



6 July 2023

Mr James Kelly
Financial Systems Division
Treasury
Langton Cres
PARKES ACT 2600

via email: paymentsconsultation@treasury.gov.au

Dear Mr Kelly

Reforming the *Payment Systems (Regulation) Act 1998* to promote competition in the debit card market and lower small business payment costs

The Australian Small Business and Family Enterprise Ombudsman (the ASBFEO) is encouraged by the Treasury's consultation on proposed reforms of the *Payment Systems (Regulation) Act 1998* (the Act), which will help ensure that all entities facilitating or enabling payments are appropriately regulated by the Reserve Bank of Australia (RBA) as the primary payment system regulator.

While we acknowledge that the RBA has been operating with limited regulatory oversight of payments system participants, it is disappointing that the Bank's expectation that the technical availability of 'least-cost routing' (LCR) would evolve into practical accessibility and take-up by merchants has not been realised. During this time, payment-system participants, product offerings and consumer preferences of payment method have also continued to evolve rapidly. The combination of increasing use of tokenised debit-cards within mobile wallets, growth in online spending and falling volumes of cash payments are applying upward pressure on merchant payment costs.¹

Over the past 12 months, the ASBFEO has undertaken a research project with the objective of developing policy solutions to reduce transaction costs for small businesses and family enterprises. This research has highlighted:

- low merchant and consumer awareness of how debit card payments are facilitated
- a large opportunity cost for small business (\$800 million per annum)²
- inconsistent use of payments terminology between government and the banking sector
- poor transparency of merchant fee structures
- inconsistent application of surcharging rules for merchants to cover the cost of consumers' chosen payment method
- multiple government reviews and inquiries have recommended that the Payments System Board should take regulatory action to progress the implementation of least-cost routing.

With the above in mind, we provide the following comments for consideration.

¹ E Connolly, *The shift to electronic payments: some policy issues* [speech], Reserve Bank of Australia, 28 March 2023.

² CMSPI, *Breaking News: What Merchants Need to Know About the RBA's Latest Payments Update*, 28 March 2023.



1. We support the proposed definition of ‘payment system’ and ‘participant’.

Updating the definitions of payment system and participant will help the RBA facilitate changes to default debit card settings and tokenisation; and thereby broaden its ability to designate new and emerging payment systems in the ‘public interest’. This will address any potential regulatory asymmetry for new and incumbent participants, to promote fairness and consistency in the system.

2. The RBA should have greater information gathering and disclosure powers.

It is appropriate to introduce a mechanism that enables the RBA to publicly disclose identifying participant information without acquiring consent to support the RBA’s existing public interest-based powers, in accordance with appropriate notification requirements and thresholds in relations to these powers (similar to section 57 of the *Australian Prudential Regulation Authority Act 1998*).

The RBA’s extended information-gathering and disclosure powers should apply to all payment system participants equally to avoid discriminating or unfairly disadvantaging one participant over another. A preferable approach could involve reporting on the performance of all participants, or calling out all parties engaging in a poor behaviour. If such powers can be enforced by adding new civil penalties to the penalty framework, this could more effectively deter behaviour that diverges from the RBA’s direction and increase regulatory effectiveness.

Granting the RBA stronger information-gathering and disclosure powers would foster transparency for personal consumers and merchant customers. It would also promote competition between payment system participants, as more of their performance metrics would be publicly available.

3. The penalty regime under the Payment Systems Regulation Act should be strengthened to better support system enforcement and compliance with RBA regulatory directions.

We support the proposal to establish a more graduated penalty regime with new civil penalties added to the existing criminal penalty framework. The RBA is not currently able to impose civil penalties under the Payment Systems Regulation Act. The addition of civil penalties will enable the RBA to encourage compliance with its regulatory directions without having to resort to criminal penalties (which are generally reserved for serious misconduct). This will more effectively deter all payment system participants – irrespective of size – from engaging in non-compliant behaviour.³

Thank you for the opportunity to comment. If you would like to discuss these matters further, please contact advocacy@asbfeo.gov.au.

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman

³ Treasury, *Reforms to the Payment Systems (Regulation) Act 1998: consultation paper*, Treasury, Australian Government, 2023, viewed 3 July 2023.