

Mr Christos Fragias

23 December 2020

Secretariat
Payments System Review
The Treasury
Langton Crescent
PARKES ACT 2600

Delivered via email to: PaymentsReview@treasury.gov.au on 23 December 2020

RE: Feedback – Payments System Review: Issues Paper (November 2020)

To Whom It May Concern:

Thank you for the opportunity to provide feedback as a member of the public, regarding the subject under reference.

The Australian and global payments systems have undergone, and continue to undergo, massive changes, ushering new innovations, and calling for revised approaches to oversight.

Therefore, this review by the Treasury is well timed, and with the appropriate regulatory architecture that will be established from this review, there is considerable opportunity to ensure it remains adaptable, flexible and serves the best interests of all participants and end-users.

In the following pages, I provide my feedback to all the questions raised by the Treasury, in its [Payments System Review: Issues Paper \(November 2020\)](#).

I give consent to the Treasury to release this entire document and my full name, Christos Fragias, to the public via the Treasury's website.

Finally, I once again thank the Treasury for the opportunity to respond to its Payments System Review: Issues Paper (November 2020), as I welcome the opportunity to discuss my responses in greater detail directly with the Treasury.

Yours Sincerely,

Christos Fragias

Q1: Does the regulatory architecture appropriately facilitate the development of an overall vision, strategy and principles for the Australian payments system?

Generally, regulatory architecture, with specificity to payments, is established to promote competition, drive innovations and create efficiencies. In the recent years however, the regulatory architecture has resulted in the erosion of longstanding consumer benefits. An example of this has been the capping of card interchange rates set out by the Reserve Bank of Australia (RBA).

The capping of interchange rates has effectively dispensed with the companion card and lucrative loyalty and rewards programs which customers enjoyed and benefited from¹. Further customer impacts extended to credit card rewards points programs being restructured to reduce the cap on points redeemable in one succession.

Regulators need to remain cognisant of the flow on effects to end-users, pertaining to the intended or unintended consequences of their payments regulations. Even though in this example, end-users are not directly subjected to regulation, in the same manner as credit card issuers or card schemes are, however, and notwithstanding, the flow on effects of such regulation has altered cardholders' enjoyment in utilising the rewards and loyalty programs previously afforded by their credit card issuers.

Q2: 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?

The existing regulatory infrastructure seems somewhat fragmented, and at times, overlapping between the RBA, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA).

For example, there are multiple regulators overseeing card interchange and Purchased Payment Facilities (PPF). Which can create blurred lines of authority between the regulators. Moving forward, it is recommended that any new regulatory architecture is designed with a central regulatory authority overseeing the Australian payment system. Where it is resourced with dedicated and skilled payments personnel who can adapt policy and regulation in tandem with payments innovations and participants.

Q3: 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 following response is listed in numerical order of priority for appropriate balance of regulating the payment system:

1. **Regulatory Authorities** – these agencies oversee the day-to-day functions of the payment system and should be able to make decisions, seek industry consultation and enforce regulation, among other remits.
2. **Self-regulation (incl. Industry regulation)** – very closely behind, should act as the conduit between industry and regulators in ensuring the industry abides, for example, by its own

¹ [ANZ has killed off American Express rewards cards. Business Insider Australia. 6 March 2017. Thomsen., S.](#)

codes and standards². While at the same time, acting as a sounding board for their industry representatives, including lobbying regulators on their behalf.

3. **Government policy** – The government is encouraged and should form policy from its own observations of the payment system and/or through consultation with the regulators and industry (i.e., points 1 and 2 above in this question).

Q4: 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?

Purchased Payment Facilities

Continuing the subject of PPF, up until 30 November 2020, PayPal Australia Pty Limited, was the only Authorised Deposit-Taking Institution (ADI) licensed on APRA’s Register of ADIs under the classification of Providers of Purchased Payment Facilities. However, on 30 November 2020, TransferWise Australia Pty Ltd joined this classification after being issued a Restricted ADI license from APRA.

It is noted the writer attended an industry Round Table meeting coordinated by the Council of Financial Regulators (CFR) (member regulatory agencies consisting of the RBA, ASIC, APRA & the Treasury), for this specific subject matter. This meeting was held over two years prior (C. November 2018) stemming from the Review of Retail Payments Regulation: Stored-value Facilities³.

A key issue raised at this meeting fell on only one industry participant (PayPal) being, at that time, the only regulated entity under the PPF regulatory framework. It was explained that PayPal customers usually held funds in their PayPal accounts for short periods of time (somewhere between 24-48hrs), before transference to and from a bank account, contingent on the transaction’s lifecycle. In doing so, questioning the regulatory scrutiny placed on PayPal alone.

And although several other market PPF participants fell under the regulatory AUD \$10 million facilities threshold, in aggregate however, these smaller participants represented sizeable volumes of unregulated PPF funds. Leaving PayPal isolated in the PPF regulatory framework, where at the CFR Round Table meeting, PayPal did express their confusion.

Although the RBA published an update in the Payments System Board’s (PSB) Annual Report – 2019⁴ on PPF regulatory review and reform, the PSB then provided a further update in its 2020 Annual Report⁵.

While the Government has yet to formally respond to the recommendations, the Bank, APRA and ASIC have continued to administer their respective regulatory requirements in relation to SVFs [Stored Value Facilities aka PPF] and been actively engaging with a number of current and prospective providers of SVFs about the Australian regulatory requirements.

² Self-regulation should apply to the extent it is serving the best interests of industry participants and end-users, with regulatory intervention, when needed. As well as the application of reviews by a regulator, or better still, an independent entity, to measure the effectiveness of industry self-regulation.

³ [Review of Retail Payments Regulation: Stored-value Facilities. An Issues Paper by the Council of Financial Regulators. September 2018.](#)

⁴ [Retail Payments Regulation Policy Issues - Payments System Board Annual Report - 2019.](#)

⁵ [Payments System Board Annual Report - 2020., p55.](#)

As a result, after more than two years, the regulatory framework review on PPFs, taking into account a CFR Issues Paper, a review and recommendations provided by the Productivity Commission, and an industry Round Table meeting in November 2018, there appears to be not much regulatory traction arising on this matter. Payments innovation and technologies are moving too fast for regulators and government to have spent this amount of time on just one payment regulatory matter, and still, with no clear results to show for.

A gap that needs further consideration is the lag in time from when regulators raise their intent of a review into a payment system regulatory framework (even raising their concern or an issue to the public), to when its policies are implemented, and their effectiveness measured.

Buy Now Pay Later Schemes

Buy-now pay-later (BNPL) schemes have gained considerable market presence in the minds of consumers and encroached on traditional lending products like credit cards. Interestingly, BNPL schemes were seen and promoted as the friendly alternative to conventional revolving credit facilities and demand for BNPL by the millennial generation proved favourable. However, BNPL schemes have been scrutinised by the media, consumer groups, and regulators, (*regulators to a lesser extent*), for their fees and charges. As well as what is perceived as the *rebranding of debt*⁶. BNPL schemes prevent merchants from surcharging for BNPL transactions, and BNPL merchant surcharging is not regulated as merchant surcharging and interchange fees are under the RBA's supervision of card payments regulation.

For example, according to recent industry publication⁷, Afterpay charges merchant fees of 4 per cent. And Klarna charges merchant fees of \$0.30, plus 5.49 per cent. **Which for Klarna, a merchant sale of \$1,000 could equate to approximately \$55 in merchant fees. However, if we take the equivalent transaction and apply a heavily regulated interchange rate of 0.80 per cent for a credit card transaction, the value of interchange significantly reduces to \$8.00. A difference of \$47.** And even if we were to add incremental layers of merchant pricing above this interchange fee to arrive at an aggregate Merchant Service Fee (MSF), we would still fall significantly short of the approximate \$55 used in the Klarna example.

While merchants are permitted to surcharge for the reasonable recoupment of accepting card transactions, BNPL schemes prohibit merchants surcharging, as mentioned above. **And in Klarna's case, maximum delay in merchants being paid can extend to a few weeks**, as Klarna's chronological measure to determine when a merchant is to be paid for sale of goods, commences when goods are despatched to the customer. In the UK for example, this can take a few weeks⁸. Yet, in the world of card payments, merchants can receive funds from the sale of goods on the same day as the transaction occurred (i.e., T + 0), whether goods were despatched or not.

Therefore, not only is the merchant paying much higher fees for providing BNPL services to its customers, which are much higher than regulated interchange caps, the merchant is not permitted to surcharge and can wait quite a few business days, or even weeks, before receiving transaction sale funds, less fees. And, if the RBA capped interchange rate fees to benefit merchants incurring excessive costs in accepting card payments, should it not take equivalent

⁶ [Buy now, pay later – the new debt trap for millennials? Financial Times. 21 September 2018. Megaw., N., & Cornish., C.](#)

⁷ [High BNPL fees a "burden" on the Aussie retail sector, says Klarna Australian boss. Smart Company. 1 December 2020. Palmer-Derrien., S.](#)

⁸ <https://www.klarna.com/uk/business/merchant-support/receive-payment/>

regulatory position with BNPL schemes? Considering BNPL schemes charge merchant fees generally higher than MSF, even prior to when interchange caps were enforced.

Clearly, there needs to be greater consistency in this great divide of payments regulation. As BNPL schemes are not regulated under the National Credit Act, they can avert the credit assessment and repayment hardship requirements under the National Credit Act. In effect creating an uneven playing field. As a result of BNPL schemes falling outside the National Credit Act, they are not required to comply with Responsible Lending laws and external dispute resolution membership (e.g., the Australian Financial Complaints Authority (AFCA)). Although Afterpay has voluntarily registered with AFCA⁹.

This apparent inconsistency in payments regulation pertaining to merchant surcharging was further widened in a media report where the RBA's Governor confirmed the RBA was unlikely, for the foreseeable future, to recommend regulatory changes that currently prevent merchants from surcharging on BNPL transactions¹⁰.

Merchants could be forgiven for their frustration on why inconsistencies in this regulatory payment matter exist; the unfairness; the inequity. And may create greater merchant dissonance to raise prices as a discrete strategy to recoup fees applied by BNPL schemes¹¹. Which goes against the spirit of the RBA's intentions when it enforced the capping of interchange rates.

Finally, BNPL schemes charge multiple fees to customers ranging from a fee per payment, and a missed payment fee, even if the missed payment was for a very low value item. Therefore, there exists regulatory improvements which would not only benefit merchants, but end-users.

Consistency in Payment Participants Annual Reports

The following picture is captured from Afterpay Limited's FY20 Annual Report¹². In the report's Key Financial Metrics summary, within the first few pages, emphasis is purely on **EBITDA of \$44.4 million to denote the company's financial performance**. Yet in the below Summary of Financial Results, well within the annual report (pg. 28), **Afterpay Limited reported a loss of (-\$22.9) million**. Additionally, in point 4 of the below picture, the following is mentioned:

EBITDA is a non-IFRS measure that is not audited but is a key financial metric used by management at a Group level.

While there is no inference nor evidence to suggest any suspicious conduct by Afterpay whatsoever, focus rests on headlining a key financial metric that is not necessarily recognised by an international reporting standard, **nor is it audited**, and that is used as a headline financial metric without including losses for the year in that same Key Financial Metrics summary. Yet, reported losses are presented several pages further into the annual report with very small narrative which provides a somewhat, interesting explanation.

⁹ [Would credit regulation kill buy now pay later platforms? Savings.com.au. 22 September 2020. Astbury., H.](#)

¹⁰ [Afterpay surcharge unlikely, says RBA. The Sydney Morning Herald. 7 December 2020. Kruger., C.](#)

¹¹ However, the vicious cycle to this discrete strategy results in merchant sales via BNPL schemes incurring higher BNPL merchant fees. As the largest component of BNPL merchant fees comprise of ad valorem pricing.

¹² [Afterpay Limited FY20 Annual Report.](#)

Table 1 Summary Financial Results

For the year ended 30 June	2020 \$m	2019 \$m	Change \$m	Change %
Total Income	519.2	264.1	255.0	97%
Cost of Sales	(134.3)	(59.6)	(74.7)	(125%)
Receivables Impairment Expenses	(94.5)	(58.7)	(35.8)	(61%)
Employment Expenses	(86.1)	(51.4)	(34.7)	(67%)
Operating Expenses ^{1,2}	(146.3)	(73.2)	(73.1)	(100%)
Afterpay Net Transaction Margin³	250.2	119.3	130.8	110%
EBITDA (excl. Significant Items)^{2,4}	44.4	25.7	18.7	73%
Loss before tax	(26.8)	(42.8)	16.0	37%
Loss for the year	(22.9)	(43.8)	20.9	48%

- Operating Expenses include one-off items of \$6.4 million (2019: \$7.5 million) and foreign currency (FX) gain of \$19.9 million (2019: \$3.0 million) which are not included in the calculation of EBITDA (excluding Significant Items). One-off items relate to international expansion costs, business combination, AUSTRAC-related costs, and other one-off gains or costs.
- The Group adopted AASB 16 Leases from 1 July 2019 using the modified retrospective method and has not restated comparatives for the prior year, as per the specific transitional provisions. EBITDA in the year ended 30 June 2020 is \$5.6 million higher due to the adoption of AASB 16 than it would have been under the previous accounting standard, AASB 117 Leases.

- EBITDA is a non-IFRS measure that is not audited but is a key financial metric used by management at a Group level. EBITDA (excluding Significant Items) excludes foreign currency gains, share-based payment expenses, net loss on financial liabilities at fair value, share of loss of associate and one-off items.

Picture 1: Summary of Financial Results – Afterpay Limited FY20 Annual Report

To provide a further example, Zip’s FY20 annual report highlights **Revenue \$161M** on its FY20 SCOREBOARD at the commencement of its annual report. Yet, not until way further in the report (pg. 71), does Zip actually report that, **it generated a loss of (\$20,020,000) for FY20¹³**.

Again, while there is no inference nor evidence to suggest any suspicious conduct by Zip whatsoever, focus rests on headlining a key financial metric portraying a much different position than the company’s gains or losses reported for FY20. In these factual examples, regulators would benefit investors to ensure, at least in the payments industry, financial reporting is much more transparent.

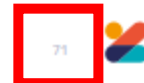
¹³ [Zip Co Ltd FY20 Annual Report.](#)

Consolidated Statement of Profit or Loss and Other Comprehensive Income

for the Year Ended 30 June 2020

	NOTE	30 JUNE 2020 \$'000	30 JUNE 2019 \$'000
Portfolio Income	3	159,372	82,877
Third party revenue splits		(2,379)	(696)
Net Portfolio Income		156,993	82,181
Cost of Sales			
Interest expense		(38,944)	(22,940)
Bad and doubtful debts expense		(53,669)	(21,947)
Bank fees and data costs		(10,844)	(5,461)
Amortisation of funding costs		(1,877)	(1,090)
Total Cost of Sales		(105,334)	(51,438)
Gross Profit		51,659	30,743
Other income	3	1,629	1,354
Expenditure			
Administration expenses	4	(9,932)	(4,704)
Depreciation expense	4	(3,993)	(968)
Amortisation of intangibles	4	(9,045)	(3,587)
Information technology expenses		(11,496)	(4,787)
Marketing expenses		(9,515)	(3,446)
Occupancy expenses		(2,233)	(2,124)
Salaries and employee benefits expenses		(44,315)	(20,399)
Share-based payments	4	(20,393)	(3,215)
Acquisition of business costs		(10,273)	-
Share of loss of associate	5	(187)	-
Fair value gain on investment	6	47,505	-
Loss Before Income Tax		(20,589)	(11,133)
Income tax benefit	7	648	-
Loss After Income Tax			
Attributable to Members of Zip Co Limited		(19,941)	(11,133)
Other Comprehensive Income for the year			
Foreign exchange differences on translation		(79)	-
Total Other Comprehensive Income for the year, Net of Tax		(79)	-
Total Comprehensive Loss for the year			
Attributable to Members of Zip Co Limited		(20,020)	(11,133)
Earnings per share			
Basic loss per share	8	(5.31)	(3.52)
Diluted loss per share	8	(5.31)	(3.52)

The above Consolidated Statement of Profit or Loss and Other Comprehensive Income should be read in conjunction with the accompanying notes.



Picture 2: Summary of Financial Results – Zip Co Limited FY20 Annual Report

Consistency in Payments Policy Across Regulators and Other Government Agencies

In June 2018, the Productivity Commission (PC) released its Inquiry Report into the Competition in the Australian Financial System. On page 484, the PC detailed, under the heading, **Setting interchange fees to zero has several benefits**, multiple benefits in essentially banning interchange fees¹⁴.

Yet, in a publication by the RBA on Retail Payments Regulation, it presented several examples on the challenges and issues in the PC's recommendations. Which raises the point, that regulators and government agencies need to improve their collaboration and communication to ensure publicly released material, is uniformly consistent¹⁵. And does not create the impression by the public and media that there are potential conflicts in the proposal of payment policies.

Q5: How should the regulatory architecture be designed to best facilitate the coordination of participants and regulators to meet the requirements of end-users?

One suggestion that can be considered is for the next generation of regulatory architecture to incorporate independent representative bodies comprising of industry participants and end-users which can feed into a regulator. Whether these bodies consist of industry groups, representatives of industry sectors or end-users, and other nominated individuals, can be determined at a later period.

This recommendation is based on how Pay.UK has established two separate advisory councils, the [End User Advisory Council](#)¹⁶ and the [Participant Advisory Council](#)¹⁷ where each serves their respective functions. As well as Pay.UK being overseen by the UK's Payment Systems Regulator (PSR). Similarly, an industry body could benefit consolidating various industry payments bodies and have oversight by a new standalone payments regulator.

In Australia, regulatory architecture tends to undergo structural changes arising from an inquiry, or an industry review or Royal Commission. This is far too long given in the intervening years, or even decades, the rapid advancement of Australian payments has left existing regulatory architecture, and the regulation and regulatory instruments at the disposal of these regulators at times, complacent, redundant, and confusing.

Even in a recent media publication, the RBA's Governor confirmed current laws covering certain elements of payments exceeded 20 years¹⁸. Is it feasible for payment regulation to sustain itself for so long without the need for more frequent reviews and overhaul?

Regulators need to maintain consistent pace in tandem with the payments industry to ensure any changes to payments regulation is timed without an excessive period of latency between when a

¹⁴ [Productivity Commission: Inquiry Report into the Competition in the Australian Financial System](#)

¹⁵ [Review of Retail Payments Regulation – Issues Paper – November 2019. 3.1 Strategic Issues in the Retail Payments System.](#)

¹⁶ **Pay.UK's The End User Advisory Council** advises and challenges the Pay.UK Board to ensure that the needs of end users, now and in the future, are correctly understood and addressed.

¹⁷ **Pay.UK's The Participant Advisory Council** advises, comments and makes recommendations to the Pay.UK Board on issues that are likely to be of current and future significance to participants in the UK's payment systems.

¹⁸ [Apple Pay, Google Pay, you pay: RBA raises virtual wallet competition concerns. The Sydney Morning Herald. 7 December 2020. Wright., S.](#)

payments matter requires revised or new regulation, to when the regulation(s) in question commence their enforcement.

Q6: 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?

Consistency in Payments Architecture Delivery and Return on Investment

One key requirement that future regulatory architecture must include is consistency in overseeing the well-timed delivery of new and enhanced payments infrastructure. One example worth raising is the New Payments Platform (NPP).

After three attempts at releasing this utilitarian payment technology into the market, with the third attempt providing no specified go live date, even then, complete functionality was not available, and there were some prominent banks that were not able to provide intended capability to their customers. **In the last two financial years, NPPA has generated less than \$10 million in net profit as a Consolidated Group.** Also, MAMBO (Me and My Bank Online), which is best left as is and to not reopen old wounds.

Unintended Consequences of Regulation – Not Piercing the Corporate Commercial Veil

An element of contract law includes privity. Meaning that only parties to a contract can enforce it or become bound by it. However, when regulators pierce the corporate commercial veil by implementing an additional layer of regulation above other regulations, even when the industry is observing the first layer of regulations, this can have significant impacts to end-users, even if there were no intentions to do so by the regulator.

For example, with the capping of interchange fees on credit and debit cards, for which the card schemes appear to be satisfying this regulatory requirement, the RBA has since issued, and further revised, Interchange Standards which prevent **direct issuer participant receipts to exceed direct issuer participant payments (known as net compensation).**

By virtue of the RBA's Interchange Standards, industry participants are no longer able to enjoy the financial net benefits from commercial arrangements entered into with card payment schemes¹⁹, prior to the implementation of the Interchange Standards. As a result, it has well been documented by the financial press that lowered interchange fees have contributed to downsizing of loyalty and rewards programs, as the first footnote in this submission confirms.

The piercing of the corporate commercial veil in this instance serves little benefit to promote efficiency, competition and end-user benefit, when the inability to generate revenues which are then partly reinvested by issuers to help fund credit card rewards programs, card fraud prevention technologies, among other investments, for end-users and payments innovations, are significantly impacted by regulation.

If interchange cap regulations are being observed by the card schemes, there is very little, if any justification that the added regulation regarding compensation, which was predominantly created

¹⁹ These financial benefits to issuers from the card schemes include, sign-on bonuses, gross dollar value spend incentives (domestic and international spend), product/systems development spend, marketing spend, card scheme consultancy support rebates and portfolio optimisation.

to circumvent incentives being provided by schemes to issuers²⁰, provides any benefit to participants or end-users. Especially when card schemes appear to be satisfying interchange cap regulations. On the one hand, interchange caps were developed to reduce merchant costs to theoretically place downward pressure on the costs of goods and services.

Yet on the other hand, merchants have lost credit card sales, where customers could earn points in multiples with their companion card, above their primary credit card. Instead, regulators have contributed to a downturn in companion cards, while expressing no foreseeable appetite to regulate extremely higher BNPL merchant fees. Therefore, in an aggregate review of a merchant’s position, there appears little evidence that they now fair incrementally better. Nor do cardholders.

A regulator can tread a treacherous path when it imposes regulations on longstanding commercial arrangements, especially where there have been no significant cases of unfair contract terms, or consumer competition disadvantages to end-users. Therefore, it would serve regulators well, and avert being seen unfavourably across the industry and media, to not impose regulations that result in impacts to end-users. And to remain agnostic to corporate commercial arrangements until such time as those corporate commercial arrangements breach legal or regulatory requirements.

Q7: What regulatory architecture is needed to provide support and clarity for businesses – particularly new entrants – to invest and innovate in our payments system?

The regulatory architecture could benefit by widening its provision of **Regulatory Sandboxes** to encompass dedicated consultative services, above testing, for new entrants and/or existing participants’ innovations. Recently, ASIC announced its Enhanced Regulatory Sandbox which commenced from 1 September 2020, to allow *‘natural persons and businesses to test certain innovative financial services or credit activities without first obtaining an Australian financial services (AFS) licence or Australian credit licence (credit licence)’*.²¹ Other regulators in overseeing payments architecture could benefit by providing similar services with dedicated consultative support staff.

Benefits of this proposal include:

- Closer working relations between regulators and aspiring payments participants;
- Regulators afforded closer access to new/existing participant initiatives, innovations and amend existing or create new regulation and maintain pace with market developments;
- Regulators are seen to be more proactive with industry developments; and
- Regulators can deploy personnel to sandboxes of their regulatory counterparts to upskill their payments knowledge.

Q8: 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?

One consideration on this point could be to link fast payments networks between countries and regions. We are seeing more fast payments systems migrating towards ISO 20022, which sees the

²⁰ <https://www.rba.gov.au/media-releases/2019/mr-19-14.html> The RBA in its media release mentions: ***“The net compensation requirements were introduced in 2016 and are designed to prevent circumvention of the limits on interchange fees by arrangements involving non-interchange payments or other incentives being provided by schemes to issuers.”***

²¹ <https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/>

enhancement of the quality of data-rich uniform payment information provided in a payment message.

If one country’s faster payments network had the interconnectivity with another country or countries’ fast payments networks, payments could be sent real-time across the world with a uniformly data-rich information source. The Society for Worldwide Interbank Financial Telecommunication (SWIFT) currently operates a similar service, GPI (Global Payments Initiative). **On 2 December 2020, Lloyds Bank became the first in the world to switch on SWIFT GPI INSTANT.** SWIFT’s INSTANT service allows consumers and businesses to send tracked payments across borders in seconds by connecting to a domestic real-time infrastructure. **In the Lloyds Bank example, SWIFT has connected to the UK’s Faster Payments²².**

Q9: 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?

Payments is a uniquely acquired skill. And one of the few industries which is so incestuous. Payments experts tend to remain in payments, and with their employer for longer periods than, say, other industries. In light of this, the acquisitional knowledge and expertise of payments remains a highly sought-after skillset²³.

The need for educating end-users cannot be overstated. And a valuable service to allow the industry to be better versed in payments regulatory architecture and keeping this front of mind when developing payments innovations²⁴. Educating end-users also provides regulators with a broader synopsis in terms of formulating policy around payments developments. Which sometimes can be seen as lagging or inconsistent on part by the regulators.

To some extent, regulators have cautiously crossed the path of educating (or advising) the industry and instead, preferring the industry seek its own professional and/or legal advice. This can be a source of frustration and tension between industry and regulators, as legal advice can sometimes fall short of accuracy. And legal advice is ultimately an opinion, albeit a very expensive opinion at times. Which seems odd that the industry is redirected by the source (i.e., the regulator), to seek another’s professional guidance on the regulator’s own policies and regulations.

One example reported by the media resulted in a law firm to have allegedly provided incorrect legal advice pertaining to a breach by Afterpay regarding its money laundering regulatory obligations²⁵.

In terms of providing this payments education, there are a few options the Treasury may consider allocating the provision of payments education to:

1. The Regulator responsible for overseeing the payments system;
2. Multiple regulators overseeing different areas of the payments system to form a central industry education body to ensure consistency and share educational developments amongst themselves more fluidly;

²² [Lloyds Bank is first in the world to connect to Swift gpi Instant. Finextra. 2 December 2020.](#)

²³ It is noted that the writer served almost five years in the RBA’s Payments Settlements Department, where staff attrition in Payments Settlements Department was among the lowest of all other RBA departments.

²⁴ [ASIC RG 274 Product design and distribution obligations.](#)

²⁵ [Dentons the law firm behind Afterpay's advice. The Australian Financial Review. 26 November 2019. Wootton, H.](#)

3. An industry body which may comprise of public and private sector representatives;
4. Any of the above combinations;
5. Providing online webinars to end-users on various payments matters to better inform them of their choices and options;
6. Provide end-users with online courses and accreditation on matters pertaining to payments, which would and could afford regulators with additional revenue streams; and
7. Collaborate with tertiary educational institutions to provide undergraduate and post-graduate courses in payments and payments related studies.

Q10: How does Australia’s regulatory architecture compare with that of other jurisdictions, particularly as it relates to the encouragement of innovation and competition?

The writer concurs with the approach inferred by the Treasury in its Issues Paper regarding Australia’s international counterparts. **The UK’s PSR appears the preferred future model for Australia, as the PSR operates with full regulatory and concurrent competition powers along the UK’s Competition and Markets Authority²⁶.**

In its short tenure, the PSR has completed market reviews and focus objectives, (and at times, bravely against the perceived norm, such as Access to Cash when the market is moving towards a cash-less or less cash society), which includes:

- Access to Cash;
- Card Payments;
- APP fraud and scams;
- Supply of Card Acquiring Services; and
- Supply of Indirect Access to the Payment Systems.

By employing payments experts for this new payment regulator, it will stand better aligned to commit to payments regulation without needing to deal with a multitude of other and unrelated regulatory workflows, which may result in the bottlenecking of regulatory payment priorities.

This ensures that by attracting and retaining such talent, this payments regulator maintains a consistent, agile and adaptable workforce that is closer aligned with payments innovation and payments regulation, and always placing industry participants and end-users in front of mind.

Additionally, the PSR has provided ongoing oversight to Pay.UK in its mandate to establish the UK’s New Payments Architecture. The Treasury could further consider the new payments regulator in Australia undertaking a similar function in providing industry bodies with support and moral suasion in the development and direction of payment systems architecture and overarching strategy²⁷. If nothing else, to avert the delays and stigma associated with the NPP.

²⁶ <https://www.psr.org.uk/about-psr/background-psr>

²⁷ [Letter by the PSR to Pay.UK on the programme of work to establish the UK's New Payments Architecture. 29 May 2019.](#)

Q11: 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?

If there is one lesson Australia can benefit from its international regulatory counterparts, it is proactive responsiveness.

It is noted, the PSR estimates approximately 12 months duration for market reviews with a further six months to assess any proposed remedies. Equally, it is also noted that the establishment of a regulator overseeing the UK’s payment systems industry stemmed from the [Cruikshank Report, 2000](#). However, it was not until almost **15 years later that the PSR was officially launched**²⁸. These two points on chronology serve to remind the Treasury that the establishment of such a regulator and its response to payments regulation need not consume a sizeable efflux of time.

For example, in question 4, it was mentioned the CFR scheduled a Round Table industry meeting to discuss issues on PPF regulations in November 2018, and to date, there remains no clear outcome on regulatory progression on this matter (and this Round Table meeting had in attendance **four government agencies**).

It is acknowledged that COVID-19 has created extraordinary and unforeseen disruptions to our contemporary work practices and payments for that matter, however, and notwithstanding, by virtue of their criticality to the payments system and overall economy, central banks and payment regulators have been long tasked with establishing, testing and continually revising their Business Continuity Planning (BCP). Therefore, even with a pandemic like COVID-19, after some adjustment period, regulators should be well entrenched in invoking their BCPs so as to return to and maintain *‘regulatory business as usual’*.

The following, and last page provides a table of abbreviations.

²⁸ [Future of money: scrutiny of competition in banking to continue](#). Pinsent Masons. 18 May 2018. Davis., A.

TABLE OF ABBREVIATIONS

Abbreviation	Explanation
<i>AFCA</i>	Australian Financial Complaints Authority
<i>AFSL</i>	Australian Financial Services License
<i>APP</i>	Authorised Push Payments
<i>APRA</i>	Australian Prudential Regulation Authority
<i>ASIC</i>	Australian Securities and Investments Commission
<i>BCP</i>	Business Continuity Planning
<i>BNPL</i>	Buy-now pay-later
<i>CFR</i>	Council of Financial Regulators
<i>MSF</i>	Merchant Service Fee
<i>NPP</i>	New Payments Platform
<i>PC</i>	Productivity Commission
<i>PPF/SVF</i>	Purchased Payment Facilities/Stored Value Facilities
<i>PSB</i>	Payments System Board (RBA)
<i>PSR</i>	Payment Systems Regulator (UK)
<i>RBA</i>	Reserve Bank of Australia
<i>SWIFT</i>	Society for Worldwide Interbank Financial Telecommunication

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