

18 August 2021

Dr Tony Richards
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Dear Dr Richards

AFIA COMMENTS ON REVIEW OF RETAIL PAYMENTS: CONSULTATION PAPER

The Australian Finance Industry Association (AFIA) appreciates the opportunity to make a submission to the Reserve Bank of Australia's (RBA) Review of Retail Payments Regulation Consultation Paper (the Consultation Paper).

AFIA is a leading advocate for the Australian financial services industry. We support our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

OUR SUBMISSION

The Australian payments and financial services regulatory architecture is considered world-class. We believe the existing regulatory settings for the payments system should be maintained.

However, AFIA agrees with the RBA Governor that: 'the structure of payments is changing... it is now better to think of a payments ecosystem, rather than a payments system. In this ecosystem, there are more entities involved and new technologies used. This more complex and dynamic environment is opening up new opportunities for innovation.'¹

Australia is recognised as a world leader in digital financial products and services. Australian financial services businesses have been driving change across the finance industry globally for years, with advances in universal access to ATMs and online banking and financial services well ahead of other parts of the world.

Even though transactions by Buy Now Pay Later (BNPL) providers comprise less than 2 per cent of transactions in Australia, they are driving competition and innovation in Australia and now leading the way overseas, giving customers additional options for managing their money and purchases.

¹ <http://www.rba.gov.au/speeches/2020/sp-gov-2020-12-07.html> (December 2020)

Furthermore, the COVID-19 global pandemic has fast-tracked some trends in payments and financial services – a move to a cashless society, a shift to contactless payments, and take up of digitisation. Integration of payments and financial services, technology and data, and marketing through platforms is being driven by customer and business demands for simplicity, efficiency, security, value-add and cost minimisation.

Therefore, AFIA also agrees with the preliminary conclusions made in the Consultation Paper to retain the current regulatory settings and introduce new principles to establish technical standards of operation, which promote access and choice, competition and innovation, and participation within the payments ecosystem.

AFIA makes five overarching recommendations regarding payments regulation:

1. Regulation should be targeted and right sized – proportionate, scalable, and functions-based.
2. Regulation should support competition and innovation, specifically, ensuring open access to facilitate mobile and contactless payments and telecommunications infrastructure providers do not have an unfair advantage or ability to limit competition and innovation in payments and financial services in Australia.
3. Regulation should balance financial stability and consumer protection, which is particularly important to ensure vulnerable customers are not disadvantaged with this next evolution and we avoid a new 'digital divide' in Australia.
4. Self-regulation should continue to play an important role in setting high standards, getting ahead of change and customer expectations, and adapting existing frameworks to drive better customer outcomes.
5. Regulation should be efficient and effective – supportive of Australia retaining our global position as a financial centre and an incubator for ideas and responsive to this dynamic environment.

AFIA has provided preliminary comments on the Issues Paper. The following comments focus on the proposals made in the Consultation Paper.

Strategic issues in the retail payments system

AFIA supports policy that is forward-looking and regulation that is based on evidence of a market failure. Regulation should not try and standardise payments products, services, and technologies, where standardisation reduces access and choice, competition and innovation, and participation for customers and businesses. Cost is not the only factor to consider when examining the efficacy of the payments system and ensuring the payments system serves the preferences and needs of end-users.

AFIA notes the Federal Government's review of the regulatory architecture of the Australian payments system to ensure it is fit-for-purpose and responsive to advances in payments technology². We do not believe changes are needed to the regulatory architecture. However, we do support a roadmap for managing changes in payment methods, including cash and cheques.

AFIA also notes the consultation conducted by the Council of Financial Regulators on regulation of Stored Value Facilities (SVFs) in Australia³. We support targeted adjustments to ensure digital wallets are regulated similarly to SVFs, potentially through a modification to the definition to ensure regulation keeps pace with like products. A functions-based approach to regulation of digital wallets would ensure a competition-neutral outcome, and consistent standards and requirements would apply to digital wallets offered by banks, financial institutions, BNPL providers, or global technology companies.

² <http://treasury.gov.au/review/review-australian-payments-system>

³ <http://www.cfr.gov.au/publications/policy-statements-and-other-reports/2020/regulation-of-stored-value-facilities-in-australia/>

Mobile payments and digital wallets

AFIA has made several submissions to a number of recent Parliamentary inquiries, on mobile payments and digital wallets, as well as Australia as a technology and financial centre.

To address industry and consumer concerns, we believe that targeted approaches are needed:

- A similar approach taken in Germany should be adopted in Australia that requires providers of technical infrastructures (including smartphone devices) that may contribute to the provision of payment services or the operation of e-money activities to give access to those infrastructures. This means that payment service providers can access the Near Field Communication (NFC) antenna to facilitate payments for their customers. It also means certain practices of digital wallet providers do not introduce new costs or risks into the payments system or impede access and choice, competition and innovation, and participation.
- A similar approach taken in the United Kingdom should be adopted in Australia that prohibits online gambling operators from receiving credit or borrowed funds for the purpose of gambling. This means that gambling companies need to ensure their customers are not vulnerable to problem gambling or using their gambling services in a harmful way. It also means that while restricting use of credit will not address the underlying issues associated with problem gambling, it can help address the economic and financial impact.

AFIA supports targeted approaches to address industry and consumer concerns with mobile payments and digital wallets, while avoiding or minimising the impact for all customers and users of the payments system. We would be pleased to provide the RBA with a copy of our submissions and representations.

Buy Now Pay Later

AFIA notes the assertions by some stakeholders in the Consultation Paper that BNPL providers are 'largely unregulated' and we disagree with this assertion.

The BNPL sector is regulated by ASIC under the ASIC Act as well as other regulatory authorities, including AUSTRAC, ACCC, OAIC, RBA and the courts. BNPL providers must comply with financial services laws, including the Design and Distribution Obligation (DDO), misleading and deceptive conduct, unfair contracts, anti-money laundering, privacy, etc. ASIC can also take action with their Product Intervention Power (PIP) to prohibit or change industry practices, products and services, or technologies.

Furthermore, on 1 March 2021, AFIA's new BNPL Code of Practice was introduced. The Code requires signatories to meet various standards that go above and beyond the law, providing higher consumer safeguards than certain credit and financial products. The Code also requires signatories to be a member of the Australian Financial Complaints Authority (AFCA), so if a customer is not able to resolve a complaint directly with their BNPL provider, they can go to AFCA to get help and resolve their dispute. The Code is contractually enforceable, so if a customer believes there has been a breach of the Code, they are able to seek recourse through AFCA or the independent Code Compliance Committee (CCC). The CCC has the ability to impose sanctions, including changing industry practices, products and services, or technologies, instructing the BNPL provider to remediate a customer, and/or naming and shaming a BNPL provider for non-compliance.

Dual-network debit cards and least-cost routing

AFIA recognises that the majority of debit cards in Australia are dual-network debit cards (DNDCs), which allows domestic debit payments to be processed through EFTPOS or one of the international debit networks (Mastercard or Visa).

Least-cost routing (LCR) is functionality that lets merchants process contactless payments (i.e. 'tap-and-go') DNDC transactions through the network where the card costs them less to accept. This means merchants can reduce their payment costs. However, we are concerned about the impact of the LCR reforms on smaller card issuers, which typically only have single network debit cards (SNDCs).

AFIA notes that the ACCC is considering an application to allow the merger of BPay, EFTPOS, and NPP Australia⁴ – this will be relevant for considerations of the impact on LCR. With the focus on cost reduction and/or operational value-add for business, especially through the COVID-19 crisis and recovery, there is an increasing focus on acquirers providing better value for money, through mechanisms such as LCR or services on top of payments processing, such as data and analytics, customer loyalty and rewards, and other 'back-office functionality'.

AFIA supports the proposal for the RBA to work with the payments industry on the implementation of principles and technical standards relating to DNDCs and LCR. We are concerned about transposing our views regarding existing products and services to emerging products, services, and technologies without examining the preferences, needs and behaviours of customers and businesses. For example, expectations and technical standards for device present (in-person) and device-not-present (online) transactions may need to differ for practical reasons. It will be important for research and evidence to understand end-users and inform any future developments.

Interchange and scheme fees

AFIA recognises the RBA has longstanding views about interchange fees. While we acknowledge the intent to influence interchange fees to be as low as possible, we are concerned this approach may be limiting competition and innovation. Two card schemes – Mastercard and Visa – dominate the market. Similarly, we are concerned about the lack of transparency with scheme fees payable by acquirers and issuers.

AFIA supports the proposal for the RBA to work with the payments industry on the introduction of principles and disclosure standards relating to interchange and scheme fees. It will be important to ensure disclosure requirements do not increase compliance costs for industry or unreasonably impact commercially sensitivity information and to ensure further interventions with interchange fees do not disincentivise investment in and upgrade of payments infrastructure.

Merchant surcharging

AFIA recognises that the surcharging rules give merchants the right to levy a fee on their customers to recover payment costs associated with using credit and debit cards, noting rules to prevent merchants from surcharging excessively.

While BNPL transactions have been growing in recent years, they comprise less than 2 per cent of transactions in Australia. BNPL delivers a number of benefits for customers and businesses.

Benefits of BNPL for retailers and merchants

1. Easy payment – it leverages the 'lay-by' approach to sales of goods, without the retailer or merchant incurring the costs of holding the goods until final payment and/or undertaking additional administration and financial burden if a customer misses any payments.
2. Customer and cashflow management – CRM-like system to suppliers to manage customer orders and receipt of upfront payment for their goods and services, which is especially important for small businesses.
3. Marketing platform – it provides opportunities to maximise brand awareness and contact with customers as well as leverages partners across retailers and merchants.
4. Customer support – each BNPL provider fields inquiries from customers of retailers or merchants and provides additional value-add services, i.e. customer remediation and refund and charge back processes.

⁴ <https://www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/proposed-amalgamation-of-bpay-eftpos-and-nppa>

Benefits of BNPL for customers

1. Quick, easy payment – it provides an integrated and frictionless experience for customers.
2. No or low-cost method of paying for goods and services – deferring payment for purchases and making instalment payments over even periods, ensuring customers understand upfront the total and individual payments. Not being charged interest reduces the chance of losing track of payments or falling into debt.
3. Cashflow and budgeting – having smaller, regular payments aids with better cashflow management and budgeting, allowing customers to prioritise the payment of more important items. Not tapping into savings allows customers to work towards larger savings goals, such as buying a house or to retain their savings as a safety net or to offset their mortgage costs. Budgeting tools and product features provides additional customer safeguards, i.e. restriction from using the product if a customer misses a payment, and unable to use until resumption of repayments.
4. Confidence – structured payment schedules give customers confidence in what they owe, clarity and transparency.

AFIA notes that the merchant cost takes into account various factors, including charges from e-payment providers, fraud prevention services (including AML/CTF checks), cost of funds through funding arrangements to service each transaction, other underlying service costs as well as payment for the receipt of additional benefits noted above for retailers and merchants.

Over the next few years, it is anticipated there will be considerable changes in the BNPL sector, with new entrants, consolidation and specialisation, and new partnerships, driving better outcomes for customers and businesses. The nature of BNPL differs from other payments products and services, and further competition and innovation will drive changes without regulatory intervention, including lower costs and greater operational value-add for retailers and merchants.

AFIA supports the proposal not to make changes to the surcharging rules. We believe there is not a clear public interest case or market failure requiring BNPL providers to remove their no-surcharge rules at this time. It is appropriate to keep this issue under review and in light of industry and market developments.

Other issues

Consumer Data Right

AFIA supports action to encourage greater participation in the Open Banking regime and to reduce barriers to entry. While we recognise there is a significant program of legal and regulatory change across the finance industry underway, it is important to ensure the benefits of increased competition and cost reduction are delivered to customers.

Therefore, we believe consideration should be given to further enhancements:

- provide more clarification about how the consumer data right (CDR) applies to a restricted authorised deposit-taking institution (RADI)
- make it easier and less expensive for smaller participants to become accredited – review process to become an Accredited Data Recipient
- increase consumer awareness of the purpose and benefits, and how customers can access the system, potentially through the [MoneySmart website](#)
- examine expansion to small business customers to promote competition and innovation in SME lending and merchant services.

CLOSING REMARKS

Regulation of payments and financial services should balance financial stability, consumer protection, competition, and innovation. In addition to the overarching recommendations we made upfront in this submission about ensuring regulation, including self-regulation, is fit-for-purpose and responsive to advances in payments technology, we believe it is critical for improved regulatory coordination and end-user capability.

Specifically, we believe that:

1. The Council of Financial Regulators should coordinate action to support greater competition and innovation in payments and financial services, recognising each financial regulator has a competition mandate either explicitly or implicitly in their statutory obligations and/or Statement of Expectations.
2. The Federal Government should ensure Australians have financial and digital capability as well as access to telecommunications and e-commerce services, leveraging initiatives within the Digital Economy Strategy and National Financial Capability Strategy.

Should you wish to discuss our submission or require additional information, please contact me or Karl Turner, Executive Director, Policy at karl@afia.asn.au or 02 9231 5877.

Yours sincerely

A handwritten signature in black ink that reads "Diane Tate". The signature is written in a cursive, flowing style.

Diane Tate
Chief Executive Officer