



## **SUBMISSION PAPER**

**February 2020**

### **Review of Retail Payments Regulation: Issues Paper**

*This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 300 FinTech Startups, VCs, Accelerators and Incubators across Australia.*



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## **ABOUT THIS SUBMISSION**

This document was created by FinTech Australia in consultation with its Payments Working Group, which consists of Australian FinTech company representatives. In particular, the submission has been compiled with the support of our Working Group lead:

- Simone Joyce, Paypa Plane

This Submission has also been formally endorsed by the following FinTech Australia members:

- Afterpay
- Airwallex
- Ezy pay
- Volt Bank
- Monoova
- Paypa Plane
  
- Transferwise

## **SUBMISSION PROCESS**

In developing this submission, the Payments Working Group held a series of member roundtables / teleconferences to discuss key issues relating to the Retail Payments Regulation.

We also particularly acknowledge the support and contribution of DLA Piper to the topics explored in this submission.



## KEY QUESTIONS FOR STAKEHOLDERS

**Q 1: What major recent or prospective developments in the broader payments industry are particularly relevant to this review? More specifically, are there any gaps in functionality available to end users or any shortcomings in industry governance or operating arrangements that require regulation or coordinated industry action?**

The majority of our members agree that the Reserve Bank of Australia (**RBA**) should consider overarching 'rules' or codes of practice that govern all payment types to create a cohesive operational environment. This rules framework should be 'technology agnostic' to allow for any future payment methods. This is particularly important when considering recurring payments, transitioning from the Bulk Electronic Clearing System (**BECS**) to the New Payments Platform (**NPP**) Australia, outdated BECs rules and the current non-legislative state of the ePayments code (which members acknowledge is currently under review).

Some members agree that payment innovation is hampered by disparate rules and regulations, many of which are outdated as compared to current technology. A unified, technology-agnostic framework would help to solve these problems for the longer term. It is also important that the rules take international best practice into account to achieve - to the greatest possible extent - a framework akin to jurisdiction-agnostic codes.

Mobile payments, digital identity and payment evolution will be a key trend to watch. Further, the likes of large technology players opening up their payment methods and acting as channels is another trend to watch (for example, Apple and Amazon). Favouring one payment type over another at the central level should not be the message communicated. A level playing field is needed for all payment methods and market forces should decide how best to innovate and extend. Promoting these concepts is key.

One member has expressed support for appropriate mandatory rules and codes of practice that foster better customer outcomes and address specific customer pain points with their domestic and international payments. However, that member does not support increased regulation that results in less customer choice, increased customer burdens or favours one participant in the payments system over another. For example, Airwallex does not support the regulation of domestic interchange fees with Visa and Mastercard while the interchange fees charged with American Express continue to be unregulated.

Further, some members have expressed concern in giving the RBA a role to regulate Buy Now, Pay Later (**BNPL**) platforms such as Afterpay, which are much more than a payment method.



Even allowing the RBA to regulate the payment processing component of Afterpay's platform would be very disruptive and place Afterpay at a competitive disadvantage.

**Q 2: Are there aspects of retail payments regulation that lead to market distortions or that create opportunities for regulatory arbitrage? If so, what options should be considered as a means of addressing these? Are there gaps in the regulatory regime that need to be addressed or any elements where regulation is no longer required?**

A majority of our members agree that despite some gaps having been addressed through the implementation of the NPP, some functionality issues remain for end-users. One of these issues is the impact of new technologies and new entrants. Regulations should be technology-neutral so to not prevent competition for new and emerging systems and companies. Further, restricted access to vital components of the payments infrastructure is a possible source of market distortion. These restrictions tend to be applied by incumbent payment service providers (mostly banks) based on their market position in comparison to new entrants, such as new card schemes or new service providers of internet and mobile payments. Fragmented competition law enforcement may lead to legal uncertainties and distortions.

Our members understand open access to all payment rails is a challenge. There will always be licensing, technology standards, infrastructure requirements and other factors that prevent or create a barrier to entry for all. However, the pathway to access to every payment scheme should be clearer. It should not be considered a dark art', rather a clearer set of guidelines on how businesses of different sizes can best obtain access to every rail here in Australia. This transparency around process will lead to greater transparency around the wider ecosystem (such as commercials and infra requirements), thereby leading to a more efficient and competitive payment landscape.

On the other hand, it is true that banks will have strong influence over access to the infrastructure. However, unless the infrastructure is publicly funded, banks will have to recover their investments. While this is frustrating for most FinTechs, the risk is otherwise that banks do not make the investments in the first place and FinTechs find they are stuck with 'cheques' (or similar) for decades to come. Technology access is only one point of access restriction, and regulation is another one which favours incumbents with large capacity. This is a question for the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), Australian Securities and Investments Commission (**ASIC**) and other regulators. If the Australian Competition and Consumer Commission (**ACCC**) wants to make the technology more freely available, the regulatory aspect has to be reviewed as well. One could, for instance, open an NPP sandbox with restrictions for willing participants.



Finally, it is important to consider that some emerging systems and companies have been successful in gaining adoption, despite regulation, due to the broader education to end users.

### **Q 3: Are there barriers to innovation and/or competition that may affect the costs of or provision of electronic payments and should be addressed in this review?**

Our members agree that banks and Authorised Deposit-Taking Institutions (**ADIs**) are the gatekeepers of the payment rails in Australia. This means that as a business (payee) or payment service provider, the consent and sponsorship of a bank must be obtained in order to access the payment rail (be it BECs, NPPA or credit/debit card rails). Whilst it is important to allow banks to make risk-based decisions, it is also important to recognise that little incentive or motivation currently exists for banks to work with payment technology companies, essentially by allowing them access to the payment rails so that innovative new payment experiences can come to market. This places potentially innovative companies in a difficult position where they cannot test and iterate their innovations as they have no access to facilities in order to do so.

Direct access to payment rails either in a live environment or test environment (similar to the Financial Conduct Authority (**FCA**) allowing direct access to the BACs system in the United Kingdom) should be considered, be cost-effective and accessible to encourage innovation and competition. Direct access to payment rails would enable greater innovation, without the restrictions and costs placed by banks. It is, however important to keep the integrity of payment security measures to ensure reliability and to retain trust from the end customer.

In addition, large technology providers need to be more clearly assessed for their payment capability and how this can integrate more seamlessly. There is a large amount of technology debt sitting in large technology companies that are considered to be stalwarts of the payment industry and backed and endorsed by the regulators. However, there is argument to say that the more nimble FinTechs and payment companies actually have more stability, secure infrastructure and speed of movement of people, technology and wider resources to solve problems. This deserves to be endorsed by the central bodies and regulators. If FinTechs continually look in the rear view mirror of "what they did before" and stick to that, there is a large possibility that the world around us will move on at a rate that will become really difficult for Australia to catch up with, without serious intervention at a later stage in the future. The time is now for bold decision making and supporting this type of decision making in other companies with a clear pathway of outlining how these innovative solutions can become mainstream more quickly.

Finally, our members agree that the cost of accessing payment networks can be prohibitive to innovation. Further, lack of clear and efficient regulatory pathways and processes is a barrier to innovation.



**Q 4: How do stakeholders assess the functioning to date of least-cost routing (LCR) of contactless debit card payments? Do additional steps need to be taken regarding LCR to enhance competition and efficiency in the debit card market?**

LCR is still in the early stages of development, particularly for Card Not Present (CNP) payments. Electronic Funds Transfer at Point of Sale (EFTPOS) is working on releasing a series of Application Programming Interfaces (APIs) to allow the more ubiquitous access of LCR, however this relies on the acquiring bank to be ready to pass on access to their partners and customers. This isn't always the case. Our members have mixed opinions about whether this limits competition in the market.

LCR and the understanding of its impact for all companies and players in the ecosystem is highly complex. Some of our members suggest more time is required to understand the landscape and more transparent pricing is a key component of this. Schemes, banks and merchants and issuers need to consider the impact of other payment rails stepping in when they are mature enough and taking a share of the 'current pie'. Our members would like to see this process supported.

**Q 5: Have recent and prospective developments in technology changed the case for promoting the continued issuance of dual-network debit cards? What policy actions might be needed to promote competition and efficiency in an environment where single-network cards were more prominent? Alternatively, would it be desirable to mandate (or incentivise through interchange caps) that all debit cards issued enable at least two unaffiliated/competing networks?**

The majority of our members agree that to be effective, appropriate education for consumers and merchants is required. As LCR via contactless payment or CNP payments become more available, the benefits for both parties needs to be clear and definable. Considering many people refer to all payments made with their card as EFTPOS, it will be a difficult point to communicate based on the scheme name alone. This is made more confusing when the account options presented at point of sale are usually savings, cheque, or credit. This has little association with the fees and more to do with the account out of which they are paying for the payer. Potentially, these options could be renamed or better described in terms of the impact upon costs of making payments.

Currently, there is very little correlation between consumers perception of payments and how it in fact works behind the scenes. Renaming the account options presented at points of sale would be very helpful, although mobile payment should be encouraged for security purposes. Therefore, ensuring the mobile payment, security of digital identification should be intertwined with this.



**Q 6: Is there a case for further policy action to enhance competition in the provision of acquiring services to merchants? If so, what form could this action take?**

Our members have mixed opinions regarding whether merchant acquiring is an essential part of card payment transactions processing. Acquirers enable merchants to accept card payments by acting as a link between merchants, issuers, and payment networks. Acquirers should address the challenges faced by the industry through the combination of technology investments, pricing strategies and designing integrated multichannel acquiring systems.

A strong majority of our members agree that competitive market conditions, including appropriate access to domestic payment infrastructures, should be fostered in the payment industry. Payment service providers should participate actively in the implementation of policy principles and actions.

One of our members does not support issuers being affiliated with at least two card processing networks, as this negatively impacts issuers to deal with two schemes where there are large similarities between Visa and Mastercard, increasing compliance and operational costs associated with operating two networks in Australia. This member suggests that in order to build out increased competition in the use of acquiring services by merchants, merchants must first trust new market entrants who are providing such acquiring services. The RBA could carry out an education campaign for merchants communicating that there is more choice in the payments landscape and to consider smaller participants who provide more options over traditional banks.

Further, one member has commented that instead of the suggested reforms, they prefer transparency of pricing and allowing parties to choose whatever option they wish on this basis, whether that be individual items or otherwise.

**Q 7: Is there a case for greater transparency in scheme fee arrangements, including their effect on payment costs? If so, what form should this take?**

Our members strongly agree that scheme fees are not transparent. As it currently stands, each issuer can provide a level of transparency to the acquirer about these fees as they see fit, for example an overview as a brochure or general statement. Acquirers may overlook this or have limited access and therefore limited understanding about their fees. Greater transparency would enable the acquirer to understand the charge. This information should take a form that enables more dynamic access to the type of fee and the purpose, on an individual transaction basis. This could potentially form part of the data attached to a transaction.

Members agree that more mandated transparency about scheme fees would allow more competition in the market, which would be beneficial for the acquirer (allowing them to readily assess and compare fee costs from each issuer). Additionally, this information may help develop a deeper understanding of the competitive landscape of scheme fees. Further, one





member commented that greater transparency on pricing (around the pricing for issuers) is vital, and another member commented that they support regulating the schemes to provide consistent and transparent pricing, and also to limit the new or changed fees they can introduce without consultation.

On the other hand, it has been suggested that while a party should always have access to the information required to understand the fees it is paying, it does not always follow that disclosure modifies behaviour. This has been playing out in the retail financial services space for some years now, with ASIC now shifting away from a disclosure model. It is particularly true that disclosure fails where disclosures are complex and difficult to understand. Therefore, it is uncertain at the present time whether increased transparency for acquirers would translate into increased competition. To some degree, this may depend on how simple the disclosures could be made. However, despite this, some members think this transparency should be provided, although other measures may also be required to increase competition.

## **Q 8: Are the existing access regimes working effectively?**

Most of our members agree that greater transparency around the process for access is needed to avoid conflicts of interest that would potentially restrict competition. The risk of a passive approach is that it encourages existing players to hold the majority of the control regarding who gains access and the threshold of access requirements. Accordingly, the RBA could establish a formal access regime for the NPP that enhances access for FinTechs and puts pressure on the big banks to comply with fair practices. The RBA could also consider offering direct access to some payment networks, bypassing the need for a sponsor bank.

On the other hand, the infrastructure required to be built for robust and stable access to the NPP is significant and needs to be understood clearly. Providers of this infrastructure service will benefit from being part of providing clearer guidelines to smaller players and FinTechs. This will in turn promote competition. It is also worth considering research and development or similar grants and special conditions to encourage this collaborative behaviour.

Whilst some members agree with having a formal access regime, it has been suggested that there is healthy competitive tension in allowing the various participating institutions to compete for partners by providing differentiated NPP access offerings. It is readily understood that in the 'real world', most participating institutions do not compete for partners. Even so, allowing for differentiation is important for the future. An access regime, therefore, could be phrased in terms of minimum standards. Those standards will inevitably have to include conditions on the partner too, not just the participating institution. No one benefits from a real-time payment system with parties that are not able or willing to conform to security, technology and compliance standards.

## **Q 9: What are the implications of the growing importance of mobile devices and digital platforms for the retail payments system in Australia? Are there issues that arise for the**



## **Bank's regulatory regime for card payments or that are relevant to competition, efficiency and risk?**

Most of our members agree that digital payment systems are an effective way to purchase, specifically in the retail sector and for other small payments. There is a growing importance on the use of mobile or digital wallets for all card transactions, which provides benefits to the user, the bank and the platform. Greater access for new entrants to digital wallets on hand-held devices, or through other measures not yet in the Australian market, such as QR Code scanners (also accessible through a mobile device) would enable competition and encourage new entrants to develop. It is important for the RBA to consider regulations that support the shifting mobile device and digital platforms as they will evolve, and this includes regulations regarding stored value wallets and alternative payment methods (such as cryptocurrencies) which may become a more accepted form of payment.

It has been suggested that this question relates back to creating regulations that are technologically agnostic. In the statements above, payment methods are mentioned alongside digital wallets which may fall under different regulatory mechanisms (related to stored value facilities and Anti Money Laundering and Know Your Customer policies). It would be ideal to see cooperation between various regulatory bodies to avoid conflicting or 'over' regulation in areas, such as digital wallets.

One member commented that digital-wallet-based services and platforms should no longer be seen as intrinsically high risk. Just like all other businesses, they need to be assessed in their own right. Banks and schemes have a long way to go with this and it is feared that this is partially a result of competitive aversion to making it easy.

Further, the increased use by customers of mobile payment options, such as ApplePay and GooglePay has provided more convenient payment options to consumers and small businesses in Australia. However, Apple and Google take differing approaches to access to their payment technology with respect to fees. It is important that the RBA consider whether Google, and in particular Apple, have too much power to limit competition and stifle innovation in the Australian payments system. In recognition of the widespread use of Apple and Google, the RBA should consider mandating that these providers open their technology platform for use by smaller FinTech participants to facilitate increased competition and use of such payment options. It has been suggested that Apple should not be allowed to leverage its market dominance to obtain a toll (financial and non-financial) from the ecosystem carte blanche.

## **Q 10: Is there a case for a further lowering of the credit or debit interchange benchmarks or any change in the way they are applied?**

Our members are divided in their opinion as to whether the RBA should lower interchange fees in-line regulatory benchmarks set by the EU which may even out the competitive landscape.



This may be more beneficial to the Australian market than the system in the United States, where high interchange fees have driven a 'rewards' and 'cashback' ecosystem which in itself limits competition. Interchange fees subsidise (in-part) benefits for the card-holder (payer) that the merchant indirectly pays for, with little or no benefit reflecting back to the merchant.

One member commented that the prevalence of premium cards has increased the costs for merchants, with many end users unaware of the differences. The issuers benefit from the interchange, and it is not necessarily passed on to the end user. It was suggested that loyalty and rewards should be based on a customer's preference of product, which can be set as part of the individual value propositions.

**Q 11: Should regulation of interchange be extended to inter-regional interchange fees (i.e. interchange fees applying to transactions in Australia using foreign-issued cards)? What is the typical cost of transactions on foreign-issued cards, and how much of this is attributable to interchange fees?**

Most of our members agree that accepting international cards, particularly for CNP payments does come at a considerably higher cost for the merchant. This is often driven by the acquiring bank and the scheme rules and relates to an increased risk of accepting international payments. If the RBA is reviewing interchange benchmarks, it would make sense to include international acceptance in that scope of review. The increased risk as a reason for a higher fee may not be valid in the face of two factor authentication (EU) and other fraud prevention mechanisms driven by the schemes themselves.

Australia should aim to make it as easy as possible for international cards and payment methods to be used within the country, although Australia needs to ensure that this comes with the correct level of regulatory oversight.

One member has suggested that two factor authorisation will not be effective for automated / recurring card transactions if users are asked to verify the transactions each time, however they agree that interchange benchmarks should somewhat extend to transactions in Australia using foreign issued cards.

On the other hand, one member does not support the expansion of interchange regulation to inter-regional interchange fees, as such regulation limits the ability of issuers and acquirers to develop more innovative payment products for merchants and cardholders. The interchange fee allows issuers and acquirers to provide innovative product features and product add-ons such as frequent flyer or rewards points that are attractive to a particular segment of the market while also giving customers choice to select other products that do not have such features. In addition, it is not Airwallex view that fraud risk is the only reason intra-regional interchange fees are higher but also the cost of building and operating a global payments network is time consuming and expensive. Airwallex is building a global payments network and increased



regulation penalises Airwallex in attempting to recover certain costs it incurs in building its global network. Airwallex supports increased transparency in the consistent disclosure by issuers to cardholders and by acquirers to merchants of the cost of using and accepting cards for international payments.

## **Q 12 – Q 14:**

Our members have not provided responses at this time and may submit their views in the near future.

## **Q 15: Is the surcharging framework working well? Are there any changes that should be considered?**

Some of our members think it is working well as a concept however consistent execution, particularly at the point of sale for card-present transactions, is not. Merchants still charge fixed or unrelated to the purchase amount surcharges to payments made on cards. This is often because it is difficult to calculate a percentage base charge and there is no transparency over what the actual cost of acceptance is for the consumer. Alternatively, if a merchant wishes to pass on a surcharge, it is reasonable that they should have to display information stating their cost of acceptance provided by their bank or acquiring partner.

All of our members agree that if a merchant wishes to pass on a surcharge, it is reasonable that they should have to display information stating their cost of acceptance provided by their bank or acquiring partner either via the point of sale technology (for example, POS or shopping cart) or by signage provided by their acquiring partner.

However, this may be difficult to implement in practice and is likely to punish smaller merchants potentially unfairly. The RBA will need to ensure this is dealt with in a way that makes the process easy for merchants, whilst maintaining end customer satisfaction and transparency.

Further, one of our members commented that merchant surcharging definitions are still unclear when merchants use a payments service provider, and this requires reform.

## **Q 16: Is there a case for policymakers to require that BNPL providers remove any no-surcharge rules, consistent with earlier actions in regard to card systems that applied such rules?**

Fintech Australia's members have taken diverse positions in answering this question and Fintech Australia acknowledges that a cohesive consensus is not always possible given our extensive member base.



This being said, Fintech Australia acknowledges that we have an overarching duty to represent our 300 strong member body fairly and promote the agenda of the Fintech Industry in Australia as a whole.

In light of this, Fintech Australia strongly urges the RBA to consider the BNPL 'surcharge question' as not simply a 'technical' question about whether or not BNPL systems are a 'payment method' and therefore should be subject to existing rules, but rather to view this an opportunity to consider new business models - made possible by technological innovation. Though these new innovations may hold some similarities to existing methodologies, in other ways they are vastly different.

It is these differences that- if regulated in a way that is protective of a secure and stable financial environment and that also encourages innovation- can cultivate a progressive and intrinsically beneficial Fintech ecosystem in Australia.

In considering this question beyond the scope of 'what has gone before' and previous precedents, Fintech Australia urges the RBA to consider the possibilities of how regulation can be designed in occasions such as this to develop a regulatory environment that is positive for Fintech innovations both now and in the future- taking lessons from the past but not necessarily encumbered by the past.

**Q 17: Are there potential enhancements to the Bank's regulatory powers and enforcement mechanisms that could improve the effectiveness of retail payments regulation?**

One of our members has commented that the growth of subscription services mean that subscription payments require specific and consistent rules regarding consent and disputes, despite the payment method. It should be easy for an end user, and the merchant. It is worth the RBA considering dispute liability when consent has been granted.



## **ABOUT FINTECH AUSTRALIA**

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 300 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its members in the development of our submissions:

- DLA Piper
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