coordination between payments regulators to ensure alignment with the strategic direction
- a flexible way to protect the payments ecosystem, by expanding the scope of the Reserve Bank of Australia’s designation power and introducing a new designation power for the Treasurer, and
- a single, tiered payments licensing framework that replaces the need for providers to obtain multiple authorisations from different regulators, provides clear protections for consumers and businesses, and facilitates transparency in access to payment systems.

Part 5 – Addressing pressing challenges

Payments now perform a vital role in providing consumers and businesses with a way to engage with Australia’s digital economy. The payments ecosystem at large should support Australia’s digital economy and be aligned with broader developments in the data ecosystem, such as the future directions of the Consumer Data Right and digital identity.

Going forward, further consideration needs to be given to how the following interact with the new regulatory architecture:

- digital wallets
- buy-now pay-later arrangements
- central bank digital currencies
- cryptocurrencies (including stablecoins), and
- de-banking.

Summary of recommendations

Recommendation 1 – Consumers and businesses should be at the centre of policy design and implementation

The regulatory architecture should serve the consumers and businesses that rely on the payments ecosystem for their day-to-day activities. A principle of **Service** means considering these users of the payments ecosystem and taking their perspective at every step of policy development and implementation. It also means recognising the important distinctions between the needs of consumers and businesses.

To support outcomes for consumers and businesses, the regulatory architecture should support three other key principles:

- **Strategy** that prepares the ecosystem for future innovation and addresses challenges in a holistic manner
- **Safety** to protect the businesses and consumers that use the payments ecosystem, and
- **Simplicity** to ensure consumers and business can understand their rights and obligations, and to reduce regulatory barriers to entry for new firms offering new services to consumers and businesses.

Recommendation 2 – Leadership of the payments ecosystem

Given the increased complexity of payments issues and the acceleration of financial innovation, enhanced leadership, vision and oversight is needed in the payments ecosystem. The government, through the Treasurer, is best placed to provide this.

Recommendation 3 – A strategic plan for the payments ecosystem

The government should develop a strategic plan for the payments ecosystem in collaboration with regulators, industry, and representatives of consumers and businesses.

The plan should provide certainty on policy priorities and strategic directions for the payments ecosystem, while being adaptable to future challenges and opportunities.

Recommendation 4 – Enhance Treasury’s payments policy function

The Treasury’s payments policy function should be enhanced to support the Treasurer’s enhanced leadership role, including in relation to the strategic plan for the payments ecosystem. Treasury should be strengthened with the necessary skills, capabilities and resources to perform this function effectively.

Recommendation 5 – Establish a payments industry convenor

The Treasurer should appoint a payments industry convenor. Supported by Treasury, the payments industry convenor should collaborate with regulators and industry to develop the strategic plan, identify key issues, coordinate responses, and provide strategic advice to the Treasurer on payments-related matters.

The payments industry convenor should help the Treasury function in facilitating communication and coordination in relation to strategic priorities of the payments ecosystem.

Recommendation 6 – Expand definition of payment system in the PSRA

The RBA should be better positioned to regulate new and emerging payment systems that are part of the changing and growing payments ecosystem.

Expanding the definition of a payment system will broaden the RBA’s ability to designate new and emerging payment systems under the *Payment Systems (Regulation) Act 1998* (PSRA), where it is in the public interest as defined in the PSRA.

Recommendation 7 – Introduce a Ministerial designation power

The Treasurer should have the power to designate payment systems and participants of designated payment systems where it is in the national interest to do so. The designation power includes the power to direct regulators to develop regulatory rules and the power for the Treasurer to give binding directions to operators of, or participants in, payment systems.

Recommendation 8 – Introduce a list of payment functions that require regulation

A defined list of payment functions that require regulation should be developed. This should be used consistently across all payments regulation. The list should be able to change to ensure it remains fit-for-purpose as technological advancements gather pace.

Recommendation 9 – Introduce a single, tiered payments licensing framework

A single, payments licensing framework in line with a defined list of payment functions should be introduced.

There should be separate authorisations for the provision of payments facilitation services and the provision of stored-value facilities, and two tiers of authorisations based on the scale of the activity performed by the payment service provider.

Applicants should be able to apply for this payments licence solely through ASIC, without the need to go through multiple regulators.

ASIC should coordinate on behalf of licence applicants with other relevant regulators. Ongoing obligations under different authorisations under the licence should remain with the regulators responsible for overseeing those obligations.

Recommendation 10 – Mandate the ePayments Code for payments licensees

The ePayments Code should be mandated for all holders of the payments licence. Accordingly, the ePayments Code should be brought into regulation.

Recommendation 11 – The single payments licensing framework should facilitate transparent access to payment systems

The common access requirements for payment systems should form part of the payments licence to facilitate access for licensees to those systems.

The RBA should develop common access requirements in consultation with the operators of payment systems.

Recommendation 12 – Align industry standards

Compliance with technical standards set by authorised industry bodies should be mandatory for payments licence holders. These standards should be aligned with broader payments policy objectives, with the RBA providing authorisation and oversight of industry standard-setting bodies.

Recommendation 13 – Better align regulator approaches and regulatory requirements

The enhanced Treasury function should take steps to improve coordination between payments regulators, and the alignment of payments regulatory requirements, including with respect to AML/CTF issues.

Recommendation 14 – Educating consumers and businesses

Improved payments capability should be a goal of the refresh of the National Financial Capability Strategy.

Regulators should work with industry to coordinate the development of a business education programme in relation to payments, to ensure they understand their options and are empowered with choice.

Recommendation 15 – Leverage the position of government as a large customer of the payments ecosystem to support broader objectives

Governments should use the payment systems that best serve the needs of Australians.

The government should leverage its position as a large user of the payment ecosystem to support broader payments policy objectives.

Part 1: The payments ecosystem

1.1 What is a payment?

A payment is a transfer of monetary value between two or more parties – be they consumers, businesses or governments. Being able to transfer value safely, efficiently and effectively is fundamental to the operation of any economy. Payments underpin everyday commerce between consumers and businesses and enable governments to raise revenue and fund essential services. In addition, payments provide the link through which Australia interacts with the global marketplace. Around 55 million transactions are made in Australia every day, with a value of roughly \$650 billion.¹

Given the key role of payments in facilitating valuable interactions in the economy, an effective payments system can help drive economic growth, attract foreign investment, and be the essential building block of Australia’s digital economy. With so many payments made daily, even relatively small inefficiencies could potentially have significant implications for the broader economy.

The way we make payments has evolved with consumer preferences and innovation in the supply of payment services. Historically, payments were predominantly made by transferring currency such as coins and notes from one entity to another. Over time, proxies for physical currencies such as money orders and cheques were introduced to overcome logistical challenges associated with physically moving large amounts of currency over long distances. With changes in technology and consumer preferences, new forms of payments emerged – ranging from payments over the phone to digital wallets. Consumers and businesses now have access to a range of payment methods that are fast, convenient, secure, and available 24/7. As a result, payments are seamlessly integrated in daily life.

1.2 A network of arrangements

Along with the increased sophistication of payment methods, the arrangements that facilitate payments have also grown in number and complexity to form large, systemic networks that connect consumers and businesses around the world. These networks have grown to such an extent that dedicated bodies and arrangements are needed to facilitate coordination so funds can move safely and efficiently from one party to another.

The network of arrangements – methods, rules and procedures, standards, and technological infrastructures – that support the transfer of monetary value between consumers, businesses and other organisations is often referred to as a payment system. Payment systems are generally invisible to consumers and businesses and form the underlying ‘plumbing’ for the movement of funds. Payment systems enable the authorisation, clearing and settlement of payments, and support a

1 Payments System Board, Annual Report (2020), page 39, available at <https://www.rba.gov.au/publications/annual-reports/psb/2019/pdf/trends-in-payments-clearing-and-settlement-systems.pdf>

range of payment methods that include cash, cheques, credit and debit cards, and electronic fund transfers.

Payment systems can be broadly categorised as cash or non-cash payment systems. Cash payment systems involve a range of rules, arrangements and physical infrastructure for the printing, manufacture, monitoring, transfer, distribution and storage of money in its physical form of coins and notes. A defining feature of cash payment systems is the role of logistics and security in enabling the safe and efficient distribution of cash across the economy.

In contrast, non-cash payment systems involve the electronic movement of funds rather than the physical exchange of money. The movement of monetary value occurs through the exchange of payment instructions and adjustments of account records. The arrangements supporting these transfers – the messaging standards, security protocols and technological infrastructure – all form part of non-cash payment systems.

Payment systems can also be distinguished by the payment they are designed to process – retail or wholesale. Retail payments typically relate to the purchase of goods and services by consumers and businesses. These payments tend to be for relatively low value, but volumes are large. Retail payment systems include the card networks, direct entry, and the New Payments Platform (NPP).

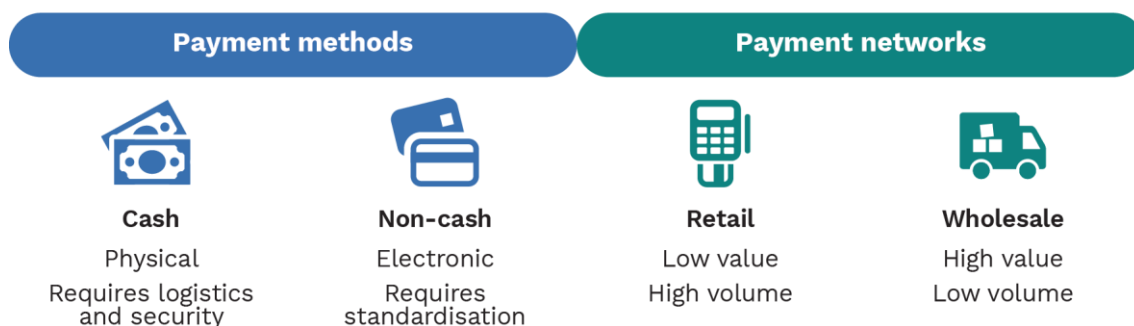
On the other hand, wholesale payments are made between financial institutions to settle securities and foreign exchange trades, and a range of time-critical corporate transactions. There are significantly lower volumes of wholesale payments relative to retail payments, although the value of wholesale payments – on both an individual transaction and aggregate basis – are significantly higher than retail payments. Much of the value of interbank payments is settled through Australia's real-time gross settlement system (known as the Reserve Bank Information and Transfer System or RITS), using funds in financial institutions' exchange settlement accounts (ESAs) at the Reserve Bank of Australia (RBA).

Figure 1.1 provides an overview of the types of payment systems in Australia.

Figure 1.1 – Payment systems

Characteristics of payment system types

The network of arrangements that support the transfer of monetary value between consumers, businesses and other organisations



1.3 From system to ecosystem

Australia's payments system is comprised of many different payment systems – cash and non-cash, retail and wholesale. It has gone through tremendous change over recent decades, driven by shifts in consumer preferences and innovation in the supply of payment services. These new services have been made possible by technological developments and the growth of new providers and business models.

The providers of payment services, together with various payment systems and the providers of technology and other support services to them, now form part of a broader payments ecosystem. The payments ecosystem has become increasingly complex and interconnected.

The following section details the evolution of Australia's payments system to an ecosystem, as driven by changes in consumer preferences and new technology, new providers and business models, and new forms of money.

New technology

New technology has revolutionised the way we make payments. It has made payments more convenient, secure, and timely, and has strengthened linkages between Australia's payments ecosystem and other payments ecosystems around the world.

The evolution of Australia's payments ecosystem has shown that Australians are fast adopters of new payment methods if they are proven to meet their needs. Payments have evolved over recent decades, from the use of paper-based methods such as cash and cheques, to electronic payments facilitated by cards, mobile phones and consumer wearables (such as watches).

For example, digital wallets such as Apple Pay and Google Pay are increasingly used to make contactless payments. These are applications on smartphones and other devices that store electronic

representations of payment cards and can provide for a variety of additional functionalities.² They can be used to make payments online and at the point-of-sale, and often rely on existing card networks to process payments. The growth of mobile payments made through digital wallets has been facilitated by tokenisation and development in near-field communication (NFC) technology that enables a mobile device to communicate with a payment terminal in-store.

Economic activities are also increasingly leveraging digital payment methods, for example through the growth of e-commerce platforms (such as online marketplaces) and digital platforms (such as app-based social media, ride-sharing, and meal delivery services). The growth of these platforms offering services within and across jurisdictions has led to a range of payment innovations that improve the ease of online transactions. Innovations range from payment gateways that facilitate online payments, to in-app payments that obtain customer details once and remove the need for subsequent individual transaction authorisation.

With the development of new payment methods, the safety and security of payments have been enhanced in certain cases. For example, additional security features have been added to protect an individual's payment identity using technologies such as one-time passwords and biometrics. Additionally, the use of digital identification frameworks to offer further security is emerging.

Technological innovation has also enabled faster payments. The NPP, Australia's real-time payment system, was introduced in 2018. The NPP allows consumers and businesses to make and receive fast, secure and data-rich payments through Osko® between bank accounts 24 hours a day. Additional capabilities such as the Mandated Payment Service (now branded as 'PayTo'³) are scheduled to follow over time.⁴

New providers and business models

The provision of innovative payment services has been increasingly driven by new entrants, alongside more traditional participants such as banks. These new providers are often technology-focused businesses (fintechs) that provide a variety of add-on services, driven by shifts in consumer preferences towards online commerce and digital payments.

Most of these new providers still rely on existing payment systems for their service provision, such as the card networks and interbank transfer systems. However, the type of payment services they offer and their value propositions differ. Some providers only facilitate the movement of funds, while others enable both the storage and transfer of funds similar to a bank account. In addition, these new providers vary in their existing customer networks and reliance on traditional participants such as banks for service provision.

2 Digital wallets in overseas jurisdictions have different functionalities compared with those in Australia. In jurisdictions such as China, mobile wallets such as WeChat Pay and Alipay enable customers to both store and transfer monetary value between wallets.

3 See <https://payto.com.au/>

4 For a full description of the features of the NPP and planned timing for the rollout, see the 'NPPA Roadmap', available on their website at <https://nppa.com.au/the-platform/npp-roadmap/>

Fintechs often develop services focused on particular elements of the payments chain, such as online payments processing, digital wallets or point-of-sale payment acceptance technology. This has led to the disintermediation of the payments chain, where multiple specialised providers are involved to complete a payment. For example, payment gateways operate alongside banks and card schemes in facilitating an online payment made through an e-commerce platform.

Large multinational businesses (such as digital platforms or ‘big techs’) are also increasingly involved in the provision of payment services. These businesses can leverage their existing customer bases and connectivity to provide payment services in addition to their traditional offerings. The bundling of payment and non-payment services within these platforms is now raising questions as to whether these providers are payment arrangements that warrant regulation. These disruptions are significant due to the inherent advantages that large multinational businesses have in their digital capability and data resources. According to the RBA’s submission:

With their very large user bases, data sources and superior technology capabilities, big techs have the potential to overcome network effects and make inroads into payments very quickly.⁵

The growth of these businesses has important implications for competition and systemic risk within the payments ecosystem, as noted by Match.com’s submission:

Choice of payment solutions for payments made within mobile apps is currently restricted, despite this being a significant and growing area of economic activity both in Australia and globally. Specifically, the current practices of app store/marketplace operators, namely Apple on iOS devices and Google on Android devices (which account for nearly all of the mobile devices used in Australia), are severely and unreasonably restricting this choice.⁶

New business models are also emerging that challenge the traditional definition of payments domestically and overseas. An example of this is buy-now pay-later (BNPL) arrangements, which enable consumers to make purchases by paying the price in instalments to a BNPL provider. The use of BNPL services by consumers has risen significantly over recent years and these services are increasingly being offered at the point-of-sale, making it a payment option from the consumer’s perspective. Most BNPL providers rely on existing payment systems such as the card networks to process transactions.

New forms of money

Beyond supporting new providers and business models, technology is enabling the emergence of new forms of money. The private sector is developing so called ‘stablecoins’ and central banks around the world are progressing work on central bank digital currencies (CBDCs). While these innovations are not yet significant elements of Australia’s payments ecosystem, they are emerging quickly and unpredictably and may present new challenges for Australia’s regulatory architecture.

Stablecoins are privately issued cryptocurrencies designed to maintain a stable value by being linked to specified assets such as a basket of fiat currencies, as a way of overcoming high levels of volatility

5 RBA submission, page 12.

6 Match submission, page 4.

often associated with cryptocurrencies. Stablecoins that have the potential to scale rapidly and reach large population bases across jurisdictions are known as global stablecoins (GSCs). GSCs could perform a similar function to current forms of money and may disrupt the global payment systems by being faster, cheaper or more inclusive.⁷

In addition to stablecoins, another form of digital currency being actively developed are CBDCs. Central banks around the world are considering the issuance of CBDCs for a variety of reasons: safeguarding access to central bank money given the decline in cash, boosting financial inclusion for unbanked populations, and supporting further innovation and efficiency in the payments ecosystem (especially in cross-border payments).

CBDCs can be broadly categorised as retail or wholesale. Retail CBDCs represent the digital equivalent of cash for use by consumers and businesses, while wholesale CBDCs are only accessible by a limited range of financial institutions and are used to settle large interbank transactions.⁸

Globally, many jurisdictions are considering the launch of a CBDC. The People's Bank of China, Sweden's Riksbank and the Bank of Japan already have retail CBDC pilots underway. The Bank of England and the Bank of Canada are investigating requirements to issue a retail CBDC, should there be a need for such a facility. Domestically, the RBA has explored the policy rationale behind a retail CBDC and has concluded that there is currently not a strong enough public policy case to introduce one.⁹

7 For more information on what constitutes a GSC, see G7 Working Group on Stablecoins, Investigating the impact of global stablecoins (2019), available at <https://www.bis.org/cpmi/publ/d187.pdf>

8 Bank for International Settlements, Ready, steady, go? – Results of the third BIS survey on central bank digital currency (2021), available at <https://www.bis.org/publ/bppdf/bispap114.htm>

9 Tony Richards, Chris Thompson and Cameron Dark, RBA Bulletin, Retail Central Bank Digital Currency: Design Considerations, Rationales and Implications (2020), page 1, available at <https://www.rba.gov.au/publications/bulletin/2020/sep/retail-central-bank-digital-currency-design-considerations-rationales-and-implications.html>

Part 2: Regulating payments

The payments ecosystem is undergoing a process of rapid change, with new technologies, providers, business models, and even new forms of money. These developments present new opportunities and benefits for consumers and businesses that regulation should cater for and enable. They also present new risks if the regulatory architecture is not sufficiently flexible to respond to them.

This Part will examine the reasons for regulating the payments ecosystem and consider how Australia's regulatory architecture has evolved over time.

2.1 Why do we regulate payments?

Regulation in the payments ecosystem exists to ensure that consumers, businesses and governments can send and receive payments safely, efficiently and effectively. Consumers and businesses need to trust that a payment will be received by the intended recipient and have access to, and benefit from, a range of functionalities that meet their needs at low cost.

There are several risks to the safety, efficiency, and effectiveness of payments. These risks arise because of the interconnected nature of participants within the payments ecosystem, and the increasing complexity involved in the supply of payment services.

The following sections outline these risks and the role regulation can perform in managing them.

Ensuring the safety of payments

System-wide safety

Payment systems connect financial institutions, payment service providers (PSPs), and the consumers and businesses that use them. As a result, payment systems form the channel through which financial disruption can be transmitted across the broader financial system and economy. The risk of this happening is known as systemic risk.

More specifically, systemic risk refers to the risk that a failure by one participant to meet its obligations, or a disruption in the system itself, could result in the inability of other system participants or financial institutions in other parts of the financial system to meet their obligations.¹⁰ The failure of one participant to meet their obligations can therefore affect the stability of the whole system, such as by causing widespread liquidity or credit problems that lead to a general loss of confidence.

With the evolution in technology, operational risk is becoming a concern for payment systems. Operational risk is the risk that operational factors such as technical malfunctions or operational mistakes could cause or exacerbate the risk that payments do not settle as required. Non-cash

¹⁰ Bank of International Settlements, Core principles for systemically important payment systems (2000), available at <https://www.bis.org/cpmi/publ/d34e.pdf>

payment systems rely on the exchange of payment instructions to facilitate a transfer, and this quality makes them susceptible to technological outages or cyber risk.

Given the importance of the role played by the payments ecosystem, there is a clear public interest in ensuring that core functionalities within the ecosystem are safely run and participants that could cause risks to safety are appropriately regulated.

Individual-level safety

Payment systems are largely invisible from the perspective of consumers and businesses, and the technology and business models involved in the facilitation of payments are complex. Consumers and businesses do not always have the information readily available to reliably assess all the risks associated with a particular payment service or PSPs. This information asymmetry can lead to consumers and businesses being vulnerable to financial losses arising from payment fraud and scams, privacy breaches, and insolvency of, or misconduct by, the PSP.

As noted in the Financial System Inquiry of 1997 (the Wallis Review):

Those who use [payments] rarely have the time, motivation or resources to assess the risks, and any breach would have potentially highly adverse consequences for the efficient conduct of commerce in the whole economy.¹¹

Regulation ensures that consumers and businesses are protected from harm and have easy access to remedies if risks materialise.

Ensuring the efficiency and effectiveness of payments

Balancing costs between consumers and businesses

Retail payment systems bring together consumers and businesses that have different needs and preferences. These payment systems are sometimes referred to as ‘two-sided markets’, where the actions of one side of the market (e.g. consumers) affect the actions of the other side of the market (e.g. businesses):

- the value of the payment system to consumers increases with the number of businesses they can reach in the system, and
- the value of the payment system to businesses increases with the number of consumers they can reach in the system.

A particular challenge that arises in two-sided markets is how to balance the relative costs and benefits associated with a payment system between these two groups. What makes a payment method attractive for consumers includes low fees, rewards, and other types of bonuses such as added travel insurance. Consumers who do not like one product can switch to another similar product quickly due to the number of substitutes available in the market.

11 Financial System Inquiry (1997), page 192, available at <https://treasury.gov.au/publication/p1996-fsi-fr>

In contrast, businesses are incentivised to accept as many different types of payment methods as possible. A higher price per transaction for a particular payment method may not be enough to force a business to stop accepting the payment method, because that could lead to a loss of sales to competitors. The result is that most businesses (and small businesses in particular) have no recourse but to be 'price takers' in the market for payment services.

In these circumstances, regulation may be required to ensure that businesses face a fair price for payment services. Without it, the price signals and levels of competition may not be sufficient to generate an efficient or fair outcome for businesses.

Supporting innovation

Network effects

The payments ecosystem comprises a range of financial institutions and PSPs that interact to facilitate a payment. These interactions between PSPs and financial institutions enable consumers to transact with businesses across a range of interoperable payment systems. This linking of consumers and businesses across the payments ecosystem creates a large network effect, where providing payment services to a subset of consumers and businesses can result in PSPs capturing additional consumers and businesses beyond that subset.

The dynamics of competition between PSPs are affected by this network effect. The initial establishment of a payment system requires substantial upfront investment to set up infrastructure and attract customers. As the volume of transactions over a payment system increases over time, the average cost per transaction for the system providers – and consequently for consumers and businesses – should fall. This characteristic is often referred to as economies of scale and can lead to a concentration of market power among a small number of system providers. To put it simply, payment systems are hard to establish, but system providers have significant market power once they are established.

The network effect and the economies of scale involved in the supply of payment services have implications for innovation by PSPs. Innovation can broadly be categorised as firm-level (or proprietary) innovation or system-wide innovation, with each requiring a different set of incentives.

Firm-level innovation

Providers of payment services generally have an incentive to innovate with new products, services and processes in a competitive market. Innovation allows PSPs to increase their revenue or market share by offering new services to consumers and businesses.

However, innovation by new entrants can be affected by the need to cooperate with incumbents to obtain access to payment systems. These incumbents may offer competing payment services and may not have the incentive to cooperate, leading to high barriers to entry and low competitive pressure across the payment system.

Regulation may be required to enable more competition by providing fair and transparent access to payment systems, and by ensuring anti-competitive behaviours are appropriately addressed.

System-wide innovation

Cooperation between competing PSPs is required for system-wide improvements to payment systems (such as establishing a new platform or moving to a new standard). Cooperation can be challenging, because PSPs may have different investment cycles, value propositions, and customer bases.

Improvements to payment systems require significant investments, but benefits of the investment can be reaped by the whole system. This means that PSPs have an incentive to not contribute to the upfront cost but still benefit from system-wide improvements.

Failure to cooperate leads to a degree of inertia in payment systems, where existing infrastructure continues to operate well beyond its functional use-by date even though all PSPs in the ecosystem would benefit from its upgrade. In these instances, there is a role for regulatory intervention to coordinate system-wide improvements that would benefit industry participants, consumers and businesses. This point was expressed by the RBA:

Inertia and coordination problems can hold back systemic innovation in networks such as payments. Overcoming this relies on a combination of factors: having private incentives to innovate, a regulatory environment that promotes competition and access, effective industry self-governance mechanisms, widely accepted strategic objectives that act as a focal point for collective action, and pressure on the payments industry from regulators and the government to cooperate in the public interest.¹²

2.2 Australia's regulatory architecture

Historically, the regulatory architecture in Australia has sought to address the concerns discussed above to ensure the safety, efficiency, and effectiveness of payments. It will need to ensure that these fundamental concerns continue to be addressed as the payments ecosystem continues to evolve.

The following sections provide a background to Australia's current regulatory architecture and discuss how the need for regulation has evolved.

Wallis reforms

Australia's current regulatory architecture is largely reflective of the reforms introduced following the 1997 Wallis Review. In some ways, the increasing complexity of the payments ecosystem was observable decades ago as the business of payments was starting to separate from the business of banking. Banks were the main providers of payment services at the time and card networks were emerging as facilitators of payments.

12 RBA, submission to the Productivity Commission Inquiry into Competition in the Australian Financial System (2017), available at https://www.pc.gov.au/__data/assets/pdf_file/0008/221876/sub029-financial-system.pdf

Observing an ‘unbundling’ of services traditionally provided by banks, Wallis recommended a functional approach to financial services regulation. A new framework for the regulatory oversight of payment systems was introduced following the Wallis Review.

The RBA gained regulatory powers to promote efficiency, competition and stability in the payments system, and a separate Payments System Board (PSB) was established within the RBA to determine the RBA’s payments system policy. Responsibility for the prudential regulation of authorised deposit-taking institutions (ADIs) shifted from the RBA to the Australian Prudential Regulation Authority (APRA), in part reflecting the separation between banking and payments. Wallis observed that the position of banks as main providers of payment services added to the risk that a bank failure might disrupt the integrity of the payments system, and that prudential regulation alone cannot prevent systemic instability.

While payments were starting to be considered as distinct from banking from a prudential regulation perspective, payment systems were nonetheless seen as critical utilities that required strong oversight. Consistent with this, the RBA was given powers to designate payment systems, and set access regimes and standards for participants within designated payment systems.

Wallis also recommended expanding the responsibilities and powers of the Australian Securities Commission (ASC). The ASC was renamed the Australian Securities and Investments Commission (ASIC), with a mandate for ensuring market integrity and consumer protection across the financial system.

Wallis further observed that the Australian Competition and Consumer Commission (ACCC) should continue to administer competition laws for the financial system. The ACCC remained the sole competition policy arbiter for mergers and acquisitions in the sector, while the ACCC’s consumer protection role for financial services was moved to ASIC. In the payments sector, the ACCC and the PSB were recommended to monitor the fees charged on credit and debit cards, and the ACCC was given the responsibility of ensuring the rules of card schemes were not overly restrictive.

The Wallis Review did not make any recommendations relating to the anti-money laundering laws administered by the Australian Transaction Reports and Analysis Centre (AUSTRAC). In 2006, AUSTRAC’s powers were extended to include monitoring terrorism financing and listed terrorist organisations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

These governance arrangements have largely remained the same to present day. More details on the mandates of the regulators are provided in Box 2.1 below.

Box 2.1 – Regulators in the payments ecosystem ¹³

RBA: The RBA is Australia’s primary payments system regulator, with broad powers to impose access regimes and set standards for participants within payment systems that it designates. The RBA plays several roles in the payments system, as a regulator, infrastructure provider, provider of banking services to the federal government, and issuer of Australia’s banknotes.

ACCC: The ACCC’s role is to enforce compliance with the *Competition and Consumer Act 2010* (CCA), including the competition provisions of the CCA with respect to payments. It does so in all instances, except where the RBA has designated and imposed a standard or access regime on a designated payment system. The ACCC also considers applications for authorising arrangements in the payments system that could be contrary to competition law.

APRA: APRA’s mandate is to establish and enforce prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions that it supervises are met within a stable, efficient and competitive financial system.

ASIC: ASIC administers regulation intended to ensure market integrity and consumer protection across the financial system, including for payment products. The functions of ASIC include the licensing of financial service providers, including non-cash payment (NCP) facility providers, and oversight of market and clearing and settlement facility licensees. ASIC also administers the ePayments Code, which is currently a voluntary code that applies to consumer electronic payment transactions.

AUSTRAC: AUSTRAC is Australia’s Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regulator and has powers to regulate designated financial services and impose reporting requirements on entities in the financial system that provide those services.

The need for regulation to evolve

Over the past two decades, Australia’s payments system has evolved into a payments ecosystem. In a way, the unbundling of services that was seen in the banking sector two decades ago is now taking place in the payments ecosystem.

Today’s regulatory architecture was designed to accommodate the technology, providers and business models of the payments system more than two decades ago. Back then, banks were the main providers of payment services and card networks played a role in facilitating payments. Prudential regulation was relied on as an efficient means of ensuring the safety of both banking and payments, and emphasis was placed on regulating payments as systems rather than services. There was no separation between the ownership of a payments system (i.e. the ‘plumbing’ or the ‘rails’)

¹³ This table reflects the key regulators for the payments ecosystem. Other regulators and oversight entities include the Department of Foreign Affairs and Trade (DFAT) and the Office of the Australian Commissioner (OAIC).

and the ability to facilitate a payment by providing services that sit 'on top' of the system. Providers (such as the card schemes) had to establish their own systems to compete and the RBA was given powers to set access regimes for payment systems.

While the reasons for regulation – to ensure the safety, efficiency, and effectiveness of payments – have not changed over time, the sources of risks have evolved, necessitating the need for regulation to respond. The safety, efficiency, and effectiveness of payments can now be affected by providers that are not within the traditional payments industry. The disintermediation of the payments process by fintechs has changed the competitive dynamics within the payments ecosystem. It has led to more layers of competition and new issues relating to access to payment systems. The diverse range of new PSPs is also making system-wide cooperation more difficult. The shift in the source of risks within the payments ecosystem warrant a change in the regulatory approach to ensure payments remain safe, efficient and effective for consumers and businesses.

The growing complexity involved in payments has challenged regulatory frameworks around the world. Countries such as the United Kingdom and Singapore have responded by making changes to their regulatory architecture. These changes included: adopting a functional approach to regulation, adjusting the regulatory perimeter to recognise and encourage innovative business models and products/services, streamlining licensing requirements for PSPs, and introducing new tools that allow regulators to protect consumers and businesses and promote competition more flexibly.

The following Part will evaluate Australia's current regulatory architecture to determine whether it remains fit-for-purpose in light of significant changes in the payments ecosystem.

Part 3: Evaluating the regulatory architecture

This Part considers the performance of the current regulatory architecture in Australia. It is structured as follows:

- Part 3.1 sets out principles for the regulatory architecture, discusses who should deliver them, and provides a general assessment on whether the principles have been achieved.
- Part 3.2 evaluates how the regulatory architecture is performing against these principles, in light of stakeholder views and the Review's assessment of the key entities involved in the regulation of the payments ecosystem.

3.1 Principles for the regulatory architecture

Taking stakeholder views into consideration, the Review considers that the regulatory architecture should be assessed against four key principles – service, strategy, safety, and simplicity. These four principles inform the changes required to ensure the regulatory architecture remains fit-for-purpose to respond to rapid developments in consumer preferences and technological innovations.

Service

The regulatory architecture should serve the consumers, businesses, and governments that rely on the payments ecosystem for their day-to-day activities. The principle of service means placing the needs of consumers and businesses at the centre of policy development and implementation.

The idea that the payments ecosystem should serve its users is not new. The RBA identified in their 2012 Strategic Review of Innovation in the Payments System some key attributes that consumers and businesses value from a payment system.¹⁴ These include: timeliness, accessibility, ease of use, ability to integrate with other processes, safety, reliability, and low and transparent prices. Most of these attributes remain relevant today and other attributes have gained importance, such as the ability to leverage payments data for more informed decision-making.

In delivering on this service principle, regulation should also acknowledge that not all users of payments are the same. While some attributes may be favoured by consumers, businesses, and governments alike – such as fast, safe, low-cost and easy-to-use – some users may prioritise some attributes over others based on the nature of their interaction with the payments ecosystem and the regulatory settings in place. For example:

- **Consumers** rely on the payments ecosystem to purchase goods and services. The attribute of accessibility has become increasingly important for consumers given the significant uptake of digital payments over recent years. As the payments ecosystem continues to evolve, it is important that the transition away from legacy systems is managed in an orderly manner. The vulnerable and those without access to digital payment technologies should have suitable

14 RBA, Strategic Review of Innovation in the Payments System (2012), available at <https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/past-regulatory-reviews/strategic-review-of-innovation-in-the-payments-system/>

alternative payment methods that they can rely on, so they are not 'locked out' of the broader economy. For consumers seeking more control over their information, the payments ecosystem should facilitate transparent access to individual consumer data to empower their choices through the Consumer Data Right.

- **Businesses** rely on the payments ecosystem to receive funds for their goods and services and to pay suppliers. Reliability is critical for businesses given the impacts that system outages or terminal failures can have on their ability to serve consumers. Ease-of-use and integration with other processes is also critical for businesses so they can better service their customers with seamless payment experiences. Smaller businesses tend to face higher transaction costs (for example, in the form of merchant service fees) compared with large businesses, but both would consider low-cost payment options as critical to their business. Further, businesses want to receive payments quickly, and the safety of online payments is a key consideration for businesses given the migration of payments fraud and scams online.
- **Governments** at the local, state, and federal levels rely on payment systems for receiving taxation revenue and to make welfare payments (including disaster payments in times of crisis). Safety, reliability, and timeliness are particularly important for some bulk payments, particularly in times of crises such as natural disasters. Governments also want to ensure that they are able to reach all recipients of government payments and would consider universal accessibility as key to their role in supporting the community.

Strategy

The regulatory architecture needs to ensure the payments ecosystem is agile and strategically positioned for the benefit of consumers and businesses, while being able to respond to and encourage innovation.

To deliver on this principle, the regulatory architecture requires leadership that brings regulators and industry participants together and provides strategic direction towards desired outcomes. Enhanced leadership is now essential compared with earlier times due to the growing complexity driven by the pace of change that is occurring both within the payments ecosystem and in broader developments in the economy. The strategy principle therefore emphasises the need for effective planning and coordination amongst regulators and industry participants to ensure Australia can capitalise on opportunities and proactively manage risks.

A strategic approach should also be supported by the development of a strategic plan with the involvement of key public and private sector bodies. The strategic plan should be used to clarify the regulatory architecture's approach to new developments and create certainty for industry investment. The strategic plan should be updated regularly and revised as needed to ensure relevance with changing circumstances.

Safety

A key component of the safety principle is the protection of the consumers and businesses that use the payments ecosystem. The regulatory architecture needs to minimise instances of fraud, scams, and mistaken payments and have clear arrangements in place to provide for redress if those

incidents occur. Consumers and businesses should be aware of the risks associated with the payment services provided to them, who to engage with when they fall victim to an error or fraud, and have redress mechanisms that are available and effective.

Safety also means having a regulatory architecture that protects the economy, businesses and consumers from systemic risks. The payments ecosystem should be regulated in a manner that preserves the stability and resilience of the system as a whole, and ensures contingencies are in place when outages occur.

Safety is particularly important in the context of our increased reliance on digital forms of payments. Payments are increasingly integrated into consumers' daily lives and business processes, and the seamlessness of payment transactions brings both convenience and risk. Online transactions and data-rich payments provide significant benefits to consumers and businesses but come with increasing susceptibility to cyberattacks and privacy breaches. To ensure consumers and businesses maintain trust in the payments ecosystem, the regulatory architecture will need to be able to respond effectively to these emerging challenges.

Simplicity

While the regulatory architecture can be complex, it should not be unnecessarily complicated for consumers, businesses, and PSPs. The regulatory framework should be simple in design and operation. It should be easy for consumers and businesses to understand their rights. Similarly, the regulatory obligations for PSPs should be clear and transparent.

Complicated legislative frameworks create regulatory gaps that interfere with achieving regulatory objectives. Simplifying these frameworks would support a more level playing field as new entrants are able to obtain the protection and reputational benefits from authorisation and compete on the same terms as incumbents.

PSPs should be able to obtain authorisation for their business activities in a straight-forward manner with clarity around their legal obligations. A simple regulatory framework can empower PSPs to more readily enter markets, invest and innovate, and offer new products and services.

Regulators should actively seek harmonisation of related settings, rules and laws to ensure the obligations placed on entities are consistent. Having consistent and aligned regulatory settings will reduce barriers to entry for new entrants. If the regulatory burden is too high – for example, if providers need to provide the same information in different formats to multiple regulators, or comply with apparently contradictory requirements – providers may be less willing to offer valuable products and services in the ecosystem.

Recommendation 1 – Consumers and businesses should be at the centre of policy design and implementation

The regulatory architecture should serve the consumers and businesses that rely on the payments ecosystem for their day-to-day activities. A principle of **Service** means considering these users of the payments ecosystem and taking their perspective at every step of policy development and implementation. It also means recognising the important distinctions between the needs of consumers and businesses.

To support outcomes for consumers and businesses, the regulatory architecture should support three other key principles:

- **Strategy** that prepares the ecosystem for future innovation and addresses challenges in a holistic manner,
- **Safety** to protect the businesses and consumers that use the payments ecosystem, and
- **Simplicity** to ensure consumers and business can understand their rights and obligations, and to reduce regulatory barriers to entry for new firms offering new services to consumers and businesses.

Have the four principles been achieved?

Overall, the Review has heard that Australia’s regulatory architecture has historically performed well in ensuring the safety of the payments ecosystem. Regulators have strong expertise in financial stability, competition, and consumer protection, and Australia has a stable, safe and reliable payments ecosystem. As noted by the NPPA:

Overall, the current regulatory architecture is working well and meeting the core objectives of ensuring safety, security and stability in the payments system whilst also working in the public interest to promote efficiency and competition.¹⁵

Industry bodies, including the Australian Payments Network (AusPayNet), were also noted as performing an effective coordination role in the context of setting standards that preserve the smooth functioning of the payments ecosystem. As expressed by ANZ:

Industry self-regulation has been an effective element of the co-regulatory model in the Australian payments system. It has been advantageous to the operation of the payments system as the system requires a level of cooperation between industry participants. An industry self-regulating organisation, such as AusPayNet, can develop and pursue common objectives (in accordance with competition law constraints).¹⁶

The regulatory architecture has also performed reasonably well in delivering the service principle to many Australians. Users generally have access to fast, low-cost, and convenient payment methods. However, some users have experienced challenges. For example, small businesses typically face

15 NPPA submission, page 1.

16 ANZ submission, page 5.

higher merchant service fees, and vulnerable consumers or those residing in remote areas do not always have easy access to payment services. Some government departments also face hurdles in implementing fast payments and additional functionalities, such as payments with more data attached that enhances functionalities for governments and recipients.

In contrast, stakeholders have noted that the regulatory architecture has not gone far enough in delivering the principles of strategy and simplicity.

On strategy, while some industry bodies such as AusPayNet have strategic plans, there is no shared vision for the payments ecosystem that includes the broader regulatory architecture of the regulators, industry participants, and the government. Delivering on the principle of strategy points to the need for key elements of the regulatory architecture to be well integrated.

On simplicity, stakeholders outlined the complexity of authorisation and licensing processes and the time and resources required to engage with multiple regulators to meet their regulatory obligations. Some stakeholders noted that regulatory frameworks are not keeping up with rapid developments in technology and the emergence of new PSPs in the ecosystem, with the result that they face ambiguities in how they need to be authorised to meet their regulatory obligations. This has resulted in unnecessary complexity for new entrants that do not fit under outdated regulatory definitions. The Council of Small Business Organisations Australia (COSBOA) noted that:

[The regulatory architecture] is too complex. Designed prior to digital agility it's been patched and added to, increasing complexity and duplication, rather than restructured to deal with today's digital flow of finances. It also lacks small business representation.¹⁷

The need for strategy and simplicity is crucial now that the payments ecosystem is moving rapidly towards greater digitisation. The digitisation of payments is breaking up traditional supply chains and is introducing a range of new PSPs which bring risks and opportunities. The regulatory architecture needs to respond to these developments through a comprehensive vision for the future of regulatory intervention. It also needs to modernise and simplify requirements for new and emerging PSPs to meet regulatory requirements.

Who should be delivering on these principles?

It is not envisaged that any single entity can provide all the elements of strategy, simplicity, service and safety required for the payments ecosystem. Instead, individual entities should collectively contribute to an architecture that can meet these principles.

The government is uniquely placed to provide strategy and holistic leadership for the system, given its roles and powers in setting system-wide policy. Similarly, all regulators should ensure the safety of the payments ecosystem, but some regulators are better placed in delivering on specific aspects of this principle. For example, the safety principle arises in the context of prudential stability, consumer protection and cyber security, with each of these objectives resting with different regulators.

17 COSBOA submission, page 5.

Industry bodies are key partners to regulators and the government in delivering on these principles through implementing standards, guiding industry participants on regulatory issues, and influencing discussions on strategic matters.

Delivery on these principles by individual entities is not a substitute for the regulatory architecture delivering on them together through policy consistency, communication, and effective coordination across the architecture generally. This collective responsibility is critical given that many of the challenges and opportunities within the payments ecosystem are likely to entail cross-cutting regulatory issues or even extend beyond the perimeter of the regulatory architecture.

3.2 Evaluating the regulatory architecture

This section discusses the roles, stakeholder views and the Review's assessment of all the key regulatory bodies involved in the regulatory architecture and the extent to which the architecture has delivered on the four principles of service, strategy, safety, and simplicity. The following sections are structured into three key groupings within the regulatory architecture:

- regulators
- industry bodies, and
- the government.

Regulators

The RBA and the PSB

The RBA is the principal regulator of the Australian payments system. The RBA's payments system policy is determined by the PSB, which sits within the RBA. The PSB has a general duty to direct the RBA's payments system policy to the greatest advantage of the people of Australia.¹⁸ It also has a specific duty to ensure the RBA exercises its powers under the *Reserve Bank Act 1959*, *Payment Systems (Regulation) Act 1998* (PSRA), *Payment Systems and Netting Act 1998* and the *Cheques Act 1986* in a way that best contributes to:

- controlling risk in the financial system
- promoting the efficiency of the payments system, and
- promoting competition in the market for payment services, consistent with the overall stability of the financial system.

18 *Reserve Bank Act 1959*, s 10B(3)(a).

The RBA has a range of powers to give effect to the payments system policy set by the PSB, including the ability to:

- designate a payment system as being subject to its regulation
- impose an access regime on participants in that system
- determine standards to be complied with by participants in that system
- give directions to comply with those regimes or standards, and
- arbitrate disputes between participants in that system.

The RBA also has regulatory responsibility for non-ADI purchased payment facility (PPF) providers – i.e. those that hold value not widely available or redeemable in Australian currency. To date, the RBA has not authorised any PPF providers. The RBA has granted class exemptions for certain low-value and limited purpose facilities.¹⁹

Other roles played by the RBA in the payments system:

- owning and operating key payments infrastructure such as RITS. RITS is Australia’s primary high-value settlement system, which is used by banks and other approved institutions to settle payment obligations on a real-time gross settlement basis between the RBA’s ESAs.
- providing banking services to the Australian government. The RBA works with government agencies including Services Australia and the Australian Taxation Office to transfer money between government accounts and make payments.
- representing Australia at key international meetings on payments-related matters.

Consistent with the intent of the PSRA, the RBA undertakes a co-regulatory approach to regulation, with a preference for self-regulation by industry. As noted in the Explanatory Memorandum to the PSRA:

The philosophy of the Bill is, however, co-regulatory. Industry will continue to operate by self-regulation in so far as such regulation promotes an efficient, competitive, and stable payments system.²⁰

As a result, the RBA prefers to encourage industry towards solutions that are in the public interest before employing its formal regulatory powers. Formal regulation is only utilised when it has become clear that an industry-driven solution is unlikely to lead to a satisfactory outcome in the public interest.

19 The CFR’s Review on Stored-value Facilities makes recommendations to move the RBA’s responsibility for PPFs to other regulators and create a new regulatory framework for stored-value facilities to replace the current PPF regime. This is discussed further under the evaluation of APRA.

20 PSRA, Explanatory Memorandum, page 2.

Issues and stakeholder views

On the RBA's powers

Stakeholders observed that the PSB is delivering on its mandate of ensuring safety and stability in the payments ecosystem, and the RBA has developed strong expertise in those areas over many years. However, some noted that the scope of the RBA's powers with respect to designation is not sufficiently broad to capture new and rapid developments within the ecosystem. As noted by eftpos Australia in their submission:

At a minimum, the PSRA should empower the RBA to function more proactively to achieve regulatory outcomes in a timely way and to cover a wider set of participants in the payments ecosystem.²¹

The RBA can only designate 'payment systems', but stakeholders have noted that the payments ecosystem is broader than what is captured under this current definition in the PSRA due to new entrants and innovations in products and services.²² For example, it may not capture services that act as intermediaries such as digital wallets, nor is it likely to capture developments that combine a range of technologies and services. As noted by AusPayNet:

A wide range of participants have jointly evolved world class products and services that leverage multiple payment systems, technology and data to maximise benefit to customers. Given this transition, regulation based on the construct of individual payment systems and narrow definitions of payment system participants may no longer be optimal.²³

According to stakeholders, such limitations on the scope of the RBA's designation power has resulted in an uneven playing field between new entrants and incumbents. The RBA noted in their submission that there is merit in establishing arrangements that would allow all entities that play a material role in facilitating payments to be regulated, where doing so would promote competition and efficiency and control risk in the payments system.²⁴ The RBA has also suggested that its powers could also be expanded to setting standards to reduce the number and severity of system outages, which have increased in recent years, including cybersecurity standards.²⁵

Some stakeholders noted that a more nuanced policy tool was needed between the RBA's soft power and its designation power to ensure financial stability, and promote efficiency and competition in the payments ecosystem.

On the RBA's approach to regulation

Stakeholders had mixed views about the RBA's approach to regulation. Many stakeholders appreciate the careful, evidence-based and methodical approach the RBA takes towards exercising

21 See eftpos Australia submission.

22 Australian Government, Payment Systems (Regulation) Bill 1998, section 7, available at [https://www.legislation.gov.au/Details/C2016C00591#:~:text=\(1\)%20This%20Act%20provides%20for,stored%20value%20of%20such%20facilities.](https://www.legislation.gov.au/Details/C2016C00591#:~:text=(1)%20This%20Act%20provides%20for,stored%20value%20of%20such%20facilities.)

23 AusPayNet submission, page 2.

24 See RBA submission.

25 See RBA submission.

its designation power. The RBA engages well with stakeholders, and its consistent approach to regulation has supported a stable regulatory environment for industry.

However, some stakeholders observed that the RBA has been reluctant to regulate and relied too much on its powers of influence. It was noted that the interventionist nature of the designation power often means that the RBA relies mainly on its powers of influence to achieve its outcomes. The Emerging Payments Association of Asia suggested that more nuance may be required between these two powers to ensure that appropriate regulatory tools are available:

The PSB or a future payments regulator should be provided with additional powers so that options for intervention prior to designation can be properly explored.²⁶

Some have directly linked a lack of formal regulatory action by the RBA to adverse outcomes for businesses, for example on the issue of least-cost routing or on the regulation of BNPL arrangements.²⁷ Some stakeholders also criticised the RBA for not placing enough pressure on industry to progress the roll out of new system-wide innovations such as the NPP, leading to a slower implementation.

In contrast, some stakeholders felt the RBA took an overly strong regulatory approach to address specific issues, such as by capping interchange fees. They observed that the PSB should more carefully consider the importance of ensuring payment system providers have an incentive to innovate by getting a return on their products and services.²⁸

The RBA notes in their submission that there are pros and cons to both formal regulation and informal encouragement, and it is not clear that regulation would in all circumstances lead to the best outcome. The RBA notes that, in the case of the rollout of the NPP, considering the backlog of work imposed on the banks:

If the Reserve Bank were to have pushed harder for the banks to develop new capabilities, it is not clear that they would have been completed much faster, and it could have created additional risks and come at the expense of other work that may have been a higher priority for other stakeholders.²⁹

Finally, stakeholders observed that the regularity of the quarterly PSB meetings and the subsequent publication of minutes, provides useful information on the PSB's thinking and policy direction. Others, however, pointed to the relatively fixed schedule of meetings and the difficulty of adding issues to the agenda that is determined by the PSB. Some noted that the overall quarterly meeting structure is not conducive to flexible decision-making and deprives the PSB of an ability to respond quickly to issues as they arise.

26 See Emerging Payments Association Asia submission.

27 See ACCI, ARA, and Salvation Army submissions.

28 See for example Mastercard submission, page 9.

29 RBA submission, page 17.

Assessment

The Review considers that the RBA and the PSB play a critical role in the payments ecosystem in ensuring safety, competition and efficiency of the payments ecosystem. They have done so effectively in line with the mandate and powers they have been provided and have deep expertise in the area. The Review considers it critical that the RBA maintains a central role in the regulation of the payments system and sees no reason why the PSB should not continue to maintain its regulatory functions and responsibility for the RBA's payments system policy.

On the RBA's powers

The Review considers there is a case for updating the scope of the RBA's designation power through modernising the definition of a payment system to ensure the RBA is able to continue to undertake its oversight of payment systems effectively, particularly given the expanding payments ecosystem. This should give the RBA more clarity on the circumstances where the designation powers could be used in the public interest as defined in the RBA's empowering legislation pertaining to payments policy.

There is also merit in considering extending the RBA's powers to set standards to address system outages, which are becoming increasingly common. The New South Wales Small Business Commissioner noted similar concerns and pointed to the need for the development and establishment of a service guarantee to address system outage issues.³⁰

However, as the payments ecosystem grows in complexity with the emergence of complex, cross-cutting, issues, even a broader definition of a payment system may not result in adequate coverage. For example, the RBA may not have the authority to engage with or direct other regulators that also have responsibilities for the payments ecosystem.

This is particularly an issue when developments affecting the payments ecosystem arise from sources beyond the regulatory scope of the RBA. For example, the emergence of BNPL and the entry into payments by technology companies are two developments where the scope of the RBA's powers has not been tested. Another example is the case where payments issues raise national security concerns or require negotiations from an international perspective. On such occasions, the RBA is unlikely to have sufficient authority to act.

To ensure coverage of new and emerging issues in the payments ecosystem and to address potential regulatory gaps formed by these developments, the Review considers that a broader designation power should be vested in the Treasurer. This power should enable the Treasurer to designate on more extensive grounds in line with their broader authority and with the ability to consider the broader national interest.

30 New South Wales Small Business Commissioner submission, page 1.

On the RBA's approach to regulation

The Review agrees with stakeholder views that there is a gap between the RBA's designation powers and their powers of influence and encouragement. The designation powers were intended in the legislation to be a reserve power that was used when the co-regulatory model and industry actions did not lead to a satisfactory outcome.³¹ To this extent, the RBA's approach to the use of the designation power has been appropriate and measured.

On the other hand, the powers of influence and encouragement may not always lead to an optimal outcome and this is observed by stakeholders in the example of issues such as least-cost routing.

The Review supports the view that between these two powers, a more fit-for-purpose licensing and authorisation process for payments service providers should be implemented to address the growing fintech and payment services market. The RBA noted in their submission that non-ADI PSPs are playing a bigger role in the payments ecosystem and there is merit in considering whether a tailored licensing and oversight regime for these entities could help to promote access and competition while appropriately controlling for financial stability risk.³²

ASIC

ASIC's role in regulating the payments ecosystem includes the licensing of financial service providers (including NCP facility providers), overseeing the ePayments Code to ensure consumer protection for payments, and administering the enhanced regulatory sandbox.

PSPs require an Australian financial services licence (AFSL) from ASIC to provide a NCP facility, which is a 'financial product' under the *Corporations Act 2001*.³³

ASIC also administers the ePayments Code, which is currently a voluntary code that applies to consumer electronic payment transactions, including ATM, eftpos and credit card transactions, online payments, internet and mobile banking, and BPAY. ASIC is currently reviewing the ePayments Code to ensure it continues to be effective and relevant to consumers and Code subscribers and has released a second consultation paper with a number of key proposed areas for reform.³⁴

Finally, ASIC administers the enhanced regulatory sandbox, which aims to facilitate financial innovation by allowing individuals and businesses to test certain innovative financial services or credit activities without first obtaining an AFSL or Australian credit licence (ACL). An independent review into the enhanced regulatory sandbox is expected to be conducted later this year.

31 See the Explanatory Memorandum to the PSRA.

32 RBA submission, page 21.

33 Corporations Act, section 763A.

34 The second consultation paper was released in May 2021 and is available here [CP 341 Review of the ePayments Code: Further consultation | ASIC – Australian Securities and Investments Commission](https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-310-review-of-the-e-Payments-code-scope-of-the-review/). The first consultation paper was released in 2019 and is available here: <https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-310-review-of-the-e-Payments-code-scope-of-the-review/>

Issues and stakeholder views

On the NCP facility authorisation

Stakeholders noted that the exemptions and exclusions in relation to the NCP facility authorisation generate confusion regarding the scope of its application. The definition that captures NCP facilities as financial products is very wide, and has led to the capture of services that were not intended for regulation under this definition, such as loyalty schemes.³⁵ To address this, ASIC has signalled that it would take a flexible approach to administering the licensing of facility providers, by providing exemptions and relief to individual firms, and more exemptions and exclusions are provided for in the Corporations Act and *Corporations Regulations 2001*.

The wording used in some of the exemptions and exclusions of the NCP facility have become outdated with developments in technology and have led to uncertainty about their application. For example, Fintech Australia noted the ‘operator exemption’ which allows PSPs that provide one-off electronic fund transfers to be exempt from licensing. In discussing this point, Fintech Australia notes that:

Though there are some distinctions between one-off and recurring payments, advancements in technology make these distinctions less important than in the past.³⁶

The 2014 Financial System Inquiry (FSI) recommended replacing these piecemeal exemptions in the AFSL regime that are currently applied to NCP facilities, noting that complexities and impediments to innovation would grow over time. The FSI observed that a more transparent approach to regulation that does not require exemptions would improve industry understanding and provide greater clarity. One proposal in the FSI was to narrow the AFSL regime for NCP facilities so that only service providers that provide access to large, widely used payment systems require an AFSL.³⁷ The FSI noted that a narrower NCP definition could minimise regulatory costs for new entrants.

One particular issue is that the NCP facility authorisation does not distinguish between payment facilitators (i.e. providers that are primarily involved in moving funds rather than holding them), and providers of stored-value facilities (i.e. providers that store funds through accounts or wallets and also can move funds). That is, the framework does not currently recognise the difference between the liquidity and storage functions in payment services. Facilities that hold funds temporarily are likely to pose less risk to consumers than those in which funds can be held for longer periods, and the nature of the risks between the two also differ.

The Review supports a simpler, functional or activity-based licence for PSPs that provides clarity over who is required to have a licence (whether an AFSL or a distinct payments licence), and possibly clarity over services that do not require PSPs to have a licence.

A simpler, functional licence that captures payment functions should also impose requirements based on the risks they pose on the system, by distinguishing payments facilitation from storing

35 Corporations Act, section 763D.

36 Fintech Australia submission, page 15.

37 Financial System Inquiry (2014), page 161.

value. A tiered approach could also be incorporated, similar in principle to that suggested by the CFR Review into SVFs with a payments facilitation licence being built in as a first step.³⁸

On the ePayments Code

Stakeholders also emphasised that the ePayments Code does not cover all electronic payments issues. For example, it does not cover mistakes in the amount transferred, nor does it extend to small businesses that face similar risks of fraud that consumers face.³⁹ The standards under the ePayments Code are said to be inconsistent, leading to confusion on the part of consumers, businesses, banks, and non-bank PSPs. Uncertainty around who is responsible hinders investment and risk-taking on the part of banks and PSPs and adds to the time and resources spent by consumers and businesses to navigate the complaints system.

The Review notes that ASIC has released two consultation papers to modify the Code to ensure it remains relevant and effective.⁴⁰ The second consultation paper notes that the proposals will be on the basis of the Code being voluntary and will focus on eight key matters:⁴¹

- compliance monitoring and data collection
- mistaken internet payments, including retrieval of partial funds and the responsibilities of the sending and receiving ADIs
- extending the Code protections to small business customers
- unauthorised transactions and the pass code security requirements
- modernising the Code
- complaints handling
- facility expiry dates, and
- transition and commencement of the updated Code.

38 Council of Financial Regulators, Regulation of Stored-value Facilities in Australia: Conclusions Paper (2019), available at <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2020/regulation-of-stored-value-facilities-in-australia/>

39 On the inclusion of small businesses into the ePayments Code, see submission from the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), page 1.

40 See ASIC, CP 310 Review of the ePayments Code: Scope of the review (2019), available at [CP 310 Review of the...~https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-310-review-of-the-epayments-code-scope-of-the-review/](https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-310-review-of-the-epayments-code-scope-of-the-review/)

See also ASIC, CP 341 Review of the ePayments Code: Further consultation (2021), available at [CP 341 Review of the...~https://www.asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-341-review-of-the-epayments-code-further-consultation/](https://www.asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-341-review-of-the-epayments-code-further-consultation/)

41 ASIC, CP 341 Review of the ePayments Code: Further consultation (2021), page 6.

The Review supports updating the ePayments Code to better cover the range of payments and also making the Code mandatory for participants in the payments ecosystem as also recommended by a range of reviews, including the 2014 FSI and the CFR Review into SVFs.⁴² The provisions of the updated Code should also be integrated into the licensing process for new entrants.

On the enhanced regulatory sandbox

Some stakeholders noted that turning off certain regulatory requirements under the regulatory sandbox to offer services up to a cap provided some opportunities for them to work, but limits on trading values has made it unworkable for some. For example, there is a \$10,000 limit on the value of some payment services that can be provided to retail clients, which may make it less attractive for larger firms seeking to enter the regulatory sandbox.⁴³

Furthermore, the perception that an entity is ‘exempted’ from AFSL requirements through the sandbox was undesirable, and fintechs prefer to be licensed to send a clear signal to potential customers that they are credible businesses.

APRA

APRA is responsible for prudential regulation, including the licensing of ADIs. APRA – alongside the RBA – also has the power to authorise the provision of PPFs, which are facilities that store funds for the purpose of making payments.

Specifically, APRA supervises providers of PPFs that have payment obligations over \$10 million (with deposit-like features), which are redeemable in Australian currency and are ‘widely available’ (more than 50 users). Provision of these PPFs are deemed as ‘banking business’ and providers are regulated as a special class of ADIs. Currently there are two PPFs authorised by APRA.

Issues and stakeholder views

Stakeholders generally echoed the views made to the CFR Review of SVFs in relation to the PPF regime. Some noted the complexity of the regime, the fact that the term ‘purchased payment facility’ does not accurately describe the economic function of the facility, generates confusion, and is not widely used internationally. Providers of these facilities may have to obtain authorisation from multiple regulators, including an AFSL from ASIC to provide a NCP facility in addition to PPF authorisation by APRA or the RBA.

Stakeholders further agreed that it was in the best interests of the system to remove the PPF framework, and the involvement of the RBA in PPF authorisation, and to introduce a tiered authorisation framework based on the risks posed by the entity.

42 See ASBFEO submission, page 1.

43 See ASIC, INFO 248 Enhanced regulatory sandbox, available at <https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/info-248-enhanced-regulatory-sandbox/>

The Review supports this approach and considers that any licensing model for payments facilitation should be designed in a manner to complement the authorisation of SVFs.

AUSTRAC

AUSTRAC performs a range of functions in the financial system. As Australia's reporting unit for financial intelligence, AUSTRAC collects and shares financial information to identify crime-related transactions. In this capacity, AUSTRAC forms part of the National Intelligence Community, which consists of six agencies that collect, analyse and report on a variety of intelligence matters.

AUSTRAC also plays another key role as a payments regulator under Australia's AML/CTF legislative regime. In this capacity, AUSTRAC can regulate designated financial services (among other sectors) and impose reporting requirements on entities in the financial system that provide those services. Entities are required to register with AUSTRAC if they provide a 'designated service', which includes remittance services, digital currency token services, and the issuance of stored-value cards that have stored value above a certain threshold.

The AML/CTF Act establishes the general framework and principal obligations for regulated entities subject to the regime.

Issues and stakeholder views

Stakeholders presented a range of views on AUSTRAC and its role as the AML/CTF regulator in Australia, given it is in this capacity that AUSTRAC generally interacts with financial services providers.

Stakeholders that were subject to AML/CTF laws in other jurisdictions such as the United Kingdom observed that AML/CTF laws in Australia are unusual in that they are administered by a regulator that is separate to the broader financial regulatory architecture. This places Australia as an outlier compared to the United Kingdom, United States of America, Japan, Singapore and Canada – all of which regulate AML/CTF laws under their Treasury-equivalent portfolios.

Some noted that separating AML/CTF from financial services regulation more broadly has led to inconsistencies in the overall policy direction for the payments ecosystem and is creating uncertainties for stakeholders. One example of AML/CTF laws creating uncertainty is in relation to 'de-banking', where financial institutions terminate or avoid engaging with smaller financial services providers such as remitters to avoid AML/CTF risks.⁴⁴ In this case, having a regulator responsible for AML/CTF outside the broader financial system regulation, and specifically payments regulation, inhibits the ability for the regulatory architecture to make appropriate trade-offs between compliance with AML/CTF obligations and the impacts on competition, efficiency and effectiveness of payments ecosystem.

Some also noted in conversations that AML/CTF requirements are more onerous compared with other jurisdictions. Some pointed to a 2012 report from the Australian Institute of Criminology in this

44 See Part 5 for a more detailed discussion on de-banking.

regard.⁴⁵ Some felt these expansive requirements were made more difficult to comply with due to the lack of guidance from AUSTRAC. As an example, some noted that the AUSTRAC website no longer contains specific guidance on how to comply with some requirements and that the guidance had to be retrieved by going back into an older version of the website to access those instructions.

Finally, some noted the fines related to AML/CTF compliance are excessive and create a chilling effect for the banks in dealing with new and innovative businesses. Such fines can also impact on compliance activities and lead to excessive amounts of resources being diverted to AML/CTF compliance over other priorities, including dedicating resources to improving payment systems.

The Review notes stakeholder feedback and considers there to be room for improving regulatory coordination to facilitate better integration of AML/CTF obligations into payments regulation.

ACCC

The ACCC's role is to enforce compliance with the CCA, including the competition provisions of the CCA with respect to payments. It does so in all instances, except where the RBA has designated and imposed a standard or access regime on the industry. The ACCC also considers applications for authorising arrangements in the payments system that could be contrary to competition law.

The ACCC oversees competition issues across the financial sector and worked with the RBA on a report that considered the functionality and access to the NPP in 2019. A key recommendation of this report is that direct access to the NPP should be open to a range of new participants and that requirements for direct participation should be tailored to the risks that are presented by those participants.⁴⁶

In addition, the ACCC is responsible for accrediting third-party data recipients under the Consumer Data Right (CDR) regime. Through its accreditation requirements and standard setting, the CDR regime establishes a rigorous 'data safety licence'. Accredited data recipients (ADRs) must meet requirements regarding insurance, being a fit and proper person, information security, internal and external dispute resolution, and comply with any conditions imposed.

The ADRs must also take specified steps to protect CDR data from misuse, as well as maintain consent dashboards and CDR policies. The government is also considering recommendations on whether the CDR will move into payments initiation so that third parties can action requests from their clients in addition to the current 'read' function.

45 Australian Institute of Criminology, *Anti-money laundering and counter-terrorism financing across the globe: A comparative study of regulatory action* (2012), page xii, available at <https://www.aic.gov.au/publications/rpp/rpp113>

46 The RBA and the ACCC, *NPP Functionality and Access Consultation: Conclusions Paper* (2019), page 25, available at <https://www.rba.gov.au/payments-and-infrastructure/new-payments-platform/pdf/functionality-and-access-report.pdf>

Issues and stakeholder views

On CDR

Stakeholders noted the importance that the regulatory architecture consider how the CDR will fit within the context of this Review.⁴⁷ Some raised particular CDR features and sought to align them with the rollout of the NPP and other developments such digital identity frameworks. MYOB, for example, noted that:

Data ownership (evolution of liability models), Consent Management (a universal approach) and digital identity (existing framework integration) are several areas MYOB believes fundamental to creating efficiencies and greater cohesion across the payments system regulatory architecture. For example, expanding the scope of the CDR to incorporate Consent Management, which can be universally accessed by other regulatory initiatives such as the New Payments Platform (NPP), will significantly reduce compliance costs.⁴⁸

As the CDR develops, the Review supports aligning accreditation requirements under the CDR with a streamlined payments licence.

On access to payment systems

Stakeholders noted difficulties accessing payment systems or platforms that are owned and operated by industry, in part because the access requirements are not transparent or are perceived as being overly onerous relative to the risks posed by the specific PSP. As noted by Fintech Australia:

Our members have been frustrated with requirements imposed by bank and scheme operators to access infrastructure. These requirements are often driven by bank risk positions and do present a real barrier to competition... Whilst it is important to allow banks to make risk-based decisions in compliance with their regulatory obligations and strategy, it is also important to recognise that little incentive or motivation currently exists for incumbents to work with payment technology companies. This places potentially innovative companies in a difficult position where they cannot test and iterate their innovations.⁴⁹

The discussions around access to the NPP is a current example of this issue. Direct access to the NPP is currently contingent on PSPs being licenced as ADIs. This leads to PSPs seeking to be licensed as ADIs even if they do not want to engage in deposit-taking services.

Stakeholders noted that greater transparency is needed in ensuring fair access to the NPP. As noted by MYOB:

Australia needs to develop a regulatory architecture regime to support the efficient entry of new participants in the payments system while curtailing the power of incumbents to block or complicate the participation of emerging payments players. For example, the NPP is a significant piece of national

47 Finder submission, page 3.

48 MYOB submission, page 5.

49 Fintech Australia submission, page 12.

infrastructure and more transparency and rigour around the process for access is needed to avoid conflicts of interest that would potentially restrict competition.⁵⁰

The Review considers there is a need for a simpler and fairer way for PSPs to access payment systems and that standards to gain access should be made clear and transparent so that new entrants can work towards meeting them.

The multi-regulator model

The previous section focused on individual regulators and stakeholder views on the effectiveness of their mandates, powers, regulatory frameworks, and approaches. This section assesses the way regulators work together. This is based on the recognition that as effective as individual players in a team may be, it is the overall team performance that determines the outcome for consumers and businesses, as well as the economy as a whole.

The two ways that the interaction of regulators can be considered is in relation to how they work together on issues where there is shared responsibility, and how regulatory frameworks impose differential regulatory requirements on PSPs that have licensing obligations.

Consistent with this, the following two sections highlight:

- stakeholder feedback on the regulatory structure we have in place today and the issues that arise due to the multi-regulator model, and
- the interaction of different regulatory requirements placed on industry participants.

Issues and stakeholder views on the regulatory structure

Given the number of participants, the complexity of issues involved and the importance of the payments ecosystem to the economy as a whole, it is reasonable that specialised regulators are in place with expertise on specific aspects of payments regulation, including in relation to safety, competition, consumer protection and market conduct.

Some stakeholders pointed to overseas jurisdictions that have attempted to centralise the policy for payments into a single regulator. For example, the Payment Systems Regulator (PSR) in the United Kingdom was usually brought up in this context, although the PSR in effect operates alongside a number of other regulators in the payments ecosystem (see Box 3.1).

50 MYOB submission, page 6.

Box 3.1 – The UK Payment Systems Regulator

The PSR is a subsidiary of the Financial Conduct Authority (FCA), established in 2013 as a utility-style regulator with distinct objectives, functions, and powers. However, the PSR is not the sole regulator of the UK payments system.

The FCA is responsible for administering the licensing framework for PSPs, and the Competition and Markets Authority is involved in the payments system where competition issues arise. In addition, the Bank of England and the Prudential Regulation Authority play a role in ensuring financial stability, including of payment systems.

To date the PSR has progressed a number of initiatives, including:

- developing an industry code for authorised push payment fraud
- introducing a Confirmation of Payee service aimed to address authorised push payment fraud
- ensuring LINK (UK's main ATM network operator) maintains geographical access to free-to-use ATMs, and
- reviewing competition in the card acquiring market.

A single regulator model could provide the flexibility to implement strategic policy objectives. However, many stakeholders have cautioned against this approach. Providing a regulator with broad authority can lead to the creation of a two-tiered regulatory architecture that adds to the complexity of the system by duplicating mandates and responsibilities between the 'lead' regulator and other financial regulators.⁵¹ Given payments are increasingly integrated with other economic activities, the remit and the scope of powers of the single regulator would have to be very broad.

Furthermore, the Review did not hear evidence that regulators are not performing their roles effectively, nor were there specific calls for enacting substantial changes to this multi-regulator model, noting the risks to the ecosystem and costs to businesses would likely outweigh any benefit.

Stakeholders did point to several other areas where the multi-regulator model can improve to meet the broader needs of the ecosystem. These areas of improvement identified by stakeholders that apply to the regulatory architecture can be categorised under three themes, that are further discussed below:

- the need for enhanced leadership and coordination
- the need for guidance, and
- the need to address gaps.

51 The Wallis Review made similar observations on this concept. See Treasury, Financial System Inquiry (1997), Chapter 12, page 545, available at <https://treasury.gov.au/publication/p1996-fsi-fr>

The need for enhanced leadership and coordination

The Review has heard that while all regulators operate effectively within their mandates, there is an opportunity for greater leadership and coordination between regulators. Stakeholders noted that the number of regulators involved in the regulatory architecture – the RBA, ASIC, APRA, AUSTRAC and the ACCC – has made the regulatory architecture complicated to navigate. As noted by eftpos Australia:

We note that the current multiplicity of regulators involves a significant number of overlapping regulatory remits...these overlapping remits and the sheer number of regulators inevitably encourages forum shopping by participants. They also increase the risk of inconsistency and create layers of additional regulatory complexity, which in turn discourage future investment and innovation.⁵²

This process of navigating through the regulatory architecture is made all the more difficult by the fact that regulators with responsibilities for the payment system can sit within different portfolios and report to different Ministers.⁵³ This can lead to difficulties in providing for a consistent policy direction, leading to further uncertainty for stakeholders. As noted by Fintech Australia:

Our members are of the view that the regulatory architecture for payments is fragmented, overly complicated and outdated. It can also stifle innovation and competition...each regulator's mandate and the corresponding regulatory regimes currently do not neatly dovetail into each other. In some cases, there are overlaps and, in other cases, gaps. This fosters uncertainty for both regulators and participants.⁵⁴

New entrants noted the difficulties they faced in knowing which regulator to approach and did not feel assisted in understanding the roles of different regulators in the architecture, creating confusion. At the most basic level, stakeholders pointed to the need for greater clarity and coordination among regulators. ANZ in their submission explained that:

A regulated market that is subject to oversight from a number of regulatory bodies benefits from clarity concerning the roles and responsibilities of each regulator, as well as the interactions between regulators, to ensure efficiency, and that competition and innovation is encouraged.⁵⁵

At a broader level, stakeholders pointed to the need for a higher level of direction and leadership that is at present missing from the regulatory architecture to ameliorate this lack of coordination and shared vision. As noted by the Commonwealth Bank of Australia:

There is no avenue to create an integrated or coherent set of guiding principles for the Australian payments system. Indeed, piecemeal objectives are generated through separate, numerous and at times overlapping industry, regulatory and government reviews...the details of the government's payments policy objectives are not always clear or consistently communicated to industry. As a result participants face multiple and competing expectations and obligations, creating misalignment between government expectations and market outcomes.⁵⁶

52 eftpos Australia submission, page 8.

53 AUSTRAC has a key role in the regulation of the payments ecosystem and sits within the Home Affairs portfolio, while other regulators sit within the Treasury portfolio.

54 Fintech Australia submission, page 8.

55 Stripe submission, pages 1-2. See also ANZ submission, page 6.

56 CBA submission, page 3.

The Review finds that there is a strong desire for enhanced leadership and better direction taking into consideration a whole-of-system approach that more actively directs and guides the regulatory architecture towards shared goals. This is particularly important given the payments ecosystem is developing beyond financial institutions and growing in complexity.

The need for guidance

Stakeholders noted that there was a general reluctance on the part of regulators to be open with industry participants on regulatory requirements. The Review heard that both existing and new providers in the payments ecosystem were not able to receive basic information regarding their regulatory obligations. When guidance was sought from regulators, a common response was to tell the business to seek out their own legal advice. As noted in Afterpay's submission:

Regulators have an opportunity to be more willing to provide regulatory guidance on new and emerging areas, with a focus on consumer outcomes rather than whether technical compliance can be achieved.⁵⁷

The fact that legal advice was required to answer basic questions such as “do I need a licence?” reflects a regulatory architecture that is not only unnecessarily complicated, but also one that does not sufficiently assist industry participants to understand and meet their relevant obligations for the benefit of consumers and businesses.

One way that stakeholders characterised their desire was for a ‘safe space’ with regulators to seek guidance and receive clarity on an informal basis. Some regulators such as ASIC have some areas where active guidance is provided to emerging fintechs through more tailored approaches to regulation.⁵⁸ However, this does not reflect a general approach and existing stakeholders have noted an inability to obtain clarity on what their licensing requirements are when bringing a new product or service to market.

On this point, the Review acknowledges that regulators are often asked to provide advice with very little information and are naturally keen to avoid providing advice that is later found to be incorrect. Furthermore, it may not be desirable for regulators to provide specific advice on matters that rest on legal interpretation that might undermine the operation of the law.

However, the Review considers that the current regulatory approaches may be too risk-averse. It introduces unnecessary uncertainty for stakeholders that are forced to incur significant costs to determine their regulatory position when it comes to entering the market or complying with a range of regulatory obligations. There is a case for regulators to rethink current approaches and deal more directly with stakeholders by providing informal and formal guidance.

The need to address gaps

The Wallis Review recommended financial services be regulated on a functional rather than entity basis to ensure that regulators have broad enough mandates to cater for future developments. This functional approach remains in place for the financial system generally and is an important tool in

57 Afterpay submission, page 7.

58 ASIC's Innovation Hub is an example.

addressing gaps and new developments, but this approach is less apparent in the regulation of a rapidly changing payments ecosystem.

For example, stakeholders noted that BNPL arrangements appear to have features of a credit product, technology product and payment system. It is not clear at present which regulator this issue predominantly sits with, and the uncertainty is creating issues from a variety of perspectives. From a consumer credit perspective, Legal Aid Queensland note that:

The response of the current architecture to properly regulate new technology such as BNPL arrangements has been slow and as a result has not prevented consumer harm. This lack of regulation such as no legislative or regulatory requirements on BNPL providers to be a member of a free External Dispute Resolution Scheme or consider Financial Hardship, has seen consumers cost shift their financial hardship away from BNPL providers to regulated products...⁵⁹

From the perspective of considering BNPL as a payment system, the Australian Chamber of Commerce and Industry note that:

Some BNPL solutions have attracted increased popularity lately however services fees range from 3 to 7 per cent of the sales value which is driving a substantial increase in merchant fees. A regulatory system that places merchants at the heart of the regulatory system by recognising they bear the cost of payments, will act to prevent similar perverse outcomes.⁶⁰

What is clear is that innovations like BNPL will continue to emerge in the payments ecosystem. The regulatory architecture should be able to look through business models and provide clarity through clearer functional definitions on where such developments would sit from a regulatory perspective. Where such an approach is not undertaken, gaps are likely to emerge due to the dynamic nature of the payments ecosystem.

Issues and stakeholder views on regulatory frameworks

The previous section highlighted some of the key areas of concern for the multi-regulator model from stakeholders. This section will consider some of the frameworks of regulators and stakeholder views on how they interact. In particular, stakeholder views can be categorised into two main themes:

- complex authorisation processes, and
- inconsistencies in regulatory frameworks.

Both are discussed below.

Complex authorisation processes

The most common feedback that the Review heard on the overlapping regulatory frameworks is the complexity of the authorisation process in Australia compared with many other jurisdictions. Some PSPs said they have to report similar information to multiple regulators (including ASIC, APRA,

59 Legal Aid Queensland submission, page 4.

60 ACCI submission, page 3.

AUSTRAC, and the RBA), leading to a multiplication of work, and the need to engage with different regulators using the ‘language’ that those regulators are comfortable with.

As noted by the National Australia Bank, there are anywhere between five and ten authorisations and relationships that are required for either direct or indirect access to Australian payment systems.⁶¹ While individual regulatory requirements may be less or more burdensome, stakeholders noted that all these requirements together require significant effort and often legal advice to navigate.

The Review considers that the issues raised point to the need for greater simplification and streamlining of requirements, removing outdated concepts, and focussing in on providing a centralised and coordinated approach to authorisation process. One possibility is the amalgamation of different requirements faced by entrants into a single licence administered by a central coordination entity. Such an approach has benefits of making it easier for PSPs to meet regulatory requirements and can lead to efficiency gains by removing overlaps in requirements.

Such a simplified licensing framework should involve a number of components, based on stakeholder feedback:

- replacing the NCP facility authorisation with a functional or activity-based licence
- bringing together and simplifying registration for other regulatory obligations such as AML/CTF
- providing a transparent pathway for access to payment systems, and
- incorporating into the authorisation or licence both adjacent developments such as licensing under SVF and alignment with CDR accreditation to ensure a more consistent and comprehensive framework.

Part 4.2 sets out the Review’s recommendations on developing a single licence and single point of access to simplify and modernise the licensing process.

Inconsistencies in regulatory frameworks

Stakeholders also noted that policy frameworks can interact in a manner that may lead to inconsistent outcomes for industry participants, consumers, and businesses. For example, there is a lack of cohesion and coordination in the way Australia regulates AML/CTF risks and broader payments policy objectives (including those around competition, innovation and access).

Decisions around policy and regulatory approach to AML/CTF are impacting the achievement of other payments system objectives, such as those around competition, innovation and access. This is not to underplay the importance of AML/CTF regulation. However, this is not the only consideration and there are other important objectives.

61 NAB submission, page 9, citing AusPayNet, Summary requirements for participating in Australia’s payments system, available at <http://auspaynet.com.au/resources/New-To-Payments-9>

This Review does not make an assessment as to whether the regulatory settings for AML/CTF are appropriate. However, where trade-offs in objectives must be made, they should be made explicit by the policy-makers responsible for the outcomes of the entire payments system, rather by regulators that do not always take into consideration the full impacts of their activities on the system as a whole.

In a similar vein, the Review notes that competition in the payments ecosystem is vital, but consideration needs to be given to the unique characteristics of the payments ecosystem that requires cooperation between competitors to ensure that systems can be established, developed and improved upon. While there is a need to ensure that competition remains at the forefront of regulator considerations, there should be greater engagement between regulators to ensure that that industry has clarity and certainty over when they can work together in the public interest.

Industry bodies

Industry bodies play an important role in ensuring the proper functioning of the payments ecosystem. This role has been referred to by various industry participants as ‘self-regulation’. The Review does not use this term because it includes a myriad of different functions played by industry (which does not include formal ‘regulation’).

Industry bodies coordinate to set operational and technical standards, develop industry codes, and provide valuable contributions to strategic matters through forums such as the Australian Payments Council (APC). Industry bodies act as supporting mechanisms to the mandates of regulators and policy-makers rather than as substitutes for those roles.

Industry participation in the Australian payments ecosystem has been coordinated by industry bodies or joint industry-government councils. Two bodies lead in this space – Australian Payments Network and the APC. There are also key bodies that coordinate and operate important domestic payment systems such as BPAY Group, New Payments Platform Australia and eftpos Australia.

Issues and stakeholder views

Stakeholders observed that industry bodies have been largely effective in setting standards to ensure the smooth functioning of day-to-day operations, and educating industry on new government policies and regulatory requirements.⁶² As a key standard-setting body, AusPayNet was acknowledged for effectively operating some payment systems and responding to technical requests with expertise. The Review has heard that the APC has been responsible for some significant initiatives, primarily in the time immediately following its formation.⁶³

Many stakeholders noted that industry bodies have been less effective in representing the views of a rapidly expanding payments ecosystem. These bodies tend to favour organisations that are well-established in providing payment services such as the incumbent financial institutions. New entrants, smaller merchants, and consumer representatives do not believe their contributions on key

62 See for example, ANZ submission, page 5.

63 For example, their activities in relation to cheques. See <https://australianpaymentscouncil.com.au/> for other activities undertaken.

issues are considered on par with the well-established organisations. It was noted that there may be a need for greater transparency in the deliberations and activities of industry bodies such as AusPayNet.⁶⁴

Some stakeholders support an expanded role for industry bodies in the payments system and believe that more could be achieved if industry body had regulatory ‘teeth.’ Some also support the use of voluntary industry codes administered through industry bodies to replace formal regulation and pointed to the benefits of a flexible regulatory regime that imposes limited burdens on industry and supports innovation. Others emphasised the relative ineffectiveness of voluntary codes in regulating financial services. Stakeholders noted that voluntary codes tend to entrench the role of incumbents by setting requirements that the larger providers can comply with, at the cost of being too burdensome for smaller and emerging providers.

Assessment

The Review finds that industry bodies will continue to have a critical role in setting technical standards and designing arrangements between members for operational matters. This technical role is essential to the smooth and effective functioning of the payments system and AusPayNet, in particular, plays this role consistently. Industry bodies also play an essential function of educating members on regulatory policies and changes and have performed this function effectively.

The Review also finds that industry bodies should play a more strategic role in identifying new trends, businesses and activities that are changing the payments ecosystem, and supporting regulators in designing appropriate responses. The Review has heard that the APC which was established to perform this type of function has not been able to sustain its initial momentum.

The Review agrees that there are concerns over representation under current industry bodies. The likely growth in the scale and type of providers is likely to require policy trade-offs that cannot easily be resolved by industry on its own. Regulators and governments will need to play an active role in developing solutions with industry bodies that strike an appropriate balance to support the variety of industry participants.

Over time, the issue of representation is likely to be further exacerbated by the entry of new providers and business models that are expanding the range of payment services provided in the payments ecosystem. These new providers sometimes adhere to different standards or sit outside the regulatory standards set by industry bodies, which creates difficulties for industry bodies in effectively coordinating across the ecosystem effectively.

On industry codes, the Review notes that they may be useful in some circumstances, but they should not be interpreted as replacing formal regulation, nor should they be seen as providing sufficient coverage to address all public policy outcomes.

64 See submission by Mr Nick Hossack.

The government

The role of the government in the payments ecosystem is in providing high-level strategic direction and designing and implementing laws to shape the regulatory architecture. The government's roles and powers are exercised by the Treasurer in some instances and by the government (through Cabinet) in others:

- The Treasurer retains general responsibility for the payments ecosystem to provide oversight, guidance and coordination. This role is based on the Treasurer's powers to oversee the operation and policies for the financial system.
- The Parliament is responsible for legislation that empowers regulators to conduct their mandates. Through its powers to make legislation, the government sets and can modify powers, mandates and approaches of the regulators.
- The government can appoint up to five members to the PSB, which provides the opportunity to select qualified individuals that also align with the government's broader priorities. The government also appoints the heads of the financial regulators that play a role in regulating the payments system.
- Since 2016, the Treasurer has provided high-level guidance to the PSB through a 'Statement of Expectations' (SoE) on the role of the PSB, the governments' policy priorities for the payments system, and the relationships between the PSB and the government and other regulators.
- The government has close working relationships with regulators and can provide direction on policy matters that feed into plans, activities and communication strategies.
- The government has relationships with industry stakeholders and can communicate its policy and strategic priorities to enable or improve interactions between industry and regulators.
- The government oversees the performance of regulators through the Regulator Performance Framework.⁶⁵ Under this framework, regulators (including the RBA, ACCC, ASIC and APRA) are required to self-assess and report their performance annually against six key indicators.

There are also mechanisms for the PSB to report to government on its policy decisions, which is currently being done formally through the provision of a public annual report to the Treasurer highlighting their work. Informal channels through discussions with senior officials also continue to provide avenues for the government to provide guidance and direction on its policy priorities.

Issues and stakeholder views

Stakeholders noted there was a lack of strategic vision for the system as a whole and that the government could more effectively provide enhanced leadership and coordinate regulators to facilitate a broader strategy setting process. As stated by CHOICE:

⁶⁵ See the Prime Minister and Cabinet website for further information, including the handbook, available at https://www.pmc.gov.au/sites/default/files/publications/Regulator_Performance_Framework.pdf

One missing element of the payments system is a guiding objective or set of principles to cover all regulators and policy work. CHOICE would like to see a clear articulation of the goal of the payments system to guide decision making and policy.⁶⁶

There were also suggestions that the Government needed to ‘walk the walk’ when it comes to the uptake of new forms of payments such as the NPP that offer greater convenience for consumers and businesses, and has a critical role to play with industry in planning the closure of legacy payment systems such as cheques.

The Review agrees with stakeholder feedback that there is a lack of overall strategy for the payments ecosystem, and that clearer guidance informed by enhanced leadership structures are required. Some activities such as legislation can only be undertaken by the government, but there is a broader question of how the system should be guided and what leadership structures should be in place to ensure that strategic vision is developed and implemented.

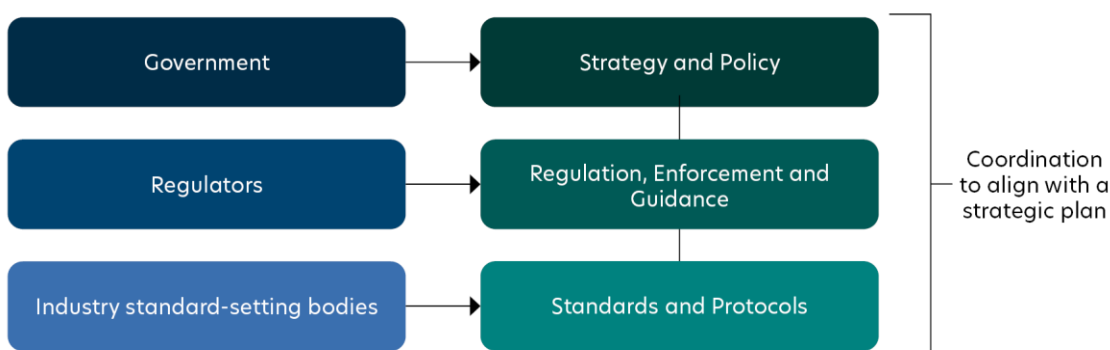
There is also merit in the suggestion that the government uses payment systems that best serve the needs of the community and that it leverages its position as a large consumer to achieve its policy objectives for the payments ecosystem.

Ensuring an integrated regulatory architecture

This Part has so far analysed the three key components of the regulatory architecture – the regulators, industry bodies and the government – but it is clear that they also need to coordinate and interact with each other to ensure that a shared vision is developed and implemented from the strategic and policy levels, to the regulatory and enforcement levels, to the standards and operational levels.

Figure 3.1 provides a representation of the roles of government, regulators and industry bodies, and the need to ensure a shared vision is developed through integrating these roles.

Figure 3.1 – An integrated regulatory architecture



Stakeholders noted that this level of integration between the government, regulators and industry bodies is currently lacking. As noted by eftpos Australia:

66 CHOICE Submission, page 1.

While there is definitely a place for each of self-regulation, formal regulation and government policy, there is a clear need to ensure that the policy is clearly articulated and cascaded, formal regulation is principles based to enable certainty and flexibility and self-regulation aligns with both the policy and formal regulation to deliver intent and is enforceable against all participants.⁶⁷

Similarly, in their submission, AusPayNet proposes a tripartite approach that integrates and clarifies the roles of the government, regulators and industry bodies through legislation and supported by a forum to serve as a coordination mechanism.⁶⁸

The Review broadly agrees that greater coordination is required between industry bodies, regulatory agencies and the government. Greater integration through formal oversight powers by the government may also be required to resolve issues such as ensuring access to payment systems based on common standards. This will also be critical in enabling effective and representative collaboration across payment systems in an increasingly complex and growing ecosystem. Moreover, a greater alignment should bring about consistency between these three layers so that government policy ‘cascades’ to regulators and then onto industry in a clear and consistent manner.

Summary of evaluation

This Part began with four key principles for the future – service, strategy, safety and simplicity – and the Review used them to evaluate the regulatory architecture we have in place today.

Stakeholder feedback discussed above point to the general observation that the principles of safety and service have been met more successfully than the principles of strategy and simplicity. The RBA and other regulators such as APRA have effectively ensured the safety of the payments system even during some of the most troubling times over the last two decades, most notably the global financial crisis in 2008-09. More generally, the fact that most consumers simply embrace new forms of payments with the trust that it will work reflects a regulatory architecture that has done its job in ensuring safety and stability, which in turns enables the uptake of new and innovative payment forms.

Significant strides have also been made in relation to the growth of new functionalities offered to consumers, with a range of new innovations such as contactless payments and the NPP providing convenience and enhanced security for consumers. Many of these have been driven by technology coupled with a willingness from consumers to use new forms of payments.

At the same time, the Review has heard from stakeholders that there are areas for improvement in the regulatory architecture, particularly on the principles of strategy and simplicity.

In terms of strategy, there is a lack of leadership at a system-wide level required to steer the payments ecosystem towards a shared vision and goals. This lack of clear vision has created confusion for industry and impacts on investment decisions in relation to major payments infrastructure. It also leads to a lack of preparedness for future change and creates multiple and at

67 eftpos Australia submission, page 9.

68 AusPayNet submission, page 3.

times conflicting directions in policy, which in turn undermines the ability for the regulatory architecture to best serve consumers and businesses and support productivity-enhancing innovations.

Ensuring that we are prepared for the future means creating leadership structures with broader powers to meet the challenges of the future, as well as the ability to effectively coordinate when needed to address issues flexibly and with authority.

It was also made clear to the Review that our regulatory architecture is unnecessarily complicated. Multiple regulators with payments-related mandates is not a problem, but that when multiple regulators operate in their own spheres without sufficient coordination or without a broader strategy or direction in mind – that is when the principle of simplicity is undermined.

For example, when individual regulators impose differing requirements to achieve the same purpose for new entrants, have slightly different answers to the same questions that businesses pose, or do not provide guidance on regulatory obligations, there is unnecessary complexity and multiplicity in regulatory burdens imposed that adds costs to business and can even deter new entrants from providing their services in Australia. A simpler set of regulatory frameworks would not only assist consumers and business to understand their rights and obligations, but also ensure that PSPs are able to benefit from simpler authorisation processes.

In summary, the Review finds that there are two major areas where the regulatory architecture can improve to serve consumers and businesses more effectively – providing for more effective strategy and coordination through enhanced leadership, and through simplifying authorisation processes to support innovations in the payments ecosystem.

Progress should be made on both areas while maintaining the principles of service and safety – ensuring that any changes to the regulatory architecture are done for the benefit of consumers and businesses that rely on the payments ecosystem, and which ensure that their payments can be safely made. In the next part of this Report, the Review consider how best these issues could be addressed.

Part 4: Preparing for the future

A key question for the Review has been whether the regulatory architecture of the payments ecosystem remains fit-for-purpose. The rapid changes to the ecosystem as outlined in Part 1 are likely to continue, and the case for an agile, flexible and coordinated regulatory architecture to address risks, support users and encourage innovation will be even more critical in the future.

This Part provides recommendations that are aimed at ensuring the regulatory structure meets the principles of strategy and simplicity, without compromising its ability to meet the principles of service and safety.

This Part is structured into five sections:

- The first section discusses the importance of a regulatory architecture that provides leadership and an overall vision for the payments ecosystem, and effectively coordinates policy developments across regulators and industry participants.
- The second section discusses ways of modernising the regulatory framework so it is simpler for PSPs, consumers, and businesses to navigate and can flexibly respond to developments in the payments ecosystem.
- The third section discusses the need to align the approaches of regulators with broader government policy objectives.
- The fourth section discusses ways to educate consumers and businesses on new payment methods.
- The fifth section discusses how government payments can be used to drive further innovation in the payments ecosystem.

4.1 An integrated regulatory architecture

The Review found that with recent changes and growing complexity it is now important that there is a coordinated and holistic strategic vision for Australia's payment ecosystem. Many stakeholders observed that regulators tend to focus on meeting their individual remits, but an overarching vision that guides participants in the payments ecosystem is needed. The following sections detail ways in which this can be achieved.

Leadership and vision

Developing a strategic vision and implementing effective coordination requires enhanced leadership. Leadership encompasses an ability to set an overarching strategy, coordinate system-wide innovations, provide a forum for regulators and industry participants to raise issues and respond to challenges beyond the remit of any individual regulator.

Stakeholders have suggested a number of entities that could undertake this broader system-wide role. Five main options are canvassed in the following sections:

1. the PSB and RBA
2. industry bodies
3. the CFR
4. a new entity, and
5. the government, through the Treasurer.

Option 1: The PSB and the RBA

Many stakeholders identify the RBA and its policy function through the PSB as being the central regulator for the payments ecosystem and the body that currently plays a leadership role. The Review has heard that the PSB has played a critical role in policy making in the payments ecosystem and has undertaken a number of strategic decisions including through establishing the APC and supporting the implementation of the NPP.

Under its empowering legislation, the role of the PSB is to determine the RBA's policy for the purpose of its exercise of its functions and powers under the *Reserve Bank Act 1959*, the PSRA, the *Payments System Netting Act 1998* and the Corporations Act. Consistent with the purpose of the relevant powers of the RBA, the focus of the PSB's policy is to control risk in the financial system, promote efficiency of the payments system and promote competition in the market for payment services.

It is important to note in this context that the PSB's role does not extend to matters beyond the RBA's functions and powers under those pieces of legislation and is therefore limited by the powers of the RBA. While the Review considers that it would be beneficial to clarify the RBA's remit so that it relates to a more functional definition of the payments ecosystem, a broader expansion of the RBA's powers to take on a greater leadership role beyond its current functions and powers is not desirable.

This is because the RBA is one of many regulators within the payments ecosystem and has a critical function in supporting the safety and stability of the system. As the complexity of payments ecosystem increases, its associated risks may either cut across the remits of multiple regulators or extend beyond those with which the RBA is responsible. This means there will be times where the RBA may not be the most appropriate regulator and/or not best placed to coordinate a response.

The PSB is part of the RBA and its purpose is to determine the payments policy for the RBA. Its functions do not extend to determining policy for other regulators of the payments ecosystem or matters beyond the remit of the RBA.⁶⁹ To elevate the role of the PSB, the PSB would have to be separate from the RBA. The separation of the PSB from the RBA would involve a significant change to the regulatory architecture and could jeopardise the functions currently performed by the PSB for the RBA.

69 *Reserve Bank Act 1959*, Sections 9 and 10A.

Overall, the Review does not consider the PSB or RBA as appropriate entities to take on the role of leading the development of a broad shared vision for the payments ecosystem.

Option 2: Industry bodies

Stakeholders often refer to two industry bodies that have some level of involvement in setting the strategic direction for the payments ecosystem – the APC and AusPayNet.

The APC was established following the RBA's 2012 Strategic Review to support the work of the PSB. The APC is the current strategic coordination body for the Australian payments industry, and directly engages with the PSB on setting and achieving strategic objectives. As a result, the APC is confined to the PSB's mandate and has limited ability to address issues that fall outside of it. Stakeholders have commented that the APC lacks the power and authority to enforce the strategy or vision it has set.

In addition, the APC lacks the broader industry buy-in to perform the desired leadership function. This is in part because the APC is not representative of the diverse range of participants in the evolving payments ecosystem. It is composed of senior executives from a range of payments organisations including banks, retailers and card schemes, AusPayNet and the RBA (in its role as provider of banking services to the government). While the APC's membership could be adjusted, its fixed structure limits agility given the pace of change and the diversity of participants in the payment ecosystem.

Stakeholders have noted the involvement of AusPayNet more recently in formulating a strategic plan for the industry on issues outside of the APC's remit. AusPayNet has broader membership than the APC, which includes a range of direct and indirect payments system participants, such as banks and credit unions, large supermarket retailers, card schemes, and other PSPs.

Like the APC, AusPayNet lacks the power, authority and accountability to the broader public to take on an ecosystem-wide leadership role. AusPayNet does not have authority over regulators and does not represent all the participants in the ecosystem. Furthermore, it is not feasible for an entirely private entity to coordinate strategy and leadership across both the public and private spheres.

As a result, the Review does not consider the APC or AusPayNet as appropriate entities to take on the role of leading the development of a broad shared vision for the payments ecosystem.

Option 3: The Council of Financial Regulators

Some stakeholders suggested that the CFR could undertake a more active leadership role for the regulation of the payments ecosystem. The CFR is the coordinating body for Australia's main financial regulatory agencies – APRA, ASIC, the RBA and the Commonwealth Treasury.

Under its charter, the CFR promotes the stability of the Australian financial system and supports effective and efficient regulation by Australia's financial regulatory agencies. With a particular focus on stability and safety, the CFR has an important role in providing leadership during times of crises, and several MoUs between CFR agencies guide and support close coordination and consultation between them. Given these financial risks can include payments issues, the CFR plays a coordinating role to ensure the stability of the payments ecosystem.

Beyond this, the Review does not support the CFR providing enhanced leadership role for all aspects of the payments ecosystem, for the following reasons:

- The CFR plays a vital role in ensuring the effective operation of financial markets in Australia, particularly during times of crisis. Adjusting its functions is not a preferred course of action as this could alter the critical functions it currently performs and its overall effectiveness in performing them.
- Key regulators in the payments regulatory architecture are not represented on the CFR, such as the ACCC and AUSTRAC. Significant changes would be required to broaden the membership of the CFR, including changes to the CFR's mandate, agenda and priorities. This could compromise the ability of the CFR to effectively address issues of financial stability, a function that the CFR has performed very well.
- Private sector input is necessary for the formulation of a shared vision for the payments ecosystem. In particular, buy-in from the private sector is critical for system-wide innovations that require long-term investment. However, there is no direct way for private sector entities to be represented on the CFR.
- The CFR is a non-statutory body, with no formal regulatory or policy-making powers. It operates as a means for cooperation and coordination among member agencies, and it is reliant on member agencies to progress its findings and recommendations. This means the CFR cannot directly implement any strategy that has been formulated.

Option 4: A new entity

A small number of stakeholders proposed the establishment of a new lead regulator that would be responsible for providing leadership and setting strategic direction for the payments ecosystem. The new entity may also have some of the functions and powers of the other regulators relevant to the payments ecosystem, and in effect become the 'mega regulator.' Stakeholders sometimes referred to the PSR in the United Kingdom when discussing the single regulator model, although the PSR in effect operates alongside a number of other regulators in the payments ecosystem (see Box 3.1).

The single regulator model could provide the flexibility to implement strategic policy objectives. However, many stakeholders have cautioned against this approach. Providing a regulator with broad authority can lead to the creation of a two-tiered regulatory architecture that adds to the complexity of the system by duplicating mandates and responsibilities between the lead regulator and other financial regulators.⁷⁰ Given payments are increasingly integrated with other economic activities, the remit and the scope of powers of the single regulator would have to be very broad.

Given the fundamental changes to the regulatory architecture involved in moving towards a single regulator model, the Review did not find evidence that the potential benefits of establishing a new entity to provide leadership and oversee the regulation of the payments ecosystem would outweigh the potential costs.

70 The Wallis Review made similar observations on this mega regulation concept. See Treasury, Financial System Inquiry (1997) Chapter 12, page 545 available at <https://treasury.gov.au/publication/p1996-fsi-fr>

Preferred option: The government, through the Treasurer

The Review considers that the government, through the Treasurer, is best placed to undertake this enhanced leadership function. This stems from the following:

- The Treasurer has general oversight powers and responsibility over the financial system and is able to coordinate financial regulatory agencies.
- The Treasurer can holistically consider payments issues in the context of broader economic policy settings.
- The Treasurer is accountable to consumers, businesses, and the Australian community generally, and will be able to provide a broader platform through which the interests of consumers and businesses can be heard on key payments matters.
- The Treasurer is not limited by the mandates of the financial regulators and has the flexibility to respond to issues that fall outside the remit of individual regulators.
- The Treasurer does not directly enforce legislation or regulations unlike regulators. This provides an opportunity for more frank feedback from industry on issues as they arise.
- The Treasurer can make quick decisions if needed on urgent matters should they arise.
- The Treasurer can involve other departments and agencies as required, depending on the scope of the payments issues at hand. This is increasingly important because payments issues could extend beyond the remits of the financial regulators.

The government's role through the Treasurer in undertaking a leadership and coordination function was also envisaged in the Wallis Review. In reflecting on stakeholder feedback, the Wallis Review noted that this general oversight role belongs essentially to the Treasurer, as the Minister with responsibility for the financial system.⁷¹

It is important to add that the government already plays a role in the payments ecosystem and engages with regulators on a range of financial matters (including payments issues). For example, the Treasurer provides a Statement of Expectations (SoE) to the PSB that provides high-level direction for policy and governance arrangements. These SoEs were recommended by the 2014 FSI, which noted that:

Regulators currently receive little guidance about how they should balance the different objectives in their respective mandates. At present, SoEs typically list each regulator's objectives, without guidance from Government on its tolerance for risk, or how it expects the regulators to balance the different components of their mandates, especially where there may be a trade-off between objectives.⁷²

71 Treasury, *Financial System Inquiry (1997)*, page 545, available at <https://treasury.gov.au/publication/p1996-fsi-fr>

72 *Financial System Inquiry (2014)*, Chapter 5: Regulatory System, page 241, available at <https://treasury.gov.au/publication/c2014-fsi-final-report>

The government provided the PSB with a SoE in 2016 and again in 2018.⁷³ These have formed the basis of guiding the policy priorities of the PSB and the relationships between the PSB and other financial regulators.

Enhanced leadership will require more than SoEs. It includes in-depth and frequent engagement to provide guidance on increasingly complex developments in the payments ecosystem that may cut across the remits of a number of regulators. Such leadership is also required to coordinate with the public and private sectors to provide a forum to address key challenges, including the retirement of legacy payment systems.

As the payments ecosystem continues to develop at pace, there is a need for the Treasurer to undertake this enhanced leadership role by setting out high-level principles, strategy and policy. This enhanced leadership function is now necessary given the recent emergence of new participants, business models and technology. The benefits and challenges these disruptions bring require a higher level of coordination and a balancing of policy objectives that should rest with elected officials.

In performing this leadership role, the Review does not envisage that the government through the Treasurer should take over the policy functions performed by the RBA. Rather, it would actively set a strategic direction for the payments ecosystem and coordinate regulators to respond to developments that do not fit neatly within individual regulators' remits.

The mechanisms needed to support the Treasurer in undertaking this enhanced role are further explored in the following section.

Recommendation 2 – Leadership of the payments ecosystem

Given the increased complexity of payments issues and the acceleration of financial innovation, enhanced leadership, vision and oversight is needed in the payments ecosystem. The government, through the Treasurer, is best placed to provide this.

Facilitating effective collaboration

A strategic plan for the payments ecosystem

The Review has heard that Australia now needs a comprehensive strategic plan for the payments ecosystem. A key task for the government is the development of this strategic plan involving all participants in the ecosystem, from both public and private sectors. A strategic plan should create a more conducive regulatory system that is prepared for change, provides certainty for industry investment and supports new entrants.

Moreover, a strategic plan is required to ensure that Australia is best placed to adapt to changes to the payments ecosystem and safely deliver the best outcomes for consumers and businesses while

73 The latest Statement of Expectations is available at <https://www.rba.gov.au/about-rba/boards/psb/psb-statement-of-expectations.html>

supporting new and innovative payments solutions. The Review heard the current absence of a strategic plan is having a negative impact on investment decisions, leading to inertia and continued reliance on legacy systems.

Other jurisdictions have taken similar steps to develop an overarching strategy for their payments ecosystems. One example is through the Payments Strategy Forum in the United Kingdom (see Box 4.1).

Box 4.1 – The Payments Strategy Forum (United Kingdom)⁷⁴

The Payments Strategy Forum was established in 2015 by the PSR to lead a process to identify, prioritise, and develop strategic initiatives where the industry needs to work together to deliver innovation for the benefit of consumers and businesses.

The Forum consisted of 22 members including government representatives, advocates for consumers and small and medium-sized businesses, corporations, PSPs, financial institutions and fintechs. The Bank of England, the Prudential Regulation Authority, the PSR and the FCA were observers to the Forum.

The Forum delivered its strategy to the PSR in late 2016 and was disbanded in late 2017 after overseeing the implementation of the first phase of the strategy.

A Payments Community was also established to support the work of the Forum. This community was open to anyone with an interest in payments. A secretariat to the Forum ensured the views of the community were taken into account in the formulation of the strategy and its implementation.

The Community was categorised into specific ‘contact groups’ such as small users, large users, technology and infrastructure providers, and industry experts with mechanisms in place to ensure channels of communication were open with these different groups.

The Review supports the development of a strategic plan. The plan should:

- be developed in collaboration with a wide range of stakeholders, including consumer and business advocacy groups, industry participants, payments technology companies, academics, regulators and government departments
- outline at a high level the key priorities for the coming years
- be sufficiently flexible to account for the dynamic nature of the payments ecosystem

⁷⁴ See <https://www.psr.org.uk/about-us/payments-strategy-forum/> for further information on the Payments Strategy Forum.

- be aligned with broader government digital economy objectives, including the Consumer Data Right and industry initiatives such as digital identification frameworks
- be dynamic and evolving as circumstances change in the ecosystem, and
- be reviewed frequently to ensure it remains relevant and up to date with present circumstances.

The Review considers that a strategic plan would support a shared vision for the payments ecosystem and facilitate more coordinated decision-making by the government, regulators, industry, and consumer groups.

One example of where a plan will be critical is in detailing a strategy to the retire legacy payment systems, as discussed below in Box 4.2.

Box 4.2 – Legacy payment systems

The payments ecosystem is constantly expanding with new payment systems offering faster services that are more secure, cost-efficient, reliable and robust than some older, less used and less functional systems. There should be a coordinated strategy between government and industry on the decommissioning of these older systems, which are also less secure and often more and increasingly costly compared with newer alternatives. Two key legacy systems in Australia are the cheques system and the bulk electronic clearing system (BECS).

Cheques

In their 2020 Future State of Payments Action Plan, AusPayNet notes that in 5 years' time there is likely to be no cheques used in Australia if current trends were to continue.⁷⁵ However, due to a range of obligations placed on the financial sector and governments, cheques are embedded into the payments ecosystem.

With fewer and fewer consumers and businesses using cheques (due to their expense, inconvenience and the lack of security), the costs of providing cheque payment infrastructure is becoming increasingly expensive per cheque. Consumers and businesses should be supported in their transition to less expensive and more convenient forms of payments, as cheques are phased out entirely.

However, some legislation requires some forms of payments to be made using cheques. This means that while in practice the take-up of cheque payment as an option is low, it cannot be phased out without changes to legislation.

Given this, the retirement of cheques needs to be carefully managed and coordinated between the public and private sectors to ensure that consumers, particularly those that are vulnerable, and businesses have viable alternatives and are guided towards safer, cheaper and more convenient

75 See AusPayNet, Future State of Payments Action Plan, Page 13.

payment methods. This whole-of-system approach to retiring this system, coupled with clear leadership guiding the process, is essential to ensure a smooth transition.

Bulk Electronic Clearing System

While many decades old, BECS is still the most widely used payment system by consumers, businesses and governments today to buy and sell goods and make and receive a variety of payments. However, its functionality is limited, and payments which previously could only be sent via BECS can now be sent via the NPP.

Direct entry is used for internet banking, debit and credit instructions. While it is mainly used for smaller payments, BECS can be used for transactions up to the value of \$100 million. Many businesses have built functionalities on BECS to operate large payment systems. BECS is also embedded into our daily lives through BSB and account numbers that account holders have.

Although reliable, BECS is limited in its functionalities. The data sent with a payment is limited, and additional features (such as higher levels of data security) are lower compared to newer systems. Over time, consumers, businesses, and government will benefit from newer payment systems that provide for additional functions, enhanced security and better integration with other aspects of their lives.

However, given the importance of BECS to the current payments ecosystem, any such migration from BECS to newer systems will need planning and effective coordination between public and private sectors, particularly since it is the most popular way to pay today for both business and government-related transactions.

Recommendation 3 – A strategic plan for the payments ecosystem

The government should develop a strategic plan for the payments ecosystem in collaboration with regulators, industry, and representatives of consumers and businesses.

The plan should provide certainty on policy priorities and strategic directions for the payments ecosystem, while being adaptable to future challenges and opportunities.

Enhancing Treasury's payments policy function

To guide the development and implementation of the strategic plan, the Review considers that there is a need for Treasury to develop an enhanced payments function. This enhanced Treasury function should support the Treasurer in their enhanced leadership role, and also facilitate:

- effective coordination – enhancing links between government, regulators and industry to provide consistency and certainty for industry on the way forward

- clarity in government policy – providing an avenue in which policy directions can be discussed, clearly articulated and guidance provided
- broader representation – ensuring that all relevant stakeholders affected by payments issues can provide their views on issues that affect them, and
- supporting future preparedness – allowing for a flexible response to new and emerging issues, and exercising authority on a system-wide basis where needed, such as developing a new payment system.

Treasury's enhanced function should not replace or duplicate the roles of the RBA or other financial regulators. Rather, it should complement the work of the regulators by articulating the government's stance on payments issues, involve relevant stakeholders to identify trends in the market, and provide the platform for regulators to work together to address key payments issues. For example, Treasury could bring together ASIC and the ACCC for payments matters relating to consumer protection, the RBA, ASIC and APRA for matters relating to financial stability, or AUSTRAC, RBA and the ACCC for cross-border issues.

To perform its payments role effectively, the Treasury function will need resourcing to develop specialised payments capability and the ability to maintain contact and commitment over the long term.

Recommendation 4 – Enhance Treasury's payments policy function

The Treasury's payments policy function should be enhanced to support the Treasurer's enhanced leadership role, including in relation to the strategic plan for the payments ecosystem. Treasury should be strengthened with the necessary skills, capabilities and resources to perform this function effectively.

A payments industry convenor

The Review envisages that Treasury, in leading the development of a strategic plan, should be supported by a payments industry convenor. The convenor should be appointed by the Treasurer and could be an industry expert from the private sector or academia, with a deep understanding of payments, broad links with the evolving payments ecosystem, and experience in working with the public sector.

The industry convenor is needed to ensure the government has access to expert advice from the private sector, which is at the forefront of new developments in an increasingly complex and fast-moving payments ecosystem. The payments industry convenor would need to collaborate widely with the private sector and bring together different industry representatives to develop advice and provide clarity on key emerging issues in the payments ecosystem to the government. Through leveraging their domestic and international networks, the government could draw on the convenor to develop advice on best practices at an international level.

The Review considers that the convenor should be appointed in a manner that best supports the Treasurer and the Treasury function to achieve payment objectives. A potential approach could be appointing the industry convenor as a non-statutory office holder, in a similar manner to the Chief Medical Officer in the Commonwealth Department of Health or the Australian Government Actuary, who is part of the Commonwealth Treasury.

As a priority, the industry convenor should work with Treasury and industry to develop the strategic plan for the payments ecosystem. The industry convenor could also play several other roles, including providing a platform through which payments issues that require both private and public sector involvement can be brought to the attention of the Treasurer and resolved in the national interest.

The payments industry convenor also provides an avenue for the government to form and sustain close links with industry as key partners in the development and implementation of policy initiatives. Through the convenor, the government could also draw on relevant stakeholders from the private sector, which can include industry groups, banks, business representatives, consumer groups, academics among others.

The role of the APC

The Review notes that the Treasury function is intended to enhance and update the strategic function of the APC. With respect to that functionality, the Treasury function and the payments industry convenor would supersede the APC. As the APC was established by the RBA, should the recommendations of this Review be implemented, the continuing function of the APC would be a matter for the RBA to determine.

Recommendation 5 – Establish a payments industry convenor

The Treasurer should appoint a payments industry convenor. Supported by Treasury, the payments industry convenor should collaborate with regulators and industry to develop the strategic plan, identify key issues, coordinate responses, and provide strategic advice to the Treasurer on payments-related matters.

The payments industry convenor should help the Treasury function in facilitating communication and coordination in relation to strategic priorities of the payments ecosystem.

4.2 A modernised regulatory framework

A key finding of the review is that the regulatory architecture has supported the delivery of some important innovations at a system-wide level such as the NPP and supported a dynamic fintech industry that is delivering innovative payment solutions.

However, as the payments ecosystem continues to evolve, the regulatory architecture needs to be flexible to adapt to new products and services, facilitate the entrance of both small and large PSPs, and coordinate system-wide innovations.

A flexible designation regime

Expanding the definition of payment system in the PSRA

Part 3 found that the RBA's designation power is limited by the PSRA definition of a 'payment system'. The definition may no longer adequately capture the full suite of payment systems within the ecosystem and, as a result, there are providers that could fall outside the regulatory scope of the RBA.

Expanding the definition of a 'payment system' would bring the RBA's designation power up to date. It would provide additional flexibility for the RBA to designate in the public interest in accordance with the PSRA, and allow it to better respond to financial stability, efficiency or competition risks posed by new innovations in the payments ecosystem.

Recommendation 6 – Expand definition of payment system in the PSRA

The RBA should be better positioned to regulate new and emerging payment systems that are part of the changing and growing payments ecosystem.

Expanding the definition of a payment system will broaden the RBA's ability to designate new and emerging payment systems under the *Payment Systems (Regulation) Act 1998* (PSRA), where it is in the public interest as defined in the PSRA.

Introducing a Ministerial designation power

The exercise of the RBA's designation power is confined to issues that are in the 'public interest' as defined under the PSRA. Under Section 8 of the PSRA, in determining if a particular action would be in the public interest, the RBA is to have regard to the desirability of payment systems being financially safe for use by participants, efficient, competitive, and not materially causing or contributing to increased risk to the financial system, in determining if a particular action would be in the public interest.

The RBA is precluded from exercising its powers based on considerations that are broader than the defined term of 'public interest' – for example, national security and consumer protection. These issues are beyond the RBA's mandate, powers, expertise, and role in the ecosystem. As a result, the RBA is not the appropriate entity to respond to these issues.

To ensure that emerging payments issues that fall outside the scope of the RBAs mandates are able to be brought within regulation where it is in the national interest to do so, the Review recommends that a broader designation power should rest with the Treasurer. Further, the Treasurer would be able to exercise these powers on wider grounds than the RBA and would not be limited by

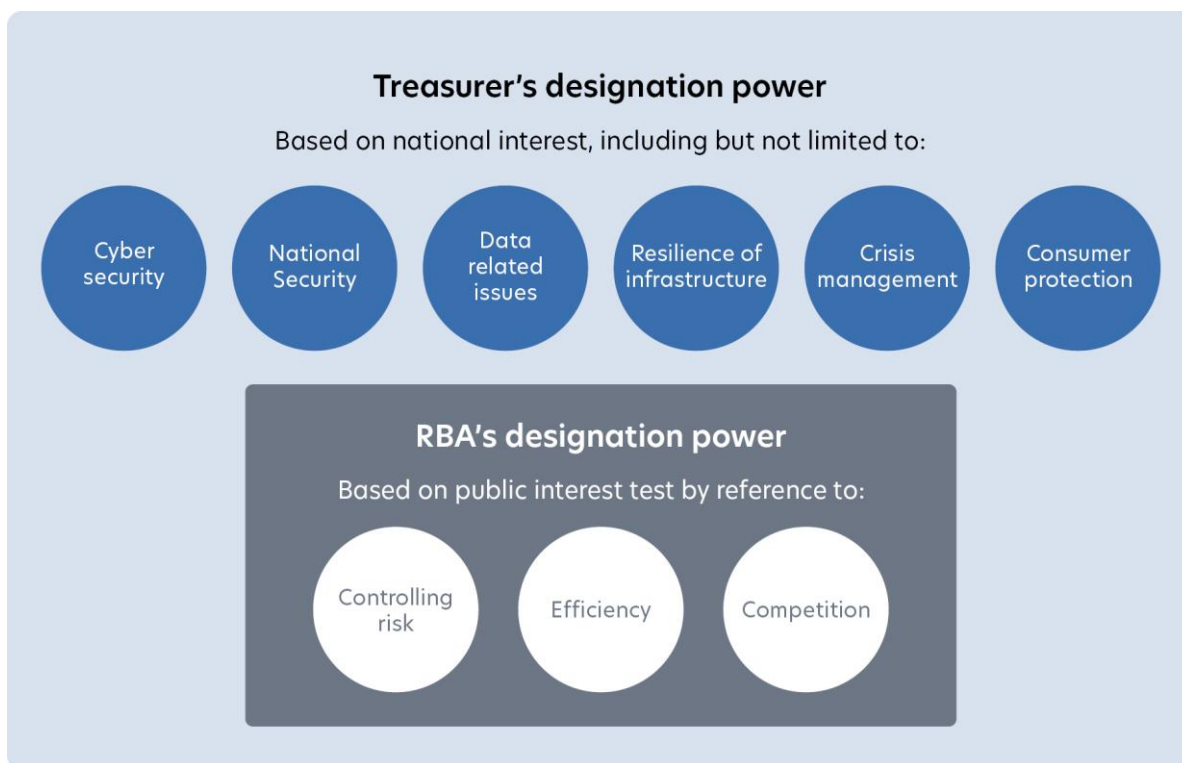
considerations of financial stability, competition, and efficiency. The Treasurer could have regard to a range of factors in the national interest, including (but not limited to):

- national security
- consumer protection
- resilience of infrastructure
- data-related issues
- cyber security
- AML/CTF
- competition and innovation, and
- crisis management.

The relationship between the two designation powers are diagrammatically represented below in Figure 4.1.

The Review envisages that the RBA would continue to designate payment systems based on financial stability, efficiency, or competition considerations. Where a designation is required in the national interest for reasons beyond financial stability, efficiency, or competition, the decision to designate should be vested in the Treasurer.

Figure 4.1 – Designation powers comparison



This power is an important tool to ensure that issues that emerge that do not fit within the remit of any single regulator are able to be regulated.

The Review considered alternatives to vesting a designation power in the Treasurer, including establishing a category-based approach that captures entities based on legislated criteria. This latter approach may provide some certainty to industry as to when an entity would be designated. However, such an approach lacks flexibility, can add additional red tape by capturing entities that do not need to be caught, and introduces gaming so that entities restructure to avoid being designated. A similar point was made in the context of the United Kingdom consultations on opening up payments:

The designation approach has significant advantages in this respect, as it will allow HM Treasury to focus the Regulator’s attention where it is required, without the need to designate less relevant schemes at the outset. It then provides the flexibility to bring emerging payment schemes and participants into scope, as and when they meet the threshold for designation.⁷⁶

The proposed approach is consistent with that of other jurisdictions that have vested designation powers in their responsible Minister, including in the United Kingdom and Canada. For example in Canada, the legislation currently provides that the Minister may, if they consider that it is in the public interest to do so, designate a payment system that in the opinion of the Minister is national or substantially national in its scope; or plays a major role in supporting transactions in Canadian

76 HM Treasury, Opening up UK payments: response to consultation, page 10, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/249085/PU1563_Opening_up_UK_payments_Government_response.pdf

financial markets or the Canadian economy.⁷⁷ The Review supports a similar power to be adopted in Australia.

The designation power should enable the Treasurer to more actively engage in, and coordinate, payments-related matters, including but not limited to:

- clarifying the application of payments ecosystem regulation by designating payment systems and participants of payment systems
- for the purpose of allocating responsibility to relevant regulators, directing one or more regulators to develop binding regulatory rules or standards to apply to those payment systems or participants giving binding directions to operators of, or participants in, those payment systems, in relation to the development, operation of, or participation in, those payment systems, their relationship with users, or their interaction with other payment systems, and
- requesting information from operators or participants, including in connection with determinations of whether to exercise the rights to designate or give directions.

This should be supported as required by appropriately amending the legislation applicable to the regulation of our payments ecosystem. Regulation-making powers of the government under current legislation should be reviewed to ensure that they are sufficiently coordinated to enable single sets of regulations to be passed if needed for the legal foundation of a harmonized regulatory approach to particular issues. The purpose of this direction power is to provide the flexibility needed to address the challenges of the dynamic future of Australia's payment ecosystem with strong governance around its use.

Accordingly, to support the Treasurer in this exercising this power, the Review considers that there be a set of principles developed to guide decision-making. Moreover, the Review considers it important that ahead of any decision to use the power, appropriate consultation will take place, similar to what is required for the exercise of the RBA's designation power. In designing this regulatory power, it would be beneficial to have some regard to the approach taken for equivalent powers in Canada and the United Kingdom. However, it is important that it is appropriately tailored for the Australian payments ecosystem.

Finally, introducing a Ministerial designation power as proposed in this Review builds upon the CFR's recommendation to introduce a power to designate large PSPs as being subject to APRA's prudential regulation in certain circumstances. As the CFR Review noted:

To account for the uncertainty of future developments in the market, an additional element of an updated regulatory framework would be a mechanism to 'designate' a SVF provider as being subject to APRA's prudential regulation on the basis of financial safety or stability considerations. This would provide the flexibility to enable regulators to adapt in a timely way if a facility were to emerge that posed risks to the system but did not strictly meet the criteria for APRA supervision. While the mechanism for exercising such powers is yet to be determined, it is envisaged that it could be vested

77 *Canadian Payments Act 1985*, section 37(1).

with the Minister or exercised by APRA and ASIC jointly. The CFR intends to develop principles to guide designation decisions.⁷⁸

The Review supports the CFR recommendation that the Treasurer requires a flexible mechanism to regulate large PSPs. However, given the need for the designation power to support the safe evolution of the payments ecosystem, the Review considers it necessary to provide a power broader than that envisaged by the CFR.

Recommendation 7 – Introduce a Ministerial designation power

The Treasurer should have the power to designate payment systems and participants of designated payment systems where it is in the national interest to do so. The designation power includes the power to direct regulators to develop regulatory rules and the power for the Treasurer to give binding directions to operators of, or participants in, payment systems.

Introducing a single licensing framework

Part 3 discussed the Review’s findings on the difficulties faced by new entrants in relation to obtaining authorisations.

The current NCP definition is wide, captures all payment-related services, and is therefore dependent on regulatory discretions and piecemeal exemptions. This creates an unclear and uncertain regulatory environment for PSPs, which can hinder investment. Moreover, this ‘catch-all’ approach is inconsistent with the approach taken by comparable jurisdictions where legislative frameworks outline the payment functions that are captured rather than those that are not.

In addition, while some PSPs may only require an AFSL, others may require authorisation from multiple regulators. For example, a large remittance and digital wallet provider may be required to obtain an AFSL from ASIC, register with AUSTRAC, be accredited by the ACCC as a data recipient under the Consumer Data Right (CDR) regime, and be subject to additional prudential oversight by APRA.

The overlapping mandates of regulators leads to confusion regarding who to approach in the licensing process. PSPs would have to provide the same information to different regulators in different formats, even if the underlying risk to be addressed by regulation is the same.

The need to deal with multiple regulators to obtain authorisation can lead to substantial delays. For example, only 76 per cent of AFSL applications were finalised within 150 days in 2019-20.⁷⁹ These

78 Council of Financial Regulators, Regulation of Stored-value Facilities in Australia: Conclusions Paper (2019), page 13, available at <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2020/regulation-of-stored-value-facilities-in-australia/>

79 See Presentation by ASIC – ASIC Licensing Liaison Webinar (2020), available at: [ASIC Licensing liaison webinar 2020 presentation](#)

timelines coincide with unnecessary duplication in information required to be submitted as part of the application process, leading to significant costs especially for smaller fintechs and new entrants.

PSPs should have greater clarity as to the types of activities that require a licence. They should be able to apply for a single licence through a single regulator. The requirements imposed on PSPs should be based on the service they provide, rather than the technology or the business model they use or the industry in which they traditionally operate. In addition, the requirements should not contradict each other.

To simplify the licensing process, the Review recommends introducing a single licensing framework, based on:

- developing a list of payment functions to be regulated
- introducing tiered authorisations
- establishing links with other frameworks including the proposed CDR accreditation and current ADI authorisation,
- adopting a single point of contact, and
- complementing the Treasurer's designation power.

These are discussed below.

Defining the payment functions to be regulated

The regulatory framework should provide clarity and transparency on the types of payment activities that are regulated. It should be easy for PSPs to understand whether they are performing a function that requires a licence and what their associated obligations are. To do this, a list of payment activities based on the functions that PSPs perform rather than the technology or business model they use is required.

Taking a functional or activity-based approach to regulating payments will ensure that PSPs are regulated according to what they are doing, rather than how they are doing it. It would help level the playing field by targeting regulation to the risk posed by a particular payment activity. For example, the provision of stored-value services should be regulated in the same way irrespective of whether the service is provided through a card or a digital wallet, or by a bank, retailer, or a utilities company.

This approach to payments regulation would also align Australia's regulatory framework with international regulatory frameworks and reduce barriers to entry for overseas providers seeking to enter the Australian market. Singapore, the United Kingdom and Canada have included or are in the process of implementing functional definitions of payment services in their legislative frameworks (see Box 4.2). Stakeholders have noted that a list that outlines what functions are regulated would provide clarity to industry and enable a better targeting of regulations to the services they provide. As noted by Klarna in their submission:

Regulation based on activity rather than whether a product fits in a finite and prescriptive class conferred by the Australian Wallis-based regime has a proven track record of success in Europe. A similar approach was also taken by the Monetary Authority of Singapore in that country's recent financial services reform.⁸⁰

Box 4.2 – Functional approaches in overseas regulatory frameworks

Several jurisdictions have introduced a functional definition of payment services into their legislation.

Singapore⁸¹

The *Payment Services Act 2019* in Singapore provides for two regulatory frameworks under the single Act. The first is a designation framework for significant payment entities. The second is an activity-based and risk-based regime applying to PSPs. Entities that undertake the following activities in conducting their businesses as defined in the legislation require a licence:

- account issuance service
- a domestic money transfer service
- a cross-border money transfer service
- a merchant acquisition service
- an e-money issuance service
- a digital payment token service, and
- a money-changing service.

The licence is also tiered according to the risks posed by the entity due to its scale or type of activity:

- The money-changing licence is for smaller entities that conduct a narrow range of activities with limited risks.
- The Standard Payment Institution (SPI) licence applies to process payment transactions or hold e-money float below specified thresholds. SPI licensees are subject to lighter regulations.
- The Major Payment Institution licence applies to entities that provide payment services above a threshold. As the scale of their operations would pose more risk, they are subject to more comprehensive regulation.

80 Klarna submission, page 6

81 See the Monetary Authority of Singapore Payments site for further information and guidance materials, available at: <https://www.mas.gov.sg/regulation/payments>

United Kingdom⁸²

Payment services subject to regulation are in Schedule 1 to the *Payment Services Regulations 2017* (PSRs). They are:

- services enabling cash to be paid into or withdrawn from a payment account and all of the operations required for operating a payment account
- execution of payment transactions – such as direct debits, credit transfers and card payments
- issuing of payment instruments (for example credit or debit cards)
- acquiring payment transactions
- money remittance
- account information services
- payment initiation services

The entities that provide these services are subject to regulation and are also provided for in regulations. Further, the PSRs contemplate tiered authorisations, for example in the distinction between authorised payment institutions and small payment institutions.

Canada⁸³

Supplementing the current *Canadian Payments Act 1985*, which enables the Ministerial designation of payment systems, Canada has recently released the draft of *An Act Respecting Retail Payment Activities* (short title, *Retail Payment Activities Act*) as part of its 2021 Budget Implementation Bill. The Retail Payment Activities Act aims to regulate retail payment activities through imposing obligations on PSPs that have a place of business in Canada. It also applies to PSPs that perform retail payment activities for an end-user in Canada but does not have a place of business in Canada.

The retail payment activities subject to regulation can consist of:

- the provision or maintenance of an account that, in relation to an “electronic funds transfer”, is held on behalf of one or more end users
- the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity
- the initiation of an “electronic funds transfer” at the request of an end user
- the authorization of an “electronic funds transfer” or the transmission, reception or facilitation of an instruction in relation to an “electronic funds transfer”, or
- the provision of clearing or settlement services.

A PSP will be required to be registered with the Bank of Canada (as the supervisory authority over PSPs) before it performs any retail payment activities.

The Review supports a functional approach to payments regulation, facilitated by a defined list of regulated payment functions that can change over time to ensure it remains fit-for-purpose as technological advances continue to transform the sector. The government should be responsible for decisions around the defined list given they are matters of policy. Further, the Review envisages that functional definitions should be outlined in subordinate legislation rather than put into primary law to ensure there is an ability to respond flexibly as needed.

In addition, the definitions in other payments regulatory legislation should be aligned with the definitions of payment functions to ensure a harmonised regulatory approach.

Recommendation 8 – Introduce a list of payment functions that require regulation

A defined list of payment functions that require regulation should be developed. This should be used consistently across all payments regulation. The list should be able to change to ensure it remains fit-for-purpose as technological advancements gather pace.

A single, tiered payments licensing framework

The Review recommends introducing a single, tiered licensing framework that is based on the defined list of payment functions. Providers of services that fall within the list should be required to seek authorisations under the new licensing framework.

The Review envisages separate authorisations for the provision of regulated payments functions which are payments facilitation services (PFSs) and those which are for the provision of SVFs, and two tiers of authorisations based on the scale of the activity performed by the PSP.

Payments facilitation services and stored-value facilities

The Review recommends separate authorisations for the provision of PFSs and the provision of SVFs. This distinction is consistent with the CFR's recommendations on SVFs.

In broad terms, an SVF is a facility that can store monetary value, which can be used as a means of making payments for goods and services or transferred to another person. A PFS is a regulated payment function other than an SVF.

The separate authorisations reflect the different types of risks associated with the transfer and storage of value. For the provision of PFSs, the risks to users relate to the transmission of funds, authorisation of transactions, and mistaken payments. For the provision of SVFs, risks include the

82 See the Financial Conduct Authority website for further information on the Payment Services Regulations 2017 and Electronic Money Regulations 2011. Available at <https://www.fca.org.uk/firms/payment-services-regulations-e-money-regulations>

83 See the Bank of Canada website for further information and the text of the draft bill. Available at [Retail Payments Supervision – Bank of Canada](#)

loss of user funds due to insolvency of, or fraud by, the facility provider. The licence conditions should reflect these risks.

Whilst some PSPs would want to solely provide PFSs, the Review anticipates that most, if not all, PSPs who want to provide SVFs would also want to provide PFSs. As a result, and to avoid duplication of regulatory requirements, the authorisation to provide a SVF should also permit the provision of PFSs.

The Review notes that different licence conditions can be imposed on PSPs based on a more nuanced way of measuring risk. For example, the PFS authorisations could impose different conditions on PSPs depending on their activities at a more granular level. Reference should be had to overseas jurisdictions that have introduced tiered, risk-based licensing frameworks such as Singapore (see Box 4.3 for a list of regulated payment activities in Singapore, the United Kingdom and Canada).

Tiered authorisations

The regulatory framework should be sufficiently flexible to support PSPs as they grow and expand the range of services they provide. As PSPs scale up in the payments ecosystem (e.g. by increasing the amount of payments they facilitate or the amount of stored-value they hold), they should obtain higher levels of authorisation to perform additional or higher levels of activities.

The Review supports having two tiers of authorisations under the new licensing framework. This is consistent with the CFR's recommendations on SVFs and aligns with the licensing frameworks for PSPs overseas, such as in the United Kingdom and Singapore. The higher tier of authorisation should involve more extensive regulatory obligations than the lower tier of authorisation, such that licensing requirements are proportional to the level of activity that a PSP performs.

The Review notes that not all providers would want to scale up in the same way. The licensing framework should accommodate the various ways that PSPs can participate in the payments ecosystem.

The two tiers of authorisations further provide flexibility for providers that have large existing customer bases to leverage their networks and enter the payments ecosystem in a safe way. These providers can be authorised as a large PFS provider or a large SVF provider, depending on the type of services they want to provide.

Consistent with the CFR's recommendation on SVFs, large SVF providers should be prudentially supervised by APRA. ASIC should be responsible for regulating small SVF providers and all PFS providers.⁸⁴

84 Council of Financial Regulators, Regulation of Stored-value Facilities in Australia (2019), See Recommendations 5 and 6, available at <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2020/regulation-of-stored-value-facilities-in-australia/>

Interaction with Consumer Data Right accreditation and authorised deposit-taking institution authorisation

The licensing framework for payment services should be well-integrated with related authorisations that a PSP would want now and into the future, such as accreditation under the CDR and authorisation to become an authorised deposit-taking institution (ADI).

Consumer Data Right accreditation and payment initiation

Under the CDR regime, data recipients are required to be accredited by the ACCC. The Government is currently considering recommendations to extend the scope of the CDR to include payment initiation.⁸⁵

Payment initiation refers to a payment instruction sent through the CDR that requests the transfer of money. If the Government extends the scope of the CDR to payment initiation, it will allow consumers to direct third-party providers to initiate payments on their behalf. With the consumer's consent, the payment initiation service provider could connect to the consumer's bank account and send messages that instruct a payment to be made.

Payment initiation under the CDR differs from payment facilitation under the licensing regime discussed above. Payment initiation is the communication of a payment instruction on behalf of a customer. The message is communicated to someone who facilitates the payment (and possibly stores value) for the customer. As a result, payment initiation under the CDR should not automatically require a PFS authorisation in addition to accreditation under the CDR. The Review acknowledges that payment initiation is regulated as a payment service in the United Kingdom and the European Union, but this is partly due to the open banking regimes in those jurisdictions being much narrower in scope and not part of an economy-wide consumer data right.

The Review anticipates that accredited providers under the CDR may want to offer payment services. These providers should be able to obtain authorisation under the new licensing framework in a streamlined manner. The payment service licence should recognise the PSP's accreditation under the CDR. For example, the PSP should not have to re-establish that they fulfil information security requirements that they have already met because of their accreditation under the CDR. Figure 4.2 depicts pathways that could be taken by an accredited CDR provider as they expand their services within the payments ecosystem.

The Review recommends aligning the requirements under CDR accreditation with the payment services licence where appropriate. For example, the payment services licence should contain requirements that are built on top of the relevant information security requirements under the CDR.⁸⁶

85 Inquiry into Future Directions for the Consumer Data Right, Final Report (2020), Recommendation 5.1, page 69, Full Report available at [Inquiry into Future Directions for the Consumer Data Right – Final Report \(treasury.gov.au\)](#)

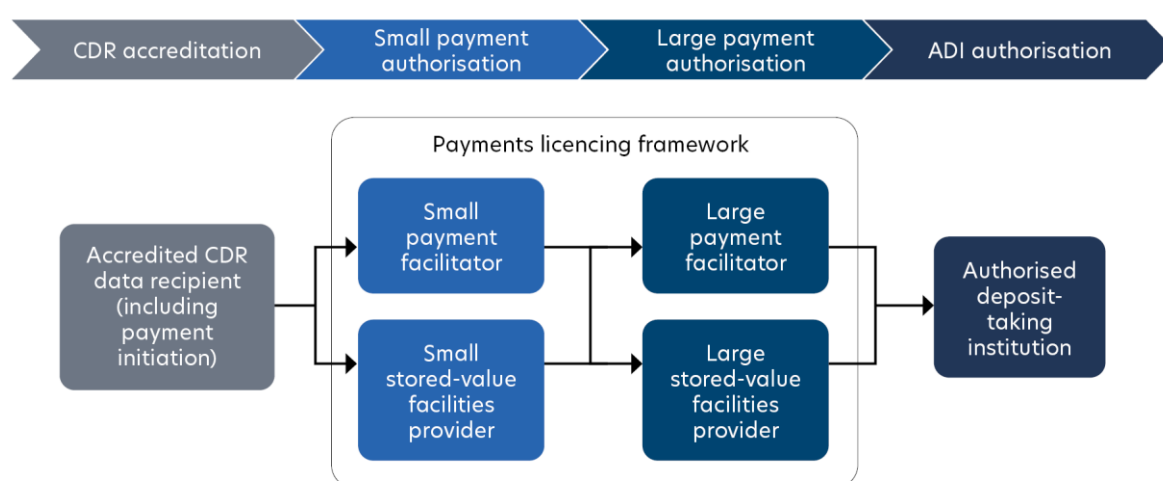
86 CDR accreditation requirements cover the security and safety of the CDR data environment, and include fit and proper person, insurance, and information security requirements. Under the CDR Inquiry

Authorised deposit-taking institution authorisation

The Review further anticipates that some PSPs, such as large SVF providers, may want to expand their services to include taking deposits. PSPs that wish to take deposits would require an ADI authorisation from APRA. The ADI authorisation should recognise the PSP's payment services licence, in a similar way that the payment service licence should recognise any CDR accreditation held by the PSP. The licensing requirements for ADIs and large SVF providers should be aligned where appropriate to support the transition of PSPs from a payment services licence to an ADI authorisation.

Figure 4.2 provides a diagrammatic representation of the proposed single licence framework, from CDR accreditation to ADI authorisation.

Figure 4.2 – Proposed single licensing framework



Single point of contact for licensing applications

PSPs should be able to apply for authorisations through a single point of contact, without the need to approach multiple regulators.

The Review considers that ASIC should coordinate on behalf of licence applicants with other relevant regulators – such as APRA for the licensing of large SVF providers, the ACCC to recognise a PSP's CDR accreditation, or AUSTRAC for registration under the AML/CTF Act. This is consistent with ASIC's role in financial services licensing and would leverage ASIC's expertise in administering the AFSL regime and enforcing obligations under the Corporations Act. Many PSPs currently hold AFSLs and, under the proposed SVF reforms, all SVF providers would be required to obtain an AFSL from ASIC.

While ASIC should be the single interface for licence applications, regulators should remain responsible for ensuring compliance with and enforcing requirements that fall within their remit. For

recommendations, payment initiators would be subject to information security requirements to keep a secure and privacy-respecting 'CDR data environment'.

example, AUSTRAC should continue to oversee and enforce compliance with AML/CTF obligations on an ongoing basis.

The Review acknowledges that single point of contact for licensing applications should require a higher degree of coordination amongst regulators to harmonise requirements and avoid duplication. This may entail legislative change to enable information sharing between regulators, and additional resourcing for ASIC given its key role in coordinating and facilitating the licence application process.

Interaction with the designation power

The proposed licence and the Treasurer's designation power are designed to work together to ensure regulatory coverage of the entire payments ecosystem. Broadly, the designation power applies to payment systems and their participants, while the licence is entity-based. A designation by the Treasurer could result in entities having to obtain a payments licence if they undertake payment functions with respect to a designated system. The designation power should allow the Treasurer to respond to the emergence of new payment systems that pose risks but do not strictly meet the functional definition of payment services for licensing purposes.

Recommendation 9 – Introduce a single, tiered payments licensing framework

A single, payments licensing framework in line with a defined list of payment functions should be introduced.

There should be separate authorisations for the provision of payments facilitation services and the provision of stored-value facilities, and two tiers of authorisations based on the scale of the activity performed by the payment service provider.

Applicants should be able to apply for this payments licence solely through ASIC.

ASIC should coordinate applications on behalf of licence applicants with other relevant regulators. Ongoing obligations under different authorisations under the licence should remain with the regulators responsible for overseeing those obligations.

Features of the licensing framework

The Review envisages that the licensing framework should be complemented by:

- mandating the ePayments Code for those payments licensees
- ensuring greater transparency for PSPs in accessing payment systems, and
- aligning and mandating core industry standards for licensees.

These are discussed further below.

Mandating the ePayments Code for payments licensees

The Review considers it necessary that holders of the new payments licence comply with the ePayments Code and recommends bringing the Code into regulation. The Code is currently voluntary and, amongst other things, sets out rules for determining who pays for unauthorised transactions and establishes a regime for recovering mistaken internet payments.

Bringing the ePayments Code into regulation would provide greater clarity to consumers, businesses, and PSPs in relation to their rights and obligations when unauthorised payments are made or when a payment does not reach its intended recipient. It would ensure Australian consumers and businesses are better protected, and level the playing field between current signatories to the Code and other PSPs.

The proposal to mandate compliance with the ePayments Code for PSPs is consistent with the CFR's recommendations on SVFs, the recommendations by the Productivity Commission, and the 2014 FSI.⁸⁷ It would also align Australia's regulatory framework with overseas frameworks. In the European Union, United Kingdom and Singapore, dispute resolution processes are clearly stipulated in payment services legislation.

ASIC is currently undertaking a review of the Code in its current voluntary form and the Review supports updates to the Code to better align it with future developments.⁸⁸ However, there is scope to improve the way in which the Code is designed and applied so that it is better coordinated with the broader regulatory architecture.

In this regard, the ePayments Code should:

- align with broader payment policy objectives, including those to be outlined in the strategic plan
- provide certainty for industry participants in relation to their obligations to consumers and each other
- be consistent with or directly incorporate other related regulatory settings, such as those around data and information security, and
- where practicable, align with other comparable jurisdictions such as the United Kingdom.

87 Council of Financial Regulators, Regulation of Stored-value Facilities in Australia: Conclusions Paper (2019), Recommendation 3. See also Productivity Commission, Competition in the Australian Financial System (2018) and Financial System Inquiry (2014).

88 ASIC has released a second consultation paper CP 341 Review of the ePayments Code: Further consultation, (2021), available here: <https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-341-review-of-the-e-payments-code-further-consultation/>

Recommendation 10 – Mandate the ePayments Code for payments licensees

The ePayments Code should be mandated for all holders of the payments licence. Accordingly, the ePayments Code should be brought into regulation.

Transparent access to payment systems

As noted in Part 3, access to payment systems is a major area of concern for new entrants. The Review considers that there is considerable scope to provide transparency and clarity over the requirements for gaining direct access to payment systems.

Progress has been made overseas to use regulation to improve the access of non-bank PSPs to retail payment systems. For example, in the United Kingdom there are three access models for retail payment systems which vary in responsibilities, implementation complexity and cost. Non-bank PSPs can choose to become a direct settling participant, direct non-settling participant, or indirect participant.⁸⁹

In Australia, the RBA and the ACCC's Conclusions Paper into the NPP Functionality and Access noted that direct access to the NPP should be open to a range of PSPs.⁹⁰ The participation of non-ADI PSPs would be subject to requirements appropriately calibrated to the key risk and operational considerations that are essential for participation in the NPP. For example, New Payments Platform Australia (NPPA) noted that currently, AFSL requirements do not sufficiently address operational, financial, and governance risks associated with direct access to a real-time payment system. However, the ADI requirement may be too burdensome for most PSPs and may not be necessary given the types of risks posed by the services PSPs provide.

There should be a simple, fair, and transparent way for non-ADI PSPs to determine what is needed to access core payment systems in Australia. Improved access allows non-ADI PSPs to compete on a more level playing field. They would be less dependent on competitors and will be able to offer a wider range of payment services.

The Review notes that there would likely be some access requirements that are common across payment systems. The Review considers that the RBA should develop common access requirements for all payment systems in Australia, in consultation with the owners of those systems. This is consistent with the RBA's oversight role in setting of standards for payment systems.

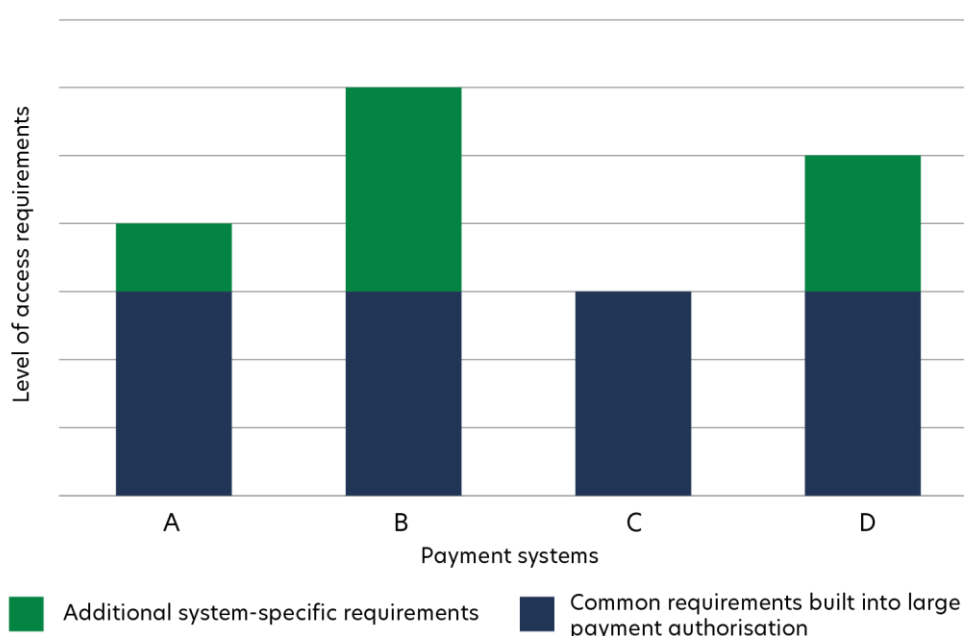
89 Bank of England, Access to UK Payment Schemes for Non-Bank Payment Service Providers (2019), available at <https://www.bankofengland.co.uk/-/media/boe/files/markets/other-market-operations/accessfornonbankpaymentserviceproviders.pdf>

90 See RBA and ACCC, NPP Functionality and Access Consultation: Conclusions Paper (2019), available at [NPP Functionality and Access Consultation: Conclusions Paper – June 2019 \(rba.gov.au\)](https://www.rba.gov.au/publications/consultations/npp-functionality-and-access-consultation-conclusions-paper-june-2019)

These common access requirements should form part of the payments licence. Specifically, the common access requirements should be part of the licensing requirements for the higher tier of authorisations (for large PFS providers and large SVF providers) and made optional for the lower tier of authorisations (for small PFS providers and small SVF providers). In this way, the new licensing framework recommended by the Review should facilitate the access to payment systems for non-ADI PSPs. The Review notes that further requirements may be required to access a payment system in addition to the common requirements, depending on the size of the licensee and on the specific payment system for which access is sought.

Figure 4.3 provides a stylised example of the different levels of access requirements set by four hypothetical payment systems (A, B, C and D). The level of requirements that are common across the four payment systems would form the common access requirements built into the large payment authorisation. The authorisation would permit access to payment system C, but additional system-specific requirements would need to be met by the PSP to access payment systems A, B and D.

Figure 4.3 – Access requirements for payment systems



This proposal ensures that smaller PSPs have a clear pathway to demonstrate their qualifications to access payment systems. It also ensures that those who do not seek access to payment systems are not forced to comply with higher standards that are not justified. For large PSPs, meeting these common requirements should be consistent with their overall need to provide for a higher level of compliance with important safety and service standards. Large PSPs should demonstrate to ASIC that they meet the common requirements as a condition under the licence.

This approach is supported by stakeholders including the NPPA, which notes in its submission:

NPP Australia has called for an e-money licence to be created (between an AFSL and an ADI) on four separate occasions in responses to various regulatory reviews. If a new class of regulated entity under the e-money licence is to be created in the market, NPP Australia stands ready to support these changes when they are introduced...The NPP access framework is flexible enough or able to be modified to adapt to any changes in the broader licensing regime as that evolves.⁹¹

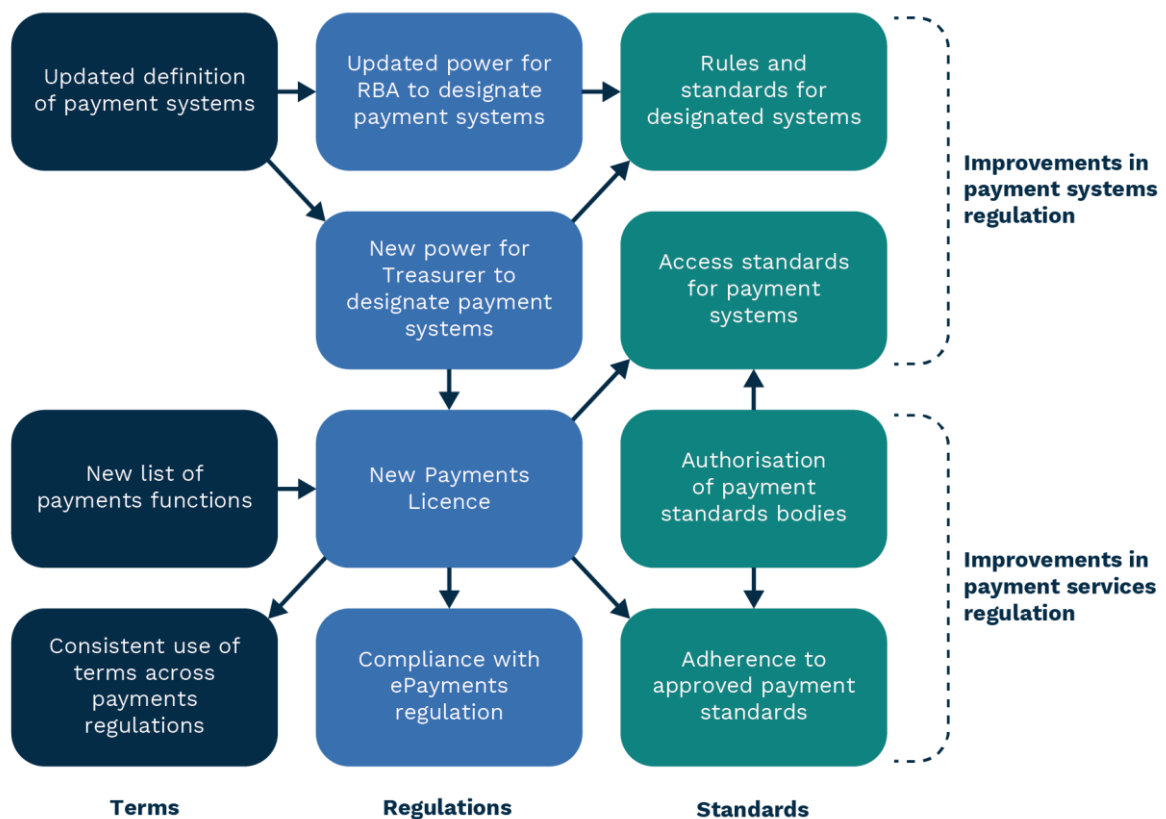
Recommendation 11 – The single payments licensing framework should facilitate transparent access to payment systems

The common access requirements for payment systems should form part of the payments licence to facilitate access for licensees to those systems.

The RBA should develop common access requirements in consultation with the operators of payment systems.

Figure 4.4 provides a summary of the proposed recommendations outlined above.

Figure 4.4 – Proposed changes to payments regulation



91 NPPA submission, page 4.

Aligning and mandating core industry standards

Mandating core industry standards

Industry standards are necessary to ensure outcomes around interoperability, consumer protection, security (including fraud and device approval) and accessibility in the payments ecosystem can be achieved.

As mentioned in Part 3, industry bodies remain best placed to set the technical rules and standards for participants in the payments ecosystem. The pace of change in payments technology, market structures, and business models require a level of agility and expertise in standards that is not well suited to regulators or the government. Standards should be able to change in line with technology and emerging risks to ensure overall objectives for the payments ecosystem can be met.

Adherence to standards set by industry bodies is currently not mandatory, which undermines a level playing field for participants within the payments ecosystem. The Review recommends mandating compliance with core industry standards set by authorised standard-setting bodies for holders of the new payments licence. This would ensure consistency and transparency in the application of the standards, such that providers of services that give rise to the same risks would be subject to the same requirements.

The Review does not propose to mandate membership for a particular industry standard-setting body. However, given compliance with core industry standards would be mandatory for payments licensees, it likely would be in the interests of these providers to become members of industry bodies so they can contribute to the design of the standards. This would ensure the standards cater for a diverse range of providers that now operate within the payments ecosystem.

Authorisation of industry standard-setting bodies

Given compliance with industry standards would be mandatory for payment service licensees, it is important that entities responsible for setting these standards are subject to appropriate levels of oversight and accountability. The Review considers that this would be best achieved through an authorisation process conducted by the RBA.

Powers should be vested in the RBA to authorise appropriate entities to set standards, having regard to – for example – the entities' expertise and capability.⁹² Accordingly, it should be a matter for the RBA to oversee and satisfy itself that authorised entities are performing their functions in a way that is consistent with broader payment policy objectives. In circumstances where those objectives are beyond the policy remit of the RBA, reference should be made to the Treasury and other payments system regulators.

92 The Review notes that AusPayNet currently has the necessary expertise and capability to undertake the functions of the standard setting body. However, the architecture should allow for flexibility to authorise a different entity to set standards, or multiple standard-setting bodies, if that is what is needed to achieve desired regulatory outcomes.

Aligning industry standards with payments policy objectives

The standards set by industry bodies should align with broader payment policy objectives and regulatory frameworks.⁹³

In addition, industry standard-setting bodies should ensure consistency in the standards they set with the standards set by other standard-setting bodies operating in the payments ecosystem. For example, there should be consistency in the standards set by AusPayNet for the payments ecosystem and the standards set by the Data Standards Body in relation to the CDR. Alignment of industry standards with policy objectives requires enhanced coordination between industry, regulators, and government, which could be facilitated by the payments industry convenor.

Recommendation 12 – Align and mandate industry standards

Compliance with technical standards set by authorised industry bodies should be mandatory for payments licence holders. These standards should be aligned with broader payments policy objectives, with the RBA providing authorisation and oversight of industry standard-setting bodies.

Implications for existing arrangements in implementation

Interaction with AFSL regime

The new payments licensing framework could be implemented under the AFSL regime. This could involve defining the authorisations under the new licensing framework as financial services that require an AFSL.

Alternatively, the licence could be implemented by establishing a regulatory framework separate from the AFSL regime. However, this would likely require significant legislative change and there is inherent complexity involved in untangling the regulation of the payment system from other aspects of the financial system. Currently many PSPs, including APRA-regulated entities, are required to hold an AFSL and there are benefits to ensuring payment services are regulated in a manner consistent with other financial services. The CFR recommendations on SVFs also recommended that payment facilitators and SVF providers hold AFSLs as a baseline requirement.⁹⁴

The Review does not make recommendations on the details of implementation. It would be a matter to be determined by the enhanced Treasury function. If the licence is to be implemented inside of the AFSL regime, PSPs that hold NCP facility authorisations should have a choice to migrate to the

93 As detailed in Part 3, AusPayNet is Australia's key payments standard-setting body. This section intentionally does not make recommendations about AusPayNet's role, but rather any entity that the RBA deems suitable to be a standard setting body.

94 Council of Financial Regulators, Regulation of Stored-value Facilities in Australia (2019), See Recommendation 3, available at [Regulation of Stored...~https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2020/regulation-of-stored-value-facilities-in-australia/](https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2020/regulation-of-stored-value-facilities-in-australia/)

new licence or continue to operate under the NCP regime. New entrants should be required to obtain a payments licence. However, if the licence is to be implemented outside of the AFSL regime, the Review considers that the new licence should be required for PSPs that hold NCP facility authorisations.

Enhanced regulatory sandbox

To assist PSPs with obtaining new authorisations, the Review has heard from stakeholders that there is value in extending the government's enhanced regulatory sandbox, administered by ASIC, to all types of PSPs irrespective of their size and the type of service they provide.

The Review considers there is merit in providing for a sandbox that is scalable. The sandbox should permit PSPs to experiment with further authorisations under the proposed licensing framework before obtaining those authorisations. For example, a PSP in the sandbox that is authorised to facilitate transactions up to a certain limit is allowed to increase that limit by meeting one or two additional criteria while remaining in the sandbox.

4.3 Better aligning regulator approaches

The Review has considered whether further changes are needed in addition to the recommendations discussed above in relation to supporting an enhanced leadership role for the Treasurer, extending the designation powers, and introducing a single payments licencing framework.

The Review considers that the approaches of regulators should be better aligned. In particular, given the difficulties that stakeholders have faced in understanding and complying with AML/CTF obligations, there is merit in closer coordination between AUSTRAC and other payments regulators.

This approach is consistent with the administration of AML/CTF laws in other comparable jurisdictions, where AML/CTF functions are regulated together with the broader financial system regulation. For example:

- In the United Kingdom, the FCA is the AML/CTF regulator for financial institutions. In this role, the FCA monitors and regulates financial sector entities subject to the law using a risk-based approach and uses an impact assessment based on the size of the entity and the number of customers.
- In Singapore, the Monetary Authority of Singapore (MAS) has responsibilities for financial services and is also responsible for the policy and enforcement of AML/CTF laws.
- In the United States of America, the Financial Crimes Enforcement Network (FinCEN) is the main AML/CTF regulator and operates under the Treasury.
- In Canada, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is responsible for administering AML/CTF laws and reports to the Minister for Finance.
- In Japan, the Financial Services Agency is responsible for supervising financial institutions in implementing required and expected actions in undertaking AML/CTF measures and has enforcement mechanisms such as penalties for not meeting required actions.

While the Review considers that it is not within its terms of reference to recommend the consolidation of the AML/CTF policy functions into the Treasury portfolio, should improved coordination not facilitate great consistency and alignment in policy outcomes, there is merit in considering this as an option in the future.

A range of MoUs are in place between regulators, but the Review considers more close and regular coordination for all regulators is needed. The enhanced Treasury function, with the powers and duties recommended by the Review, should take steps to improve this coordination and ensure the alignment of payments regulation.

This is consistent with stakeholder feedback discussed in Part 3. Greater coordination will support a number of key goals, including:

- developing a consistent policy direction for the payments ecosystem
- ensuring regulatory approaches and strategies can be more readily understood and communicated
- delivering a streamlined payments licensing process with a rationalisation in the information needed from applicants across different authorisations
- supporting the Treasurer’s enhanced leadership role in the payments ecosystem, and
- enabling more holistic decision-making processes in the financial system that can incorporate issues under a single framework.

Recommendation 13 – Better align regulator approaches and regulatory requirements

The enhanced Treasury function should take steps to improve coordination between payments regulators, and the alignment of payments regulatory requirements, including with respect to AML/CTF issues.

4.4 Empowering consumers and businesses with payments education

The payments ecosystem exists to serve to needs of consumers and businesses. While regulation is designed to achieve objectives of safety, effectiveness, and efficiency, there will always be a role for consumers and businesses being informed of their options for engaging with the payments ecosystem.

Consumers and businesses are increasingly exposed to a variety of new payment methods and technologies that are timely, convenient, and easy to use. However, the knowledge needed to use these methods safely is not guaranteed. Transitioning towards new systems risks leaving behind businesses and consumers that do not adapt.

Ensuring that the benefits of evolving payment methods are shared can be partly achieved by shared representation in our decision making. Consumers and business advocates perform an essential role in setting the strategic agenda of Australia's regulatory architecture which needs to be preserved.

Educating consumers

As complexity in the payments ecosystem has increased, so too have the range of consumer benefits and risks. While having available different payments choices that provide different services at different costs is not a new phenomenon, the choices consumers are increasingly having to make are becoming more complex. Looking forward, consumers will have to make personal choices not just between cost, security, and convenience of a payment but also privacy.

Faster payments with additional data capabilities and the continued seamless integration of payments into broader aspects of the economy will undoubtedly bring increased convenience for consumers. This is especially evident given the continued acceleration of consumers adopting mobile and online payments. While these forms of payment are convenient and cheap, they can lead to scams and fraud. Global value of losses due to e-commerce fraud has been estimated to be over \$20 billion in 2021, a growth of 18 per cent from the previous year.⁹⁵

In addition, stakeholders have noted that consumers need to be made aware of the implications of taking up new financial products, such as BNPL. According to the Salvation Army:

The number of people ... who do not recognise BNPL loans as debt, even at the end of a financial counselling session, reveals that more education is needed to equip people to identify credit and its consequences. The 2016 Household, Income and Labour Dynamic in Australia (HILDA) survey revealed only around half of all Australians are financially literate, with women and younger people generally displaying lower levels of financial literacy. Targeted investment in financial capability support is needed for younger people given they tend to use BNPL more yet tend to be less financially literate.⁹⁶

Another important development where consumer education is critical is in relation to new and emerging digital currencies that are increasingly popular. Consumers should understand what cryptocurrencies are, the risks and opportunities they give rise to and the best ways consumers can engage with these new products in an appropriate way.

Although regulatory frameworks will have in place safeguards that make it easier for consumers to engage with payments in a safe way, this is no substitute for consumer education. The Review considers it necessary that there be more comprehensive payments-related education to be provided. This should be done not only by the government through regulators, but also by industry directly to consumers.

There are a variety of existing education programs already in place, such as those in the newly announced Digital Economy Strategy. Through this strategy, the Government is investing in building

95 Juniper Research, Ecommerce losses to online payment fraud to exceed \$25 billion annually by 2024 (2020), available at <https://www.juniperresearch.com/press/ecommerce-losses-to-online-payment-fraud-to-exceed?ch=eCommerce%20Losses%20to%20Online%20Payment>

96 The Salvation Army submission, page 3.

the digital skills of Australians. In conjunction with this, there are also pre-existing support and educational services through ASIC's Moneysmart program and the ACCC's Scamwatch programs.

All of these would assist consumers in understanding the benefits and risks of new payment methods, but it is not clear whether gaps remain. These programs may be collectively sufficient in educating consumers, but this should be reviewed by the government to ensure that any gaps in information or guidance in relation to payments matters are filled. The refresh of the National Financial Capability Strategy (NFCS) provides an opportunity to ensure that consumers are well equipped for future payment changes.

An important component in educating consumers is ensuring that consumer-focused bodies are also equipped with an understanding of payments issues and the way they impact on consumers. This will allow them to more effectively represent consumers on key payments issues and contribute to broader payments policy issues from a consumer's perspective. This is particularly important in the context of ensuring better representation of all end users in key decisions.

Educating businesses

The Review has heard that an increased awareness for businesses that use the payments ecosystem is also vitally important. Businesses often face the same difficulties as consumers in relation to possible scams and will benefit from the incorporation of payments into the NFCS.

However, businesses also face additional difficulties to those encountered by consumers. While businesses are generally required to accept many forms of payments from consumers, they do face choices in PSPs. The choices between PSPs are often difficult, as the associated costs are complex and sometimes ambiguous. As the number of PSPs grow, understanding the differences between them will become increasingly important.

Stakeholders also conveyed the importance of ensuring that businesses have access to this information. For example, the Master Grocers of Australia noted in their submission that:

The regulatory architecture should ensure that merchants have full transparency of their payment costs, with pricing information provided in a way that is understandable and enables merchants to make informed decisions about the choices available to them. This contrasts with the current complex and opaque disclosure of transaction costs, which makes it exceedingly difficult for busy small business operators to make valid comparisons between different offers in the market.⁹⁷

The Review supports increasing transparency and the awareness of businesses in relation to key payments issues such as merchant cost routing and merchant services fees so that they are empowered to make choices that best meet their needs.

As with consumer education, the Government has also taken steps towards this education. For example, there is currently development of a Digital Readiness Assessment tool to help businesses self-assess their digital maturity.

97 Master Grocers of Australia submission, page 6.

While this may assist businesses in understanding their online payments, consultation suggests that there is still a gap in broader payments knowledge. The Review recommends that industry and regulators coordinate the development of a business education programme. While there is overlap between the needs of consumers and businesses, the complexity and importance of merchant costs makes it likely that further work is required.

Recommendation 14 – Educating consumers and businesses

Improved payments capability should be a goal of the refresh of the National Financial Capability Strategy.

Regulators should work with industry to coordinate the development of a business education programme in relation to payments, to ensure they understand their options and are empowered with choice.

4.5 Modernising government payments

Government as a customer

Governments should use the payment systems that best serve the needs of Australians, by using the best and most appropriate payment methods and upgrading existing functionalities where they best serve the broader community.

Governments have adapted to newer payments systems where they deliver on specific benefits. For example, the federal government has delivered emergency payments for natural disasters such as floods and bushfires through newer systems such as the NPP, to quickly reach those in need of financial assistance. These are welcome initiatives that provide a strong basis for extending the use of NPP payments to more recipients due to the benefits that NPP payments bring, including:

- near-instant payments that supports people in need
- more secure payments that are less susceptible to fraud or misuse, and
- more data-rich instructions, enabling more information to be provided about the payment and an ability for greater engagement of recipients.

The Review has heard that more government payments could benefit from the use of the NPP and that governments should consider how to move more government payments to this newer system for the benefit of the Australian community.

Governments also play a unique role as significant customers that rely on the payments ecosystem to administer tax and welfare systems, pay employees, and procure goods and services to deliver on a range of commitments. Changes in the way that governments pay for goods and services can create network effects and drive change in the payments ecosystem, because of the scale and number of services that the government provides.

However, the Review has heard that there are barriers to extending the government's use of the NPP. These issues range from legislative requirements and capacity bottlenecks to accessibility concerns and the need to ensure recipients and taxpayers have the education and tools to switch over to newer platforms.

Another issue is that large government agencies such as Services Australia and the Australian Taxation Office have existing strategies and budgets in place to invest in custom payments solutions built on existing payment systems. These are often long-term strategies and are not necessarily aligned with changes in the broader payments ecosystem, which may be problematic if older systems are retired over time while government payments remain dependent on them.

This necessarily means that governments agencies that are large users of payment systems should be engaged in the strategy for the payments ecosystem to ensure there is some alignment in investments between the government and the broader payments ecosystem. Moreover, as a large customer in the payments ecosystem, the government can also take the opportunity to accelerate the take-up of these new innovations by becoming early adopters and demonstrating greater leadership in the use of productivity-enhancing innovations in the payments ecosystem.

The Review recognises the barriers faced by government agencies but notes that planning with their banking partners through the development of a priority list of programs to move to the NPP will provide for a smooth transition over time. Such a transition will support the expanded rollout of NPP technology and enable faster, more secure, and safer government payments.

Recommendation 15 – Leverage the position of government as a large customer of the payments ecosystem to support broader objectives

Governments should use the payment systems that best serve the needs of Australians.

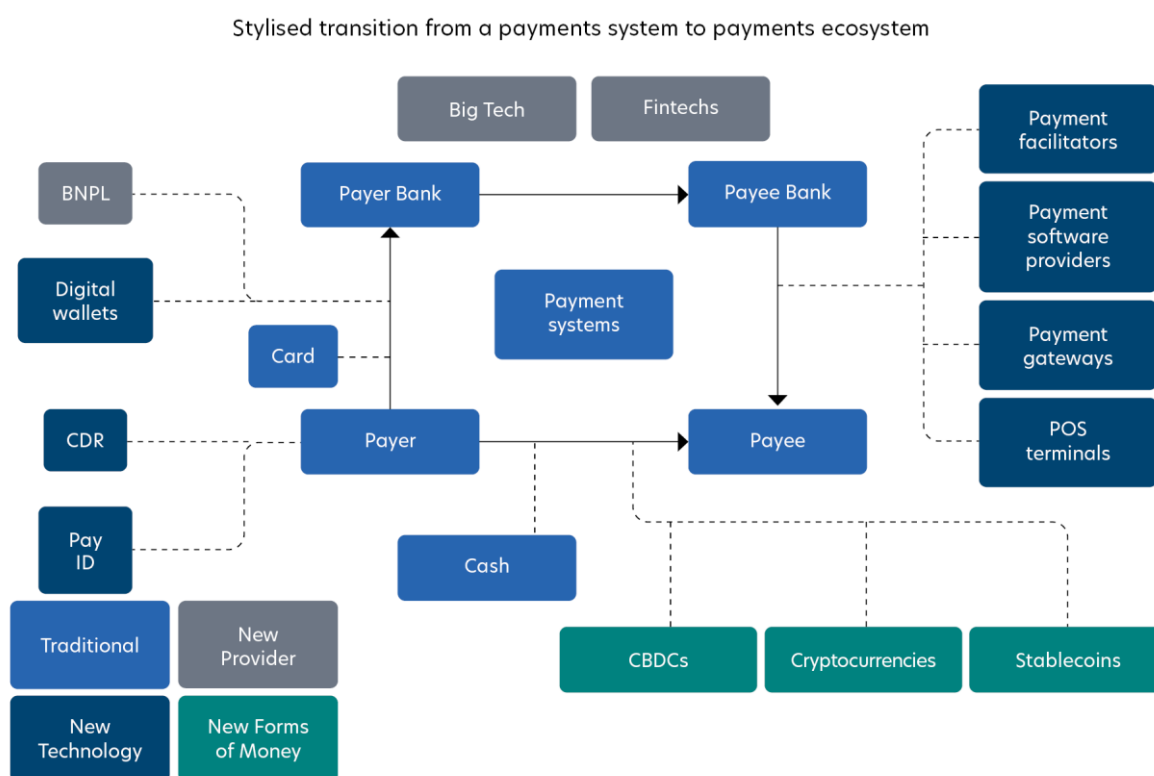
The government should leverage its position as a large user of the payment ecosystem to support broader payments policy objectives.

Part 5: Addressing pressing challenges

This Review has been conducted at a time of major innovation in Australia’s payments ecosystem. The payments ecosystem has been transformed by the emergence of new technology, providers, and business models involved in the facilitation of payments, and potentially new forms of money over recent years. These developments have been made possible by the digitisation of payments and the shift in economic activity towards digital and e-commerce solutions, not only from new businesses but also from ‘bricks-and-mortar’ businesses that are increasingly offering online purchase options. Payments now perform a vital role in providing consumers and businesses with a way to engage with Australia’s digital economy. As a result, the payments ecosystem at large needs to support Australia’s digital economy.

A snapshot of the payments ecosystem with the new providers, technologies and new forms of money are provided in Figure 5.1.

Figure 5.1 – The expanding payments ecosystem



The digitisation of payments means that many payments are now effectively data transfers, and the payments ecosystem is becoming a subset of the broader data ecosystem. This has a myriad of implications for how payments are facilitated, their global reach, and their integration with broader economic activities. Digitisation has delivered significant benefits to consumers and businesses by facilitating commerce across the globe, but it has also given rise to a new set of risks and regulatory challenges.

The following section will detail some current day challenges the Review considers as critical for the regulatory architecture to grapple with. This Review does not articulate a recommended position on these matters, as they require further consideration of matters beyond the terms of reference. However, the Review notes the concerns expressed by a range of interested persons on these matters and so provides a background to the issues and a potential way forward for further consideration using the recommended revised architecture.

5.1 New technology and business models

Digital wallets

Digital wallets are applications on smartphones and other devices that store electronic information including representations of payment cards. Prominent examples of digital wallets include Apple Pay and Google Pay. These applications can be used to make contactless payments when shopping online, and at the point-of-sale using NFC or quick response (QR) code functionality of the mobile device to communicate with a payment terminal.

Digital wallets provide significant benefits to consumers. They offer the ability to make payments with increased convenience and security and are becoming an increasingly integral element of the payments ecosystem. However, they present new regulatory challenges that require consideration.

First, digital wallets could become systemically important should consumer uptake of this technology continue to grow. For example, with an estimated 690 000 users of WeChat Pay alone in Australia, there are a range of regulatory considerations that may need to be addressed.⁹⁸ While they may become systemically important as they grow in use, digital wallets are not designated as a payment system or required by regulation to meet any standards around availability or accessibility. Moreover, digital wallets provide a rich source of transaction data for wallet providers. Consideration should be given to the appropriate storage, collection and use of that data.

Second, digital wallets could provide a means to facilitate the storage and distribution of funds or assets not currently considered to be included in the definition of Australian money, such as foreign currencies, crypto-assets, or foreign CBDs. For example, digital wallets could be used, but not operated, in Australia without being subject to Australian regulation in the same way as those which are operated in Australia.

The recommendations put forward by this Review could support a targeted and proportionate response to these regulatory challenges. The functional definition of payments under the proposed licensing framework would clarify the regulatory status of digital wallets and allow them to be regulated appropriately. The tiered licensing requirements should assist in ensuring a level playing field for PSPs.

98 See WeChat International submission to the Select Committee on Foreign Interference through Social Media, available at [Submissions – Parlia...~https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Interference_t hrough_Social_Media/ForeignInterference/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Interference_through_Social_Media/ForeignInterference/Submissions)

In addition, the new designation power for the Treasurer or the expanded scope of the designation power of the RBA could be relied upon where oversight of a particular digital wallet would be in the national interest or the public interest.

Finally, recommendations aimed at enhancing coordination between government, regulators and industry standard-setting bodies could ensure consistency in the regulatory approach toward digital wallets. This is particularly important given some regulatory challenges stretch beyond the provision of payments (for example, in relation to data protection and privacy).

Buy-now pay-later

BNPL arrangements allow consumers to purchase goods or services and defer the payments for those products usually in a series of interest-free instalments. BNPL providers generally charge a transaction fee to business for offering the service and/or late fees to consumers who fail to meet instalments. BNPL arrangements rely on existing payment systems and operate as an intermediary between the consumer and the business.

Although often not structured as a credit product, BNPL arrangements are at times drawing close parallels to traditional credit offerings. In recent times, BNPL providers have introduced rewards programs similar to those associated with credit cards.

The close parallels between BNPL and credit cards have resulted in the major banks, who are also major credit providers, to either directly enter the BNPL market or develop partnerships with BNPL providers. The close parallels have also resulted in consumers viewing BNPL services as substitutes for credit cards. Specifically, the Senate Standing Committees on Economics noted that young Australians were turning to BNPL services instead of lines of credit to facilitate their consumption.⁹⁹

Given the emergence of BNPL arrangements are a recently new phenomena in the payments ecosystem, it has not been tested as to whether BNPL meets the definition of a 'payment system' under the PSRA. The regulatory settings for specific systems and services is beyond the scope of this Review, as is consideration of other forms of financial services regulation, such as the regulation of credit. Accordingly, the Review has not made any determination as to the regulation of BNPL.

However, it is clear that the BNPL sector is growing rapidly and becoming a significant feature within the payments ecosystem and it is important the regulatory architecture is sufficiently comprehensive to enable the regulation of new business models like BNPL, should the policy rationale to do so be established.

99 Senate Committee on Economics, Credit and financial services targeted at Australians at risk of financial hardship, Chapter 5, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report

5.2 New forms of money

Central bank digital currencies

CBDCs are a digital alternative to cash being considered by central banks around the world. CBDCs are issued by a central bank and the unit of account is the sovereign currency of the issuing country. This makes them distinct from other digital payment methods like electronic money ('e-money') and cryptocurrencies. E-money is not issued by a central bank and carries some credit risk on its issuer.

A central bank might consider issuing a CBDC for several reasons.¹⁰⁰ A CBDC could be useful where a decline in cash results in lower confidence in conducting transactions or has negative impacts on particular parts of the community. Furthermore, issuing a CBDC can ensure the domestic sovereign currency appropriately responds to the emergence of digital currencies that could grow quickly in usage and take over domestic sovereign currencies. As noted by the Bank for International Settlements:

Significant adoption of money not denominated in the sovereign currency could limit the impact of monetary policy or the ability to support financial stability. A risk of stablecoins, so-called "cryptocurrencies" and foreign CBDCs is that domestic users adopt them in significant numbers and use of the domestic sovereign currency dwindles. In extremis, such a "digital dollarisation" could see a national currency substituted by another with the domestic central bank gradually losing control over monetary matters.¹⁰¹

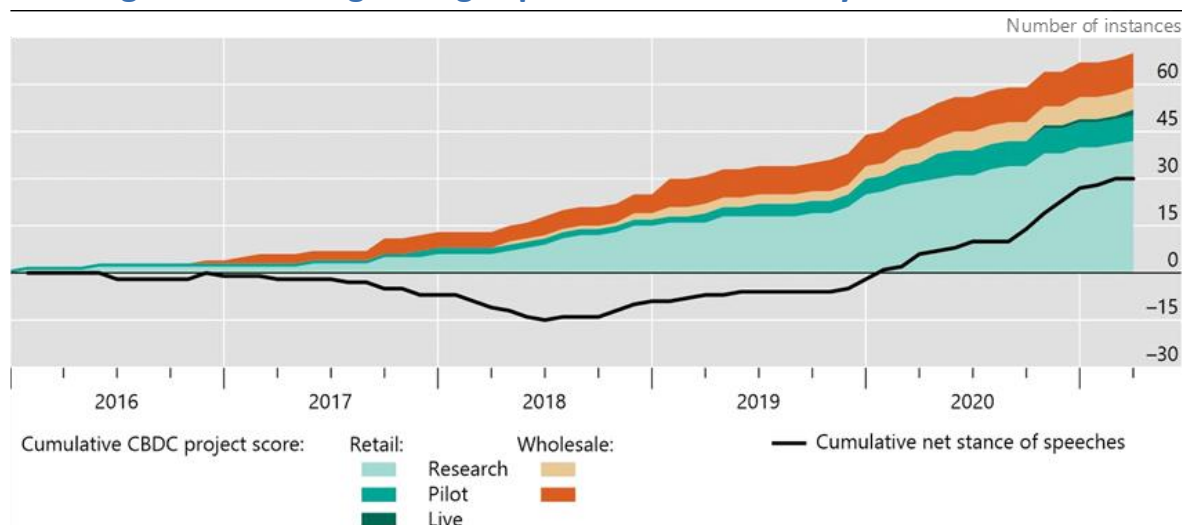
Central banks around the world are showing a more positive stance toward the issuance of CBDCs (see Figure 5.2). The CBDCs of other central banks could have implications for Australia's payments ecosystem and international payments ecosystems.

Given Australia is an open economy with vast international linkages, the actions of foreign central banks around CBDCs could have domestic implications. The nature of those implications and the potential risks they pose will vary depending on the country issuing the CBDC and its design. For instance, if a foreign-issued retail CBDC were to be made available and used for domestic transactions, considerations would need to be given to the implications on financial stability, monetary policy, privacy, national security, AML/CTF, consumer harm, and data collection and use by oversight agencies.¹⁰²

100 For a detailed explanation, see Tony Richards, Chris Thompson and Cameron Dark, RBA Bulletin, Retail Central Bank Digital Currency: Design Considerations, Rationales and Implications (2020), pages 38-40, available at <https://www.rba.gov.au/publications/bulletin/2020/sep/retail-central-bank-digital-currency-design-considerations-rationales-and-implications.html>

101 G7 Working Group on Stablecoins, Investigating the impact of global stablecoins (2019), available at [d10fb97f-a9a6-472b-842a-8b279e8863c4 \(economie.gouv.fr\)](https://www.economie.gouv.fr/d10fb97f-a9a6-472b-842a-8b279e8863c4)

102 This list is not intended to be exhaustive of all the potential risks but rather provide an illustrative example of the range of risks that may need to be considered.

Figure 5.2 – The growing exploration of CBDCs by central banks¹⁰³

Source: R Auer, G Cornelli and J Frost (2020), "Rise of the central bank digital currencies: drivers, approaches and technologies", *BIS working papers*, No 880, August; central banks' websites.

Domestically, the RBA recently concluded that there not a strong enough public policy case to issue a retail CBDC at present.¹⁰⁴ The RBA is investigating the potential use and implications of a wholesale CBDC which includes consideration of a limited proof-of-concept of a DLT-based interbank payment system using a tokenised form of CBDC backed by ESA balances.¹⁰⁵ The outcomes of this research are expected to be published in the first half of 2021.

It is beyond the scope of this review to assess whether Australia should have a domestic CBDC in what form it should take. However, the introduction of a domestic CBDC could have far reaching implications, potentially beyond those limited to the functioning of the financial system. As acknowledged by the RBA, a decision to implement a retail domestic CBDC would require in-depth assessment and consultation.¹⁰⁶

Cryptocurrencies

Cryptocurrencies emerged in 2009 to facilitate peer-to-peer payments sent from one party to another without going through a financial institution.¹⁰⁷ These transactions utilise cryptography and distributed ledger technology (DLT) to record transactions and the account balances of individuals. The most well-known example is Bitcoin.

103 Raphael Auer, Giulio Cornelli and Jon Frost, Rise of the CBDCs: policy approaches and technologies, Presentation, April 2021. See link at [Rise of the central ...~https://www.bis.org/publ/work880.htm](https://www.bis.org/publ/work880.htm)

104 RBA, Retail Central Bank Digital Currency: Design Considerations, Rationales and Implications, available at [Retail Central Bank ...~https://www.rba.gov.au/publications/bulletin/2020/sep/retail-central-bank-digital-currency-design-considerations-rationales-and-implications.html](https://www.rba.gov.au/publications/bulletin/2020/sep/retail-central-bank-digital-currency-design-considerations-rationales-and-implications.html)

105 See the RBA media release, available at <https://www.rba.gov.au/media-releases/2020/mr-20-27.html>

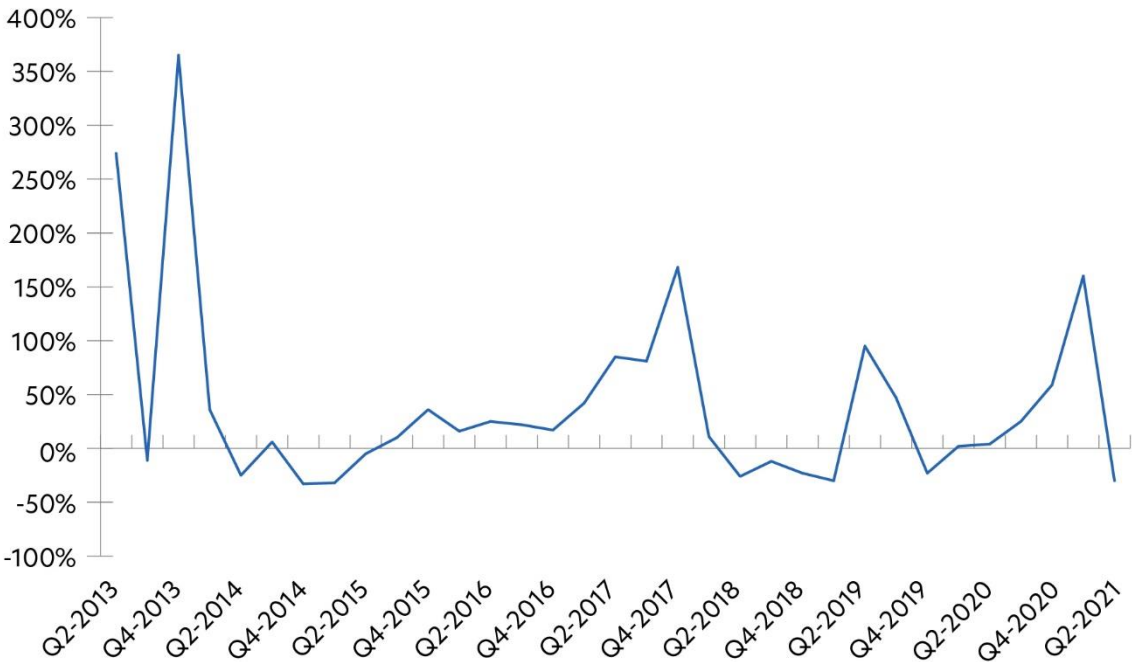
106 As noted in the RBA media release, see footnote above.

107 For a history and overview of cryptocurrencies, see the Bank for International Settlements, Annual Report 2018, Chapter V: Cryptocurrencies: looking beyond the hype, available at [V. Cryptocurrencies: looking beyond the hype \(bis.org\)](https://www.bis.org/press/2018/09/09180901)

To date, the price of cryptocurrencies has been extremely volatile. The RBA has noted that this high price volatility means existing cryptocurrencies do not perform the three functions of money – acting as a store of value, a means of payment, and a unit of account.¹⁰⁸

Figure 5.3 below provides the change in the prices of Bitcoin over time.

Figure 5.3 – Volatility in the price of Bitcoin



The RBA further noted that the use of cryptocurrencies in payments is limited by scalability issues and uncertainty around settlement finality. The shortcomings of cryptocurrencies as a payment method have shifted public interest in these products away from facilitating payments and more towards speculative investment. The RBA survey data suggests that only one per cent of consumers used a cryptocurrency to make a payment in the previous 12 months.¹⁰⁹

Although cryptocurrencies do not yet play a significant role in Australia’s payments ecosystem, interest in the market is growing. This is presenting new risks that warrant ongoing monitoring. For consumers, the speculative nature of cryptocurrencies is raising consumer protection concerns. Notably, there are few consumer protections when cryptocurrencies or the related platforms are utilised.¹¹⁰ There have been instances in Australia where cryptocurrencies have been used to scam

108 RBA, Cryptocurrency: Ten Years On (2019), available at <https://www.rba.gov.au/publications/bulletin/2019/jun/cryptocurrency-ten-years-on.html>

109 RBA submission, page 11.

110 ASIC, Initial coin offerings and crypto-assets (2019), available at <https://asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings-and-crypto-assets/>

individuals or where the trading platforms have failed, resulting in losses for the individuals involved.¹¹¹

Cryptocurrencies are posing challenges to the existing regulatory framework. Partly, these challenges are driven by the fact that one cryptocurrency can differ significantly in design which means different cryptocurrencies may interact with (or be outside of) the regulatory framework in different ways. The novel features of these products may also make identifying core characteristics relevant for the regulatory framework difficult. Responses to the regulatory challenges posed by cryptocurrencies will require strong coordination between regulators and clear policy direction from the government. It also requires a flexible framework that allows cryptocurrencies to be brought into regulation should there be a policy requirement to do so.

Global stablecoins

New forms of cryptocurrencies are emerging to overcome issues of price volatility. Known as stablecoins, these cryptocurrencies are designed to maintain a stable value by being pegged to a sovereign currency, a basket of sovereign currencies or other assets.¹¹² Stablecoins that can scale rapidly and reach large population bases across jurisdictions are known as global stablecoins (GSCs). Greater price stability and global scale of GSCs may prove to be a more attractive payment method than conventional cryptocurrencies.

GSCs have the potential to improve the speed, cost and convenience of cross-border payments, which to date have been slower and more expensive than domestic payments.¹¹³ The efficiencies arise because GSCs are less reliant on traditional payment systems than current forms of currency. The emergence of GSCs could provide a cheaper, more efficient avenue for individuals to conduct transactions both domestically and across borders.¹¹⁴

The benefits of GSCs need to be weighed carefully against the risks they could pose. The Bank for International Settlements notes that stablecoins pose legal, regulatory and oversight challenges relating to legal certainty, governance, illicit financing, operation of payment systems, cyber security, market integrity; data privacy, consumer/investor protection, and tax compliance.¹¹⁵

Moreover, should a GSC become systemic in the Australian economy it could introduce broader macro-financial risks. For example, central banks could experience reduced effectiveness of

111 Money Smart, Cryptocurrencies and ICOs (2021), available at <https://moneysmart.gov.au/investment-warnings/cryptocurrencies-and-icos>

112 For a detailed explanation, see G7 Working Group on Stablecoins, Investigating the impact of global stablecoins (2019), available at [d10fb97f-a9a6-472b-842a-8b279e8863c4 \(economie.gouv.fr\)](https://www.g7.org/working-groups/working-group-on-stablecoins/)

113 Bank for International Settlements, Cross border retail payments (2018), available at <https://www.bis.org/cpmi/publ/d173.pdf>

114 Financial Stability Board, Regulation, Supervision and Oversight of “Global Stablecoin” Arrangements (2020), available at [Regulation, Supervis...~https://www.fsb.org/2020/10/regulation-supervision-and-oversight-of-global-stablecoin-arrangements/](https://www.fsb.org/2020/10/regulation-supervision-and-oversight-of-global-stablecoin-arrangements/)

115 See Bank for International Settlements, Investigating the impact of global stablecoins (2019), available at <https://blogs.imf.org/2019/09/19/digital-currencies-the-rise-of-stablecoins>

monetary policy and ability to shape desired economic outcomes such as financial stability.¹¹⁶ Significant operational disruptions could affect real economic activity, including temporarily blocking remittances. The collapse of a GSC could expose the financial institutions involved in the stablecoin arrangement to adverse confidence effects.¹¹⁷

These potential risks demonstrate the importance of a proactive approach to stablecoin regulation and monitoring. There is merit for the proposed strategic plan to coordinate a comprehensive approach to stablecoins. Furthermore, the new designation power for the Treasurer could be relied upon where oversight of a particular GSC would be in the national interest.

5.3 Financial inclusion

Access to payment services is an important aspect of financial inclusion. Consumers and businesses need reliable, affordable, and convenient payment methods to meaningfully participate in the economy. Although Australia has a highly-banked population, the Review has heard that businesses and consumers are facing emerging, albeit different, challenges around access to payment systems.

De-banking

De-banking occurs when an ADI withdraws banking services from, or refuses to provide banking services to a customer.¹¹⁸ The Review has heard that de-banking is growing in prevalence, particularly for entities engaging in cross-border payments.¹¹⁹ This not only affects the entities involved but the consumers they service, including those that receive remittances.

The prevalence of de-banking is a serious concern for competition and innovation in payments. In their recent review, the ACCC noted that de-banking of non-bank international monetary transfer (IMT) suppliers raises their costs and hinders their ability to compete and grow. De-banking undermines a necessary source of competitive tension in cross border payments. This is amplified by the fact that traditional cross-border payment methods are typically slower, more costly, and more opaque compared with domestic payments.¹²⁰ De-banking also restricts access to remittance services and undermines financial inclusion.

116 See Bank for International Settlements, *Investigating the impact of global stablecoins* (2019), page 2, available at <https://blogs.imf.org/2019/09/19/digital-currencies-the-rise-of-stablecoins>

117 Financial Stability Board, *Regulation, Supervision and Oversight of “Global Stablecoin” Arrangements* (2020), available at [Regulation, Supervis...~https://www.fsb.org/2020/10/regulation-supervision-and-oversight-of-global-stablecoin-arrangements/](https://www.fsb.org/2020/10/regulation-supervision-and-oversight-of-global-stablecoin-arrangements/)

118 ACCC, *Foreign currency conversion services inquiry* (2019), available at https://www.accc.gov.au/system/files/Foreign%20currency%20conversion%20services%20inquiry%20-%20final%20report_0.PDF

119 Though less prevalent, the Review has heard that de-banking can also occur to entities that provide exclusively domestic payment services.

120 Financial Stability Board, *Enhancing Cross-border Payments – Stage 1 report to the G20* (2020), available at <https://www.fsb.org/2020/04/enhancing-cross-border-payments-stage-1-report-to-the-g20>

Additionally, de-banking also has the potential to force entities and/or consumers into less regulated or unregulated channels which may not be subject to AML/CTF laws.¹²¹

The reasons for de-banking are complex. However, the Review has heard that the risk of severe penalties associated with a breach of AML/CTF obligations coupled with a regulatory approach around AML/CTF that lacks clarity is primarily driving the de-banking of PSPs.¹²²

Severity of penalties

There are severe penalties for breaches of AML/CTF regulatory obligations. The penalties are of such scale that they may dwarf the potential profits from a banking relationship. In Australia, two high profile cases in the past three years saw fines of \$700 million and \$1.3 billion respectively.¹²³ Globally, fines associated with AML/CTF compliance breaches was \$10.4 billion in 2020, almost double the level from 2019.¹²⁴

The scale of penalties is amplifying the consequences of the information asymmetries between those who can be liable for breaches (such as banks) and those who could be the cause of the breach (such as PSPs).

Ambiguous obligations under AML/CTF laws

Under AML/CTF laws, there is an array of obligations including adherence to customer due diligence procedures and 'know your customer' (KYC) requirements for those providing banking services. It is up to the banks to make their own decisions on how best to manage AML/CTF risks. However, the Review has heard there is a lack of clarity around what the compliance obligations are for banks that provide banking services to PSPs.

This finding was echoed by the ACCC in their Foreign Currency Conversion Services Inquiry.¹²⁵ The ACCC noted that the opinions of stakeholders were generally either that a bank only needs to be satisfied that the non-bank IMT supplier is only required to have KYC, or as well as the KYC requirement, a bank also needs to understand each IMT transaction a non-bank IMT provider is engaging in to the same extent it would were the bank sending the IMT itself. This demonstrates that a lack of clear guidance on obligations for banks providing banking services is contributing to uncertainty and potentially to high risk aversion.

121 See Financial Action Taskforce, Risk-based Approach Guidance for the Banking Sector (2014), available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-and-de-risking.html>

122 The Review acknowledges that de-banking can occur on grounds beyond that of managing AML/CTF risks. De-banking can occur for other reasons such as those pertaining to environmental, social and governance issues.

123 See AUSTRAC media release at <https://www.austrac.gov.au/austrac-and-cba-agree-700m-penalty> and at <https://www.austrac.gov.au/news-and-media/media-release/austrac-and-westpac-agree-penalty>.

124 Fenergo, the Financial Regulatory Environment in a Historic Year (2020), available at <https://www.fenergo.com/fines-report-2020/>

125 ACCC, Foreign currency conversion services inquiry (2019), available at https://www.accc.gov.au/system/files/Foreign%20currency%20conversion%20services%20inquiry%20-%20final%20report_0.PDF

It has also been put to the Review that banks may de-bank PSPs as they are competitors for services that banks provide. Though the ACCC did not make such a finding in its Foreign Currency Conversion Services Inquiry, the opacity within the AML/CTF regulatory framework does render this assertion possible.¹²⁶ Anti-tipping off provisions of the AML/CTF framework prevent banks from informing their customer that they have terminated their banking relationship on the basis that they have identified suspicious transactions. This prevents the customer from undertaking any corrective action. It also allows the bank to not be transparent around why it is ceasing to provide services.

The Review has also heard that PSPs also face ambiguity around their own AML/CTF obligations. This is partly driven by the breadth and associated uncertainty around the definition of ‘designated remittance arrangements’. Unlike other jurisdictions (such as the European Union and the United Kingdom), Australia does not specify which payment functions may trigger the application of AML/CTF obligations. This means there is no clear differentiation between PSPs which potentially makes it more difficult for banks to take a more nuanced approach toward managing AML/CTF obligations for the sector as a whole.

Although there are characteristics of de-banking that are specific to Australia, the Review acknowledges that de-banking is a global problem. The Financial Action Task Force (FATF) (the intergovernmental AML/CTF standard setting body) acknowledges that de-banking may be an unintended consequence resulting from the incorrect implementation of its standards.¹²⁷ In February 2021, it launched a new project to understand these unintended consequences and to propose solutions.

De-banking is a complex problem and is likely occurring as a result of all the above dynamics operating together. Because of the ambiguity in the regulatory arrangements and the severity of the penalties, risks may not appropriately priced and commercial relationships are ceased or not entered into to begin with. The lack of transparency makes it difficult to assess the true causes and therefore identify policy solutions.

The recommendations proposed will help reduce, but unlikely to solve, instances of de-banking in Australia. The proposed licencing regime should facilitate better direct access to key payment systems. Direct access would allow PSPs an ability to circumvent the need to rely on a bank to get access to payment systems. Moreover, setting out functional definitions of payment services should provide a basis with which AUSTRAC can provide guidance and certainty to PSPs around the AML/CTF obligations. Finally, PSPs that holder a payments licence may provide further confidence to banks in their ability to meet minimum level of standards around information and security obligations.

There are also recommendations that seek to enhance coordination within the payments ecosystem, including between regulators and the government. Increased coordination will be important to ensure greater alignment – or explicit decisions around policy trade-offs – between AML/CTF

126 The ACCC is continuing to monitor non-bank international money transfer suppliers’ access to banking services and payment infrastructure to assess whether the denial or withdrawal of those services raises concerns under the Competition and Consumer Act.

127 Australia’s AML/CTF laws are guided by the standards set by the Financial Action Task Force.

objectives and policy objectives of competition, innovation, and financial inclusion in the payments ecosystem.

Consumer inclusion

The Review has heard that certain groups within the community, such as those with disabilities, older Australians, and those living in remote and regional areas tend to rely on legacy payment systems and could face access issues as the payments ecosystem continues to evolve and digitise.

The regulatory architecture will need to ensure that innovation in the payments ecosystem does not inadvertently exclude vulnerable communities from access to critical payment services. As new innovations mature, consideration will need to be given around standards that support accessibility for all Australians. There is also wide acknowledgement that inadequate infrastructure can create a barrier to regional and remote communities engaging with digital technologies such as payments.¹²⁸ The needs of vulnerable consumers who rely on legacy payment systems will need to be considered as part of any strategy to retire legacy payment systems (such as cheques or BECS).

Critical to consumer inclusion is the education of consumer groups that represent their views in payments policy discussions. This will be relevant to the proposed development of a strategic plan for the payments ecosystem and broader strategic matters that will benefit from the views of consumers.

Cash distribution

Like many countries, the use of cash in Australia is falling, with more consumers and businesses increasingly choosing to pay and accept by other means, such as through a card or a digital wallet. As the RBA's consumer payments survey indicated in late 2019 indicated, cash was used for 27 per cent of the number of consumer payments, compared with 69 per cent in 2007.¹²⁹ This trend has accelerated with the COVID-19 pandemic, as consumers and businesses have taken up digital payments at a pace not seen in earlier years.

While the use of cash may continue to fall in use over time relative to other means of payment, it is expected to remain an important method of payment well into the future, not only for vulnerable consumers but as an important 'back-up' form of payment not tied to the digital economy. Given this, the distribution of cash will also remain a critical system that ensures that there is an adequate supply of cash available across the economy.

In Australia, the distribution of cash is undertaken by private companies that secure, store and deliver cash to required locations. With relatively high fixed costs and scale required to undertake this business, there are a relatively few companies that form part of this 'Cash In Transit' (CIT) sector.

128 Department of Infrastructure, Transport, Regional Development and Communications, Growing a Strong and Resilient Regional Australia (2020), available at https://www.infrastructure.gov.au/departments/statements/2020_2021/ministerial-statement/infrastructure-transport-regional-development-communications.aspx

129 RBA submission, page 10.

The decline in use of cash has meant that these CIT companies may be less profitable in the future, particularly as their costs remain relatively fixed while the number and size of the deliveries fall. Should a large firm exit the market due to falls in profitability, this is likely to impact on the distribution of cash.

The Review considers that cash distribution is a critical function in the payments ecosystem, and that a strategic plan for the payments ecosystem should give consideration to this issue in a holistic manner, particularly as cash continues to fall in use over time. In the immediate term, the Review notes that the RBA has announced it would consult on banknote distribution arrangements in the second half of 2021.¹³⁰

5.4 Developments in the data ecosystem

Many aspects of the payments ecosystem are already wholly digital and there is a strengthening connection between the sharing of information and the payment of money. The connection can be seen in two aspects of the Government's Digital Economy strategy: the CDR and a trusted digital identity. The regulatory architecture should be cognisant of these developments and ensure policy directions are well-aligned.

Consumer Data Right and digital identity

The CDR gives consumers the right to share their data similar to their right to make payments from their money. Currently, the Government is considering recommendations to extend the scope of the CDR to empower consumers to also share instructions to make payments (known as payment initiation), as well as their data.¹³¹ Those recommendations required standardisation compatible with those applicable in the payments ecosystem and an integrated consumer experience between the sharing of data and the initiation of payments. They also required an allowance for functional extensibility to incorporate future capabilities that develop from innovation in the payments ecosystem. If implemented, these recommendations would require a close link between the CDR and payments strategy to ensure that the strategic focus of each is aligned. As noted by MYOB in their submission:

MYOB welcomes the Review's determination to examine payments linkages with other key policy reform agendas that may overlap including Open Banking and the Consumer Data Right (CDR). While we understand that CDR may not specifically impact the payments system's architecture and regulation, MYOB agrees with the paper's assumption that it could have a significant impact on the technology and related services that consumers use when making payments.¹³²

Similarly, the work undertaken to strengthen and modernise the management of identity credentials to combat fraud and build trust is fundamental to the future of our payments ecosystem. Developing

130 See Payments System Board Update: May 2021 meeting, available at <https://www.rba.gov.au/media-releases/2021/mr-21-07.html>

131 Inquiry into Future Directions for the Consumer Data Right, Final Report (2020), Recommendation 5.1, page 69, full report available at [Inquiry into Future Directions for the Consumer Data Right – Final Report \(treasury.gov.au\)](#)

132 MYOB submission, page 5.

methods that provide secure and trusted digital identity verification is recognised as a crucial element to encouraging greater trust in the use and growth of public and private online services. In this setting, it is important that an individual's identity can be verified to an appropriate degree of certainty that reflects the risks of incorrect identification. Whilst customer authentication is already part of customer's engagement with the payments ecosystem through banks, consideration needs to be given to the consistency and security needed to provide consumers with confidence that their data and money is secure and being handled appropriately.

It is likely that Australia will see the emergence of a competitive market for interoperable digital identity solutions, compatible with international standards, that provides strong value propositions for both consumers and businesses. Any minimum assurance standard for digital identification in payments should be consistent with that developed for other parts of our digital economy to minimise duplication of regulatory requirements. This will help reduce costs for PSPs and avoid them having to use different assurance solutions for payments, CDR and their other digital economy services.

Having a strategic focus on increasing interconnectivity between the evolution of our digital economy and payments requires close collaboration between private sector, regulators, and standard-setting bodies. The enhanced strategic role for the Treasurer, supported by Treasury and the payments industry convenor, will facilitate this collaboration and ensure that consumers and businesses can enjoy the benefits of an integrated digital economy with confidence.

5.5 International interoperability

Australian consumers and businesses make and receive payments internationally using cross-border payment mechanisms and payment systems overseas. Improving the interoperability of Australia's payments ecosystem with these international systems could enable Australian consumers to transact internationally more easily and for Australian businesses, it facilitates the opportunity to access overseas markets.

Elements that foster international interoperability may include participation in international coordination on standards, recognition of foreign payment authorisations and international cooperation on policy development.

International coordination on standards

International frameworks are in place for the coordination of regulatory standards on payments. For example, in October 2020, the G20 endorsed a 'roadmap' to enhance the efficiency of retail and wholesale cross-border payments. As noted by the RBA in its submission, there are likely to be implications for the Australian payments ecosystem and regulatory framework in a number of areas, including domestic AML/CTF requirements, data frameworks, payment message standards and payment access arrangements.¹³³ An important, and practical, part of this work is the adoption of common data and message formats across countries, with a view to improving the speed,

133 RBA submission, page 26.

transparency and price of cross-border payments. In this context, the submission of AusPayNet notes the importance of the migration to the ISO 20022 messaging standard.¹³⁴

The Review considers that the use of best-practice international standards remains important for the Australia's payments ecosystem and the continued involvement of Australian agencies and industry bodies in the development of those standards should be encouraged.

Acknowledgment of international payment authorisations

It would be possible for international payment authorisations to be considered in the process of establishing the new payments licence recommended by the Review. Options for acknowledging international payment services authorisations could vary from full recognition where an international authorisation is considered appropriate to satisfy the Australian requirements, or partial recognition where international authorisation is considered appropriate to satisfy some elements of Australian requirements to enable a quicker, streamlined process. The extent of additional requirements could vary depending on the tier of accreditation being sought.

Recognising international payment authorisations would lower costs for businesses holding that authorisation, which would lower barriers to entry, improving competition and providing more options for consumers. However, it is not without risk. By relying on an assessment performed in another jurisdiction, there is a risk that the assessment is not performed to the standard expected. There is also a risk if the entity subsequently loses its authorisation in another jurisdiction (or is subject to some other adverse finding) and Australian regulators may not find out for some time.

Whilst there are already arrangements and processes in place for the recognition of foreign authorisations in the context of AFS licences, consideration should be given to the extent to which aspects of particular foreign licences could be recognised in the development of the new single licence for payments.

International cooperation on policy development

While there are international forums focused on payment systems, most focus on particular aspects of payment system regulation, such as management of systemic risk and efficiency, prudential stability or AML/CTF concerns. The Review considers that it remains critical that Australian agencies continue to engage and participate actively in these. Further, the Review considers it important that the enhanced Treasury function also strengthens connections with similar policy functions in foreign governments which have similar oversight and responsibilities for their payments ecosystem. This would enable further cooperation in responses to international frameworks (such as the G20 roadmap), sharing of learnings on new developments, development of consistency in approach on emerging challenges and support trade between countries to make it easier for Australian businesses to expand internationally.

134 AusPayNet submission, page 9.

Appendix

Terms of Reference

The Government is committed to a modern payments system that meets the current and future needs of all Australians. Consistent with this, the Government is commissioning a review into the regulatory architecture of the payments system to ensure it is fit-for-purpose and responsive to advances in payments technology and changes in consumer demand.

This is particularly important now as the COVID-19 pandemic has seen consumer appetite for using different payment platforms accelerate, including a significant increase in demand for digital payments. Continued innovation of this key economic infrastructure will be central to lowering transaction costs, reducing the cost to doing business and supporting the economic recovery.

The regulatory architecture that applies to these new technologies, businesses and products have served us well, but have remained largely unchanged for over two decades. This review would look at the roles of industry self-regulation, regulators and the Government and consider the balance between promoting competition, innovation, efficiency, safety, resilience and stability of the system.

The review will assess:

- The current structure of the governance and regulation of the payments system to assess whether it is fit-for-purpose, including whether the regulatory framework adequately accommodates new and innovative systems and the effectiveness of the current structure in implementing government policy;
- How to create more productivity-enhancing innovation and competition in the payments system, including in relation to the pace and manner in which the New Payments Platform is being rolled out and enhanced by industry;
- Ways to improve the understanding of businesses and consumers of alternative payment methods;
- Whether government payment systems, including payments to citizens, are agile and can take advantage of new payments functionality, to enhance service delivery; and
- Global trends and how Australia should respond to these trends to ensure that it continues to remain internationally competitive.

Consultation process

The Review released its Issues Paper in November 2020, inviting interested stakeholders to provide their views.

The Inquiry received 45 public submissions from a wide range of stakeholders including:

- banks and other financial service providers
- payment systems and service providers
- fintech businesses
- consumer and privacy advocates
- government bodies
- peak bodies and industry groups, and
- individuals.

The Review met with interested parties through virtual meetings, small groups, and bilateral discussions. The Inquiry met more than 150 representatives from interested organisations and groups. Virtual meetings were also held with a range of overseas parties including policy makers, implementation bodies, regulators and consultants, to gain insights into international regimes.

Glossary

Access regimes: The set of rules, obligations, and requirements necessary for an entity to be provided access to a system.

AFSL: Australian Financial Services Licence. It authorises licensees to:

- provide financial product advice to clients
- deal in a financial product
- make a market for a financial product
- operate a registered scheme
- provide a custodial or depository service
- provide traditional trustee company services.

An AFSL is required to conduct a financial services business.

AML/CTF: Anti-Money Laundering/Counter Terrorism Financing. The *Anti-Money Laundering/Counter Terrorism Financing Act 2006* (AML/CTF Act), and the AML/CTF Rules aim to prevent money laundering and the financing of terrorism.

Bulk Electronic Clearing System (BECS): Also referred to as Direct Entry, BECS is an electronic payments system that facilitates the exchange and settlement of bulk electronic transactions between financial institutions on behalf of their customers.

Buy-now pay-later (BNPL): Arrangements allow consumers to pay for goods or services by instalments over time.

Central Bank Digital Currencies (CBDCs): A digital form of a country's sovereign currency issued by that country's central bank.

Consumer Data Right (CDR): The right of Australian consumers to control their data, including who can have it and who can use it.

De-banking: When an authorised deposit-taking institution (ADI) withdraws or refuse to provide banking services to a business customer that relies on them to provide financial services.

Designation: The Reserve Bank may designate a payment system if it considers that designating the system is in the public interest. It may then impose an access regime or establish standards to be complied with by participants in the system.

Fintechs: Businesses that integrate technology into their provision of financial services.

Legacy system: An existing payments system which is based on older technology or protocols.

Memorandum of Understanding (MoU): A written agreement between two or more parties that defines the working relationship, expectations and responsibilities.

Non-cash payment facility: a facility through which, or through the acquisition of which, a person makes non-cash payments.

Near-field communication (NFC): A wireless form of communication used to facilitate contactless payments.

New Payments Platform (NPP): Australia's real-time payments infrastructure, introduced in 2018, which allows consumers and businesses to make and receive fast payments which are secure and data-rich.

Open Banking: The application of the CDR to the banking sector.

Payment: A transfer of monetary value between two or more parties.

Payments ecosystem: The integration and interlinkages of various payment systems, providers, and instruments.

Payment instrument: Cash, cards, cheques and electronic funds transfers which customers use to make payments.

Payment service provider (PSP): Organisations that provide payment instruments or services that provides ease in facilitating a payment.

Payment system: The network of arrangements – instruments, procedures, rules, and technological infrastructures – that support the transfer of monetary value between consumers, businesses and other organisations.

Payments system: Refers to all arrangements which allow consumers, businesses and other organisations to transfer funds usually held in an account at a financial institution to one another.

Payments ecosystem: A modern payments system, which includes technological disruptions, new entrants, and integrations with other systems.

Payments industry: Grouping of all industry participants that provide payment services.

Payment infrastructure – The underlying physical and technological structures that enables a payment.

Purchased payment facilities (PPFs): Facilities that enable funds to be stored for the purpose of making payments.

Regulatory architecture: The Ministers, regulators and industry bodies involved in regulating the payments ecosystem.

Reserve Bank Information and Transfer System (RITS): Australia's primary high-value settlement system, which is used by banks and other approved institutions to settle payment obligations.

Stablecoins: Privately issued cryptocurrencies aimed at limiting volatility by being pegged to a sovereign currency, or basket of sovereign currencies.

Stored-value facilities (SVF): Payment services that enable customers to store funds in a facility for the purpose of making future payments.

Systemic risk: The risk that a failure by one participant to meet its obligations, or a disruption in the system itself, could result in the inability of other system participants or financial institutions in the other parts of the financial system to meet their obligations.

Key acronyms

ACCC: Australian Competition and Consumer Commission

ADI: Authorised deposit-taking institution

AFCA: Australian Financial Complaints Authority

AML/CTF Act: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

APC: Australian Payments Council

APRA: Australian Prudential Regulation Authority

ASIC: Australian Securities and Investments Commission

AUSTRAC: Australian Transaction Reports and Analysis Centre

BECS: Bulk Electronic Clearing System

CFR: Council of Financial Regulators

KYC: Know Your Customer

NPP: New Payments Platform

PFS: Payments Facilitation Services

PSB: Payments System Board

PSRA: *Payment Systems (Regulation) Act 1998*

RBA: Reserve Bank of Australia