



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

6 February 2023

Director — Payments Strategy and Policy Unit

Financial System Division

The Treasury

Langton Crescent

PARKES ACT 2600

via email: paymentsconsultation@treasury.gov.au

Dear Sir/Madam,

Strategic Plan for the Payments System: Consultation Paper

We support the broad initiatives proposed by Treasury to update the regulation of Australia's payments system to account for its increasing size and complexity. To ensure the interests of small and family business participants are accounted for, we provide the following recommendations.

Key principles

- 1. The proposed system principles should encapsulate transparent system guidelines that align with the core principles (II and III) of the Bank for International Settlement (BIS) regarding systemically important payments systems.** The payments system's rules and procedures should be easy to understand, clearly specify responsibilities and encourage safe, reliable, and competitive transactions. While the system itself is complex, the guidelines must support simplicity of access to reduce barriers to entry for small and family businesses, providing more equitable system access. Recommendation 14 of the Farrell Review – which proposed that the payment service providers and regulators should co-design a business education program for payments – remains relevant and should be implemented.¹

Promote a safe and resilient system

- 2. The ePayments code (the code) should be comprehensively reviewed and extended to protect the specific needs of small and family businesses.** The code is a voluntary code of practice for banks, credit unions, building societies and other providers of electronic payment services. Noting the challenges identified by the Australian Securities and Investments Commission (ASIC) in extending the code to include small businesses, we suggest the extension to be reconsidered when mandating the code.² Within the scope of a mandated code, the extension can be achieved without generating adverse unintended consequences of reduced code membership. It is vital that the code establishes a comprehensive regime that protects all system facility users with different payment needs.
- 3. The RBA should conduct a second review of the New Payments Platform (NPP), following the bank's initial review in 2019.** The RBA's incident report of the October 2022 fast settlement service (FSS) outage showed that NPP transactions are not centrally monitored by

¹ Treasury, *Payments system review: from system to ecosystem*, Treasury, Australian Government, 2021, accessed 16 January 2023.

² ASIC, *Review of the ePayments Code: further consultation*, ASIC, Australian Government, 2021, accessed 2 February 2023.



the RBA or New Payments Platform Australia in real time. Insufficient system supervision can result in more frequent or severe system outages, which can erode participants' trust in the system. Indeed, the RBA's analysis of outages data revealed that NPP services were the least reliable retail payment service for households and businesses in 2021-22.³

Ensure regulatory framework is fit for-purpose and promotes competition

- 4. The government should expand the *Payment Systems (Regulation) Act 1998 (PSRA)* to give the RBA sufficient regulatory capacity to mandate least-cost routing (LCR) for transactions across all channels, including in-person, online and digital wallets.** On average, it costs small businesses twice that of large businesses to process the same transactions.⁴ The RBA's expectation that the technical availability of LCR would evolve into practical accessibility and take-up by merchants has not been realised. By the end of 2021-22, only 50% of merchants had LCR enabled.⁵ To ensure LCR is offered by payment service providers by default, we suggest amending the PSRA to allow the RBA to mandate LCR merchant-fee arrangements.

Just as 'MySuper' legislation requires default superannuation options to provide a simple, cost-effective, and balanced product, an amended PSRA could require LCR as the default merchant-fee mechanism, with an opt-out provision for alternative arrangements.

- 5. We support a product-agnostic approach to establishing a new functions-based licensing framework for payment providers.** The establishment of this framework consistent with recommendations 8, 9 and 11 from the Farrell Review will prevent framework redundancy when innovations enter the system. To facilitate implementation, a corresponding rigorous assessment framework should be established to determine the fit of the regulatory space for new entrants or innovations in the system. Guidelines should ensure that this assessment is conducted in a timely manner for effectiveness.

Alignment with the broader digital economy transformation

- 6. The government should monitor the implementation of the NPP's PayTo payment option in parallel with the rollout of consumer data right's (CDR) action initiation functionality.** The policy approaches should be determined with sufficient industry consultation and adequate awareness of the scams related to the UK's Authorised Push Payments (APP) initiative. Since the enablement of APP in the UK, APP scams have become the largest type of payment fraud in volume and value.⁶ The UK's payment system regulator recently consulted on proposals to change the policy approach to APP. The plan's actions should extend beyond platform interlinkages, with a targeted focus on controlling and mitigating shared platform risks

³ RBA, *Payments System Board annual report*, RBA, Australian Government, 2022, accessed 16 January 2023.

⁴ Philip Lowe, *An efficient, competitive, and safe payments system*, RBA, 14 December 2022, accessed 16 January 2023.

⁵ T Gill, C Holland, and G Wiley, *The cost of card payments for merchants*, RBA, 15 September 2022, accessed 16 January 2023.

⁶ Payment Systems Regulator (PSR), *PSR sets out proposals to give greater protection against APP scams*, PSR, 29 September 2022, accessed 16 January 2023.



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Modernise payments system infrastructure

- 7. The plan should include actions to discourage the arbitrary de-banking of ‘higher-risk’ but legal and licensed small businesses.** De-banking – that is, the denial of banking services or closing of accounts – can hinder competition and productivity, increase consumers’ and businesses’ exposure to less-regulated products, and force legitimate businesses into the cash economy. Banks may provide vague reasons for de-banking, citing anti-money laundering or national security laws as justifications. This fuels a perception that small businesses seeking to open a bank account or get a loan are often assessed on the ‘nature of their business’, rather than purely on the merits of their application.

Financial institutions must balance their commercial priority of managing risk with their social responsibility to offer services to the whole community. The objectives of countering money laundering and the financing of terrorism are not advanced when banks unilaterally de-bank a customer without a process for substantiation or review. We recommend that the government implement the full suite of recommendations set out in the Council of Financial Regulator’s written advice to the Treasurer in August 2022.⁷

- 8. The government should maintain access to banknotes and offline banking services when exploring future opportunities to shape the payments system.** While fundamental elements of the payments systems will continue to evolve and transform through innovation, it is vital that the government preserve public confidence in Australian currency and maintain access to offline banking services. Small businesses are highly reliant on access to liquidity. In regional and rural communities, the local post office or chemist is often the only means of access to banking services. Any system changes that affect payments and liquidity access must ensure viable means are available for the entire population to gain access to the payments system.

Process for review

- 9. Treasury should engage directly with small business representatives.** Small businesses are at the forefront of payments system interaction, with a unique perspective on system problems and opportunities. The scope for plan review should assesses the extent of outreach to stakeholders of different sizes, industries, and interests, as this will influence the balance of priorities in the plan’s future directions. The short 12-month review cycle of the plan may not allow sufficient time for effective consultation with small businesses or for smooth processes of transition.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Dianrong (Sophie) Li on [REDACTED] or at [REDACTED].

Yours sincerely

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman

⁷ Council of Financial Regulators (CFR), *Potential policy responses to de-banking in Australia*, CFR, Australian Government, 2022, accessed 17 January 2023.