



25 January 2021

Secretariat  
Payments System Review  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [PaymentsReview@TREASURY.GOV.AU](mailto:PaymentsReview@TREASURY.GOV.AU)

Dear Mr Farrell

**Re: Payments System Review**

The Australian Financial Markets Association (AFMA) represents the interests of over 110 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

AFMA welcomes the opportunity to comment on the Payments System Review *Issues Paper*. AFMA's interest is in the efficiency and security of the system as these are fundamental to the success of the economy and all Australians.

*Context*

Australia is currently well-served by a leading-edge payments system notably including at its core (since February 2018) the New Payments Platform (NPP) which delivers fast, secure, round-the-clock, data-rich, ISO 20022 payments. Uptake is tracking faster than comparable systems overseas<sup>1</sup>. Five million PayIDs have been registered through the 90 participating banks, credit unions and building societies.

The system is continuing to evolve in functionality and is well regarded as a project and a system.

The billion-dollar NPP system has been developed for the most part by the private sector with the involvement of the Reserve Bank of Australia (RBA) through NPP Australia established by Auspaynet in 2014.

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<sup>1</sup> Source *New Payments Platform – Two years on*, NAB, published June 2020.

Prima facie it would not appear to be a system in need of significant overhaul. Using the terminology of the Issues Paper, the current arrangements already *ensures payments can be made in an efficient, low-cost and secure manner without compromising the stability of the system.*

The current level of success and efficiency should not be taken for granted. They are the results of the largely free-market arrangements and for the most part industry initiative, self-governance and management.

From the industry's perspective in relation to the payments infrastructure and its access there are no signs of market failure and in fact to the contrary it appears to be an overwhelming success. This is not to discount the potential for fine-tuning to ensure new entrants are appropriately incorporated into the regulatory system and that investment incentives are optimised, but it would suggest wide-ranging reform may not be warranted.

### *Regulatory costs*

The Issues Paper appears to be predicated on the view that there are improvements to be had through increased regulation and government involvement, and that the no-change or limited change option is not in serious contemplation.

Greater regulatory intervention is typically a driver of increased costs to the detriment of end-users. Examples abound and include the many years of increased regulatory costs relating to financial advice. ASIC acknowledges this has resulted in the outcome that "Consumers find it difficult to access good-quality affordable personal advice"<sup>2</sup> with costs estimated at over five times the maximum that consumers were willing to pay<sup>3</sup>. The well-intentioned regulatory changes in that case have resulted in a cost structure that makes the provision of the service unavailable at an affordable price point for most Australians, and a high risk for firms to provide.

Given the centrality of payments to the health of the economy the same costly outcomes cannot be risked. We suggest that the Review should have a working assumption that increased regulatory interventions including in governance will very likely result in increased costs for end-users and should only occur if these costs are strongly outweighed by reasonably expected benefits.

### *Role of regulatory architecture*

The characterisation of the role of regulatory architecture in the issues paper may not adequately cover the range of stakeholders involved in payments and the role of market forces in driving consumer outcomes. A focus on end-users/consumers is appropriate. However, using market forces to drive consumer outcomes rather than government mandate is a key strength of market economies and reliance upon them should be the default in a market economy, particularly given the record of

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<sup>2</sup> See *Consultation Paper 332: Promoting access to affordable advice for consumers*, p. 5.

<sup>3</sup> *Ibid.*, p. 20.

government intervention (see financial planning example above). The interests of the owners and operators of the system should also be considered, as this is the mechanism in market economies for ensuring that firms will have confidence to continue to make the investments and innovations that will be needed to keep the system up to date. Government planning is unlikely to match the dynamism of market forces and the efficiencies in pricing and function that it typically finds over time.

We therefore suggest that the Review revisit its understanding of the appropriate role of the regulatory architecture and consider the benefits of prioritising market mechanisms in a market economy. Moving private sector assets under increased government control through governance changes and curbing market pricing through pricing controls should be avoided where possible in a market economy to preserve the inherent strengths of the system. The equity implications of the government in effect taking control of a privately created asset may also need to be examined.

In this regard, the framing of the majority of questions in the Issues Paper in terms which only consider the interests of end-users may represent an imbalance that ultimately may be unlikely to result in optimal outcomes for end-users if the incentives for private investment are decreased and the risks are increased.

#### *Productivity Commission Report*

We note that the Review has stated it will consider the conclusions of a number of papers including the Productivity Commission (PC) Inquiry Report into Competition in the Australian Financial System. Some key findings of this report were rejected by the RBA, Treasury, ASIC, and APRA, and as such the report should be read cautiously. While the private sector investment of around \$1 billion had largely concluded, the NPP had not yet launched when the Productivity Commission Draft Report (in a position repeated in the final) recommended substantial changes to its governance and government intervention in its access pricing.

Particularly where substantial investments have been made in good faith by the private sector, regulatory intervention (including by government price fixing as recommended by the PC) should only occur where there has been a significant market failure. Beyond the inequities, not to do so is to risk creating an increased risk environment for investment that discourages private sector involvement. Longer term, this increases costs for the Government and end-users and decreases innovation.

#### *Overlapping regulators*

The Review notes that:

The Australian Competition and Consumer Commission's (ACCC's) role is to enforce compliance with the Competition and Consumer Act 2010 (Cth) (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. Where such a standard or access regime is set, industry compliance with these rules cannot be challenged under the CCA.

We are unsure if there is a suggestion here that the ACCC should be empowered to enforce compliance with the CCA where the RBA has designated and imposed a standard or access regime.

The level of the payments system is, for reasons of governance, information security, and adequate resourcing requirements, necessarily a wholesale-only business. The current system therefore of having a knowledgeable and experienced wholesale regulator, in the RBA, setting arrangements that cannot be challenged by the consumer regulator is entirely appropriate.

ACCC participation in the Council of Financial Regulators as a member was opposed by Treasury (and other agencies) on the grounds that:

[It] would involve housing in the designated agency a team whose function is reviewing the actions and policies of other regulators and potentially other parts of its own agency. Such a team would struggle to develop the expertise to understand and review effectively what is being proposed, while adding a bureaucratic overlay and slowing down regulator decision-making.

Imposing a formal process of discussing or clearing competition assessments on the CFR would also detract from its core function, and the relatively informal and flexible way in which it functions.<sup>4</sup>

Similar concerns about the role of ACCC in reviewing and potentially opposing the actions and policies of an experienced wholesale regulator may also apply if RBA decisions are subject to ACCC review. End users are ultimately best served by a highly efficient and reliable wholesale layer.

#### *A regulatory architecture for the future*

As we have noted there is no evidence of a market failure in the payments infrastructure under the current arrangements.

While acknowledging this success the Issues Paper suggests in the section “A regulatory architecture for the future” that in the future a new regulatory architecture will be required for the following numbered arguments.

1. *“developments in the payments system continue to gather pace and in some cases evolve in an unpredictable manner. These could impact the effectiveness of Australia’s regulatory architecture to meet the objectives of a competitive, resilient and efficient payment system.”*

This appears to be an argument that there *could* be future developments with which the regulatory architecture *might not* cope. This is entirely speculative and provides absolutely no grounds for change. To change a system that has proven to work very well to an unproven system for challenges that *might* arise is not advisable.

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<sup>4</sup> Submission on the Productivity Commission’s Draft Report: Competition in the Australian Financial System [https://www.pc.gov.au/data/assets/pdf\\_file/0011/226964/subdr126-financial-system.pdf](https://www.pc.gov.au/data/assets/pdf_file/0011/226964/subdr126-financial-system.pdf) p. 12

- 2. The future of Australia's regulatory architecture will need to facilitate effective coordination between regulators, industry and governments, and appropriately balance the management of risk and efficiency in the payments system. It needs to create an environment in which businesses – particularly new entrants – are able to meet regulatory requirements in a straight-forward and streamlined manner, and have the confidence and certainty to invest and develop new forms of payments technologies that are tailored to the needs of end-users.*

Again, there appears to be an appeal to future challenges and speculation that the current arrangements *might* not be able to address these. There is no evidence provided to support this speculation. To the contrary the very types of innovation that are set up as future challenges – ‘new forms of payments that are tailored to the needs of end-users’ – are already being successfully deployed under the current arrangements with the examples listed by the Issues Paper (dual-network debit cards, contactless payments, digital wallets and the NPP).

- 3. Most of all, the architecture should place end-users at the heart of regulatory design, by ensuring consumers and businesses benefit from lower transaction costs and enhanced service delivery as they adopt new payment functionalities, leading to greater productivity in the economy as a whole.*

The argument appears to suggest that a redesigned regulatory system that “place[s] end-users at the heart” will result in lower transaction costs and enhanced service delivery. There is no evidence provided to support this claim which must be regarded as speculative. As existing arrangements are already driving great improvements in service delivery and lower costs, the burden of proof on those suggesting alternative arrangements would do even better, should be appropriately high. Again, this speculative reasoning should not form the basis for governance changes.

We provide high level answers to the first group of questions below. We note with concern that the framing of the questions suggests a preference for a move to a more centrally controlled system. We encourage the Taskforce to take a more neutral stance and where things are working well to default towards building on existing self-governance arrangements.

#### *Issues Paper Questions*

- 1. Does the regulatory architecture appropriately facilitate the development of an overall vision, strategy and principles for the Australian payments system?*

We question whether this is the appropriate framing for an examination of the present state. More appropriate questions might be whether the current regulatory architecture has been successful and if there have been any significant market failings identified. The answers to these questions are that it has been very successful and no significant market failings have been identified, although minor refinements are always possible.

Framing this question around whether the architecture facilitates ‘vision, strategy and principles’ might invite claims that better ‘vision facilitating’ architectures exist. Regulatory architectures with greater centralised control and planning are all likely to meet this criterion, but this would not be to say these architectures would deliver outcomes (including for end-users) as strong as current the market-based arrangements.

2. *How should our regulatory architecture be designed in order to balance the management of risk and efficiency in the payment system with the need for effectiveness for end-users?*

Again the framing of this question is likely to favour regulatory architectures with greater centralised control and planning. Market-based solutions such as those currently in place are in practice and recent experience likely to deliver superior outcomes for end-users. Regulatory architectures with greater centralised control and planning are likely to appear to ‘better balance’ the need or effectiveness for end-users, but in practice government controlled systems are almost inevitably more expensive, less agile and deliver poorer results for end users as a result.

3. *What is the appropriate balance between self-regulation, formal regulation and government policy to ensure the payment system continues to work in the best interests of end-users?*

The framing of this question also is likely to favour regulatory architectures with greater centralised control and planning. These systems appear in theory to be able to ‘ensure’ outcomes for end-users. In practice, however, experience has shown that market-based solutions typically provide superior outcomes despite there being no formal guarantee as such in their design.

4. *Are there gaps (or duplication) in the current architecture that need addressing to ensure the system continues to work in the best interests of end-users?*

This is a reasonable question, however, we note again that it should be considered over the broader scope of all stakeholders to ensure that the incentives and risks for continued private sector investment in the system are maintained. Considering all stakeholders is ultimately in the best interests of end-users when the need for ongoing investment is properly considered.

Addressing the broader question, we see some potential for increased coordination between the regulators and where there are high regulatory costs the potential for whole-of-government reviews.

5. *How should the regulatory architecture be designed to best facilitate the coordination of participants and regulators to meet the requirements of end-users?*

We note once more the concern that the exclusion of the consideration of a wider range of stakeholders may lead to inefficient outcomes that ultimately could be negative for the interests of end-users.

We also consider that this question may be precipitative in the context of a system that has proven itself to be working well over many years and continues to deliver excellent results. The review should

not progress on the basis of speculation that other governance arrangements might deliver superior results.

#### *Developments in the payments system*

6. *What are the required features of a future regulatory architecture to ensure it is well-placed to meet the needs of end-users in relation to emerging innovations in the payments system such as those discussed above? Are changes needed to existing structures, roles and mandates involved in the governance of the system?*

There is currently no demonstrated failure of the regulatory architecture to deal with the developments listed:

- Fast Payments: the current regulatory architecture has successfully implemented a very large fast payments system.
- Buy Now Pay Later: while the paper suggests “The emergence of the BNPL industry has raised questions as to whether the regulatory architecture is flexible and adaptable to determine whether new innovations such as BNPL are payment systems” these concerns appear to be speculative.
- Stablecoins and cryptocurrencies: The paper notes “Industry feedback through these reviews indicate a lack of clarity in the system on whether crypto assets are governed as ‘financial products’ and therefore subject to ASIC regulation, or are other products that fall under general consumer protection laws governed by the ACCC.” We note that this is a matter for government policy and not the regulatory framework of payments which would implement rather than determine any decisions on these matters.
- Cross border payments: the NPP forms a sound foundation to address the challenges of data rich ISO 20022 payments. The main barriers to cross border payments remain regulatory risk created outside the payments self-regulation infrastructure.
- Digital wallets and stored value facilities: Adaptation through the existing regulatory architecture is already underway through the CFR review.
- CDR and Open Banking: There are no identified issues for the payments system from these programs at this time.

7. *What regulatory architecture is needed to provide support and clarity for businesses – particularly new entrants – to invest and innovate in our payments system?*

AFMA supports a stable investment environment for firms in the payments system. Firms should be able to have confidence that investments they make will in the market economy continue to be entitled to make commercial returns subject to the discipline of a competitive market.

AFMA notes the importance of the availability of regulatory reviews and feedback within the regulatory architecture to facilitate clarification on any regulatory questions (for example on IFTI reporting). Such facilities are of particular assistance to new entrants into the payments space.

8. *How can the regulatory architecture enable participants in the payments system to make better use of data to improve cross-border payments and other payments that benefit end-users?*

The challenge for the regulatory architecture is to ensure inappropriate regulatory barriers are not created for the investment in innovation that is emerging to take advantage of the improvements in payments technology. The key challenges for cross-border payments currently are regulatory challenges that increase costs and risks for businesses providing these services that are outside the scope of the self-governance regulatory infrastructure.

9. *Given rapid changes to the system, what need is there for education for end-users (including consumers and businesses) about payments and who should provide that education?*
10. *How does Australia's regulatory architecture compare with that of other jurisdictions, particularly as it relates to the encouragement of innovation and competition?*

Australia's regulatory architecture has performed well in producing a world leading physical payments system in the NPP, an appropriate access regime and other innovations. The system has provided access on commercial terms to firms through a number of mechanisms including intermediated connections.

Australia's system creates higher levels of regulatory risk for participants in some areas than other jurisdictions that are making reasonable good faith efforts to comply with regulatory requirements.

11. *Are there are lessons from international experiences that can improve Australia's regulatory architecture to ensure it responds effectively to new developments in the future for the benefit of end-users?*

Some overseas regulators have a more accommodative regulatory stance than Australian regulators. This accommodative stance is beneficial for the business environment and the economy. While a number of local regulators while nominally adopt the 'responsive' regulatory paradigm over time some of these have shifted to be in practice more punitive. ASIC's switch to a 'why not litigate?' stance being one example. More generally, due to the pressures on regulatory bodies 'responsive' paradigms tend to decay in this way, it may be an inherently unstable approach.

To encourage a reversal in movements away from some cross border business there may be benefit in a consideration of clarifying which elements of the regulatory framework are *mala in se* and which are *mala prohibita*, and for greater clarity in public discourse on the nature of these matters as they can sometimes be conflated. Having *mala prohibita* penalties too high may not be an outcome that is in the best interests of the business environment, the broader economy and ultimately end-users. Where firms are in good faith endeavouring to meet the demands of a highly complex regulatory



system, a properly calibrated regime combined with an accommodative regulatory stance that supports business and the economy is likely to be of the most benefit.

While MAS's fully integrated structure may not be optimal for the Australian case, MAS appears to have advantages in bringing a whole-of-economy perspective to the impacts of its actions. This may suggest that better coordination between regulators and efforts to ensure a whole-of-government perspective to decision making may be of benefit locally. AFMA supports the proven expertise and appropriateness of having the RBA involved in regulating the wholesale payments infrastructure in coordination with the industry's self-regulation mechanisms.

There is always a risk that regulatory driven risks and costs can get high enough to interfere with other government priorities outside the scope of a particular regulator's area of interest. Where there is risk or evidence of this occurring the regulatory infrastructure should be designed to work to ensure that the priorities of the whole-of-government prevail. Treasury can be a valuable contributor in ensuring this outcome.

### *Conclusion*

AFMA supports building on the strengths of the current industry self-governance arrangements. We have cautioned that regimes with greater government intervention while likely to promise 'more balanced' outcomes may be unlikely to deliver as efficient and agile outcomes as market-based arrangements.

In addition to the important end-user impacts perspective we have noted the importance of maintaining an attractive environment for private sector investment into the payments infrastructure to ensure its ability to continue evolving with end-user needs. We have noted the potential for greater coordination between the regulators and the benefits in ensuring that a whole-of-government perspective is brought to regulatory decisions to bring greater consistency to the breadth of policy issues the Government faces.

For more information or if you have questions in relation to our letter please do not hesitate to contact me at [djeffree@afma.com.au](mailto:djeffree@afma.com.au) or 02 9776 7993.

Yours sincerely

A handwritten signature in black ink that reads "Damian Jeffree". The signature is written in a cursive, slightly slanted style.

Damian Jeffree  
**Senior Director of Policy**