



22 January 2021

Secretariat
Payments System Review
The Treasury
Langton Crescent
PARKES ACT 2600

Submission by email to: PaymentsReview@treasury.gov.au

Payments System Review

Dear Chair,

Please find attached the submission of the Emerging Payments Association - Asia to the Payments System Review.

The Emerging Payments Association Asia's (EPA Asia) goal is to unify the payments agenda in the region, drive business development and improve the regulatory landscape for all organisations within the payments value chain. We are a community of payments professionals whose goals are to strengthen and expand the payments industry to benefit all stakeholders.

Please note, that while we have consulted widely, any views expressed in this submission are the views of EPA Asia and do not necessarily represent the views of individual contributors, Ambassadors or Members.

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

While Australia's regulatory architecture has been reasonably sound, it has its origins in the Wallis Inquiry from the late 1990s. This was a very different era where banking and payments were closely related, paper-based payments were common, electronic and card-based payments relatively new, e-commerce in its infancy with biometrics, mobile commerce and distributed ledger technology non-existent from a consumer point of view

The Wallis Inquiry principles, framework and recommendations were, however, sound and have served Australia well, though reviewing these now makes significant sense.

Relationship between PSB and Government

There has been a clear separation between the Payments System Board (PSB) and the Reserve Bank Board as well as the PSB being independent from the commercial activities of the Bank. This has been effective and clearly understood.

However, the PSB's relationship with the Government is a bit more complex. The non-RBA and APRA members of the PSB are appointed by the Treasurer for a term of up to five years. The Government provides the PSB with a Statement of Expectations and the PSB responds with a Statement of Intent. This independence from Government applies to both financial stability issues as well as the more "micro-economic" policy concerns in the retail payments space.

While it is clear with regulators such as APRA or ASIC of their accountability to the relevant Minister and their role to implement Government policy, the location of the PSB within a central bank that is independent of Government for monetary policy purposes, can create some uncertainty. It therefore remains unclear whether, at its essence, the PSB is a policy-making body or a policy implementation body.



This is not a fine point of legal interpretation but rather a practical matter that requires greater clarity, particularly as the payments ecosystem evolves quickly and the issue of regulatory accountability, particularly within financial services, becomes a critical issue for Government.

Further, it is worth considering whether the PSB's blended role – with matters of financial stability being dealt with alongside micro-economic policy matters – still makes sense. While independence is paramount for financial stability, it could be argued that micro-economic policy matters sit more with Government and that the accountability of the PSB (or any replacement body) to the Government in this respect should be strengthened.

RECOMMENDATION ONE: Stronger accountability between the Government and the PSB / future payments regulator on retail payments issues with micro-economic implications.

Industry Vision and Roadmap

Though Australia has made great strides in recent years, within developments such as the New Payments Platform, issues around industry coordination and collaborative innovation remain unresolved.

The Australian Payments Council has developed its Australian Payments Plan and while this work has defined strategic themes and direction and underpinned important work on matters such as digital identity, it does not function as a detailed ecosystem vision and roadmap. Australia Payments Network is similarly recognised for the work it has undertaken in advocacy, standards, regulation and also more recently in Digital Identity.

Regardless of where this work is done or who does it, Australia needs a more coherent vision and roadmap for payment ecosystem development. This should include a clearer articulation of the linkages between payment system development, the adoption of the ISO 20022 message standard, open banking and digital identity and requires the involvement of a wide range of industry stakeholders.

RECOMMENDATION TWO: The PSB or a future payments regulator should develop or direct the development of a national payment vision and roadmap for Australia. This process should include broad industry consultation.

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?

There is often a trade-off between risk management and efficiency within the regulation of payments. The PSB has a mandate to consider both, though regulation of systemically important systems needs to be done differently and potentially more transparently than matters that impact retail payments.

Transparency of PSB decisions

In recent years, the PSB has improved transparency and its interaction with stakeholders, for example publishing a summary of its quarterly meetings and regularly meeting with the Australian Payments Council.

However, the basis on which the PSB makes its decisions remains opaque. For example, in his recent speech that covered a number of topics including the potential application of merchant surcharging regulation on “buy now, pay later” (BNPL) operators, the RBA Governor said:

“The Board's preliminary view is that the BNPL operators in Australia have not yet reached the point where it is clear that the costs arising from the no-surcharge rule outweigh the potential benefits in terms of innovation.”



While the speech explained the basis of the position and some next steps, there has not been any explanation of the relative costs and benefits. This has also been the case in respect to the designation of card schemes, where it can be unclear when a scheme or system is significant enough to warrant regulation.

This has been a problem as a new entrant is never sure at what point it would become “big enough” to warrant RBA regulation. This creates uncertainty and makes it more difficult to make informed business decisions about entering or expanding in a market like Australia.

RECOMMENDATION THREE: The PSB or a future payments regulator should publish clear criteria as to when it would decide to regulate.

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?

For the most part, we would argue that the balance between self-regulation, formal regulation and Government policy is about right though role clarity is warranted. Further, considerations around issues such as access of industry infrastructure are more important as opposed to formal governance. For example, any concerns around the recently announced NewCo (the merged BPay, Eftpos Australia Limited and NPPA) are as much around the ability for new entrants to access these rails as to how it is governed.

Lastly, issues such as the number of regulators is probably less an issue than ensuring there are clear accountabilities and appropriate coordination.

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?

PSB / RBA toolkit

One of the long-standing challenges facing the PSB is that it has a limited regulatory toolkit. The primary power to regulate retail payments is its ability to designate a payment system and to then apply standards. This has been used to regulate interchange fees but is a lengthy and complex process. Besides this power (and moral suasion), the PSB has a relatively limited regulatory toolkit that has been unchanged since the late 1990s, particularly when compared to other regulators operating in the Australian financial sector, which have acquired a raft of new powers over the past two decades.

While the PSB should not be given powers to provide some form of parity with other regulators, consideration should be given as to whether a wider range of more granular regulatory tools, such as a directions power, should be available to the PSB or a future payments regulator to engage in regulatory activity without needing to rely too heavily on the designation power.

RECOMMENDATION FOUR: 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.

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

EPA Asia does not have a strong position as to whether a new or more dedicated payments regulator is required. Whether a reformed regulator can continue to operate within the RBA or a new body spun out or hosted elsewhere is less important than what it actually does.

Addressing the issues such the relationship with Government, the transparency of decisions, the need for a more robust regulatory tool kit and inclusion of an explicit innovation mandate (which is explored below) may be difficult for the PSB in its current form. It could be argued that the activities of the PSB



that are squarely micro-economic policy should be split out from the RBA – either through a reformed PSB or else a new payments regulator.

At the very least, consideration could be given to better distinguishing between the financial stability and micro-economic policy matters that both reside with the PSB.

RECOMMENDATION FIVE: The Government should closely examine the pros and cons of a restructure of the PSB within the RBA or the creation of a new payments regulator. Further industry consultation is necessary to determine the best way forward.

Regulatory Coordination

The complex nature of payments means that coordination of regulators remains an important issue. Currently Treasury, the RBA, APRA and ASIC participate in the Council for Financial Regulators. The CFR is already playing a role in terms of financial stability, cybersecurity and the response on the regulation of stored value facilities, all of which have a strong payments perspective. The Interim Report of the Senate Fintech Committee made a number of recommendations associated with an expanded role for the CFR.

This suggests the on-going need for coordination, which could be supported through a continued and potentially expanded role for the CFR, to ensure open competition. Depending on the work done, this could include adding the ACCC, Austrac and others such as the Office of the National Data Commissioner and the Office of the Australian Information Commissioner to the CFR.

RECOMMENDATION SIX: The Government should consider expanding the membership and role of the CFR.

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?

Access to Industry Infrastructure

The amalgamation of NPPA, Eftpos Australia Limited and BPay under “NewCo” structure is a significant new development within the Australian payments ecosystem, though clearly its impact on the ecosystem remains to be seen. The key issue is access and the NewCo entities participants have made announcements that would encourage. However, the implementation of enhanced functionality and wide access needs to be closely monitored.

RECOMMENDATION SEVEN: The PSB or a future payments regulator should closely monitor access to existing payments infrastructure by new entrants and advise Government accordingly on any action required.

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

As already noted, addressing the issues such the relationship between the regulator and Government, the transparency of decisions, the need for a more robust regulatory tool kit and inclusion of an explicit innovation mandate as well as role clarity between regulators and appropriate coordination is more crucial than the actual structure of future regulators.

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?

Australia needs to remain actively involved in the cross-border payments agenda of the Financial Stability Board. The G20 Cross Border Roadmap agenda what EPA Asia is working on with the



Private Sector may be something of interest for Australia in considering improvements for this important business.

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?

We believe that education can be a shared responsibility and that groups such as the EPA Asia are well-placed to play an important role in educating the public and training the industry.

10. How does Australia's regulatory architecture compare with that of other jurisdictions, particularly as it relates to the encouragement of innovation and competition?

11. Are there 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?

The PSB has a reasonably broad mandate, including to consider risk, efficiency and competition. This mandate was quite broad for its time – though in recent decades many newer bodies, such as the UK Payment Systems Regulator, have a clear competition mandate.

Innovation is something that has become more common as a concern for payment regulators. The UK PSR has an explicit innovation mandate while the Monetary Authority of Singapore aims to develop and promote Singapore as a regional and international financial centre.

Conversely, the PSB has been mindful of not having an explicit innovation mandate. For example, during the Strategic Review of Innovation, it distinguished between system-wide or cooperative innovation, which it felt it could involve itself in, while leaving customer-facing innovation to the market.

Not having a regulatory body that has a focus on development of the sector and fostering innovation may leave Australia behind as the global fintech and regtech ecosystem becomes more competitive. Ideally the PSB or a future payments regulator should have a more explicit mandate to develop the ecosystem and promote innovation.

RECOMMENDATION EIGHT: The PSB or a future payments regulator should have an explicit mandate to consider the fostering of innovation and the development of Australia as a financial centre.

3. Final Thoughts

3.1 Role of Government and the Need for Coordination

The principles for good policy to support financial services innovation is well documented. For example, the final report of the 2014 Murray Inquiry outlined Principles (at page 146) to enable innovation in financial services. Reproduced below, these Principles remain valid today:

- *Industry and government should work together to identify innovation opportunities and emerging network benefits. Government should facilitate industry coordination where competitive forces prevent these opportunities from being fully realised.*
- *Regulation should be functional to ensure competitive neutrality and facilitate innovative business models. Regulation should also be graduated to enable market entry and ensure regulation is targeted to where it is most needed. At times, this may increase risks for some consumers, but it is expected to improve consumer outcomes overall.*



- *Regulation should aim to be technology neutral in design. Regulation should only be technology specific where selecting a common standard would improve overall system efficiency. Review mechanisms are needed to ensure technology-specific regulation does not become an impediment to innovation over time.*
- *Policy settings should aim to reduce information asymmetries by improving access to public and private sector data, subject to appropriate privacy safeguards to preserve consumer confidence and trust in the system, and maintaining private sector incentives to collect data.*

The Government is to be commended for this Review. Government, policymakers and regulators can continue to play their important part, though it will often be the market that solves these issues. Inquiries such as this are an important part of the all-important dialogue with industry stakeholders, so we can get things right for a new decade of opportunity.

If you have any further comments or questions, please feel free to contact me on email john.ryan@emergingpaymentsasia.org

Kind regards,

John Ryan

Director General Policy

Emerging Payments Association Asia Pty Ltd.