



31 December 2020

Secretariat
Payments System Review
Federal Treasury
By email: PaymentsReview@treasury.gov.au

Dear Secretariat

RE: Payments System Review - Issues Paper

CHOICE appreciates the opportunity to comment on the Issues Paper for the Payments Systems Review (the Issues Paper).

Overview

The current regulation of payments systems is largely effective and ensures that consumers can trust that the payment options presently available to them will work as promised.

Consumers need a strong, empowered regulator that is able to act on harm, and likely potential harm, in the payments system. For this reason, CHOICE believes that the depth of knowledge, independence and evidence-led approach to regulation at the Reserve Bank of Australia (RBA) needs to be maintained.

Questions 1 - 6: A guiding objective for payments system regulation

One missing element of the payments system is a guiding objective or set of principles to cover all regulators and policy work. CHOICE would like to see a clear articulation of the goal of the payments system to guide decision making and policy. This should be similar to the object of the *Competition and Consumer Act 2010* (the Act):

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The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision of consumer protection.¹

This stated objective is a clear articulation of the “why”. CHOICE strongly believes that our payments system should have a similar goal to enhance the welfare of consumers. Competition, innovation and effective regulatory decision making are important tools to achieve these ends, but not ends in themselves.

Question 3: Self-regulation is not in the interests of consumers

CHOICE does not support further self-regulatory approaches in the payments system.

We cannot point to a single example where self-regulation has delivered the best outcomes for consumers. Self-regulation cannot work where the commercial interests of industry players are inconsistent with the interests of consumers. In our experience, self-regulatory options lead to one of two outcomes:

1. The process fails to achieve anything except a delay to effective action that would benefit consumers. We saw this, for example, when the insurance industry repeatedly tried to find a self-regulatory option to define the term “flood” in insurance. The issue of inconsistent terms was identified in 1996. An effective reform wasn’t implemented until 2014. The near 20 years of delay is due to industry failure to act.²
2. The process only addresses issues which industry feels comfortable tackling, not the root cause of problems. We saw this with the Combined Industry Forum - an attempt by the financial services industry to address issues with the mortgage broking industry. Consumer representatives were involved in the process but quit after years of discussions failed to deliver action on commissions and a best interest duty for customers.³ Instead, the issue was dealt with by the Banking Royal Commission and later government legislation.

Questions 4 and 5: Inconsistent remedies when something goes wrong

There is a need for changes to be made to regulatory approaches and architecture to address ongoing problems with the payments system, including regulatory gaps like the ones that are currently occurring with the Buy Now Pay Later payment system.

Consumers do not have clear, consistent and easy-to-access rights when something goes wrong with a payment. Some of these issues have been outlined in detail in joint consumer submissions to the RBA.⁴

¹ *Competition and Consumer Act 2010*, section 2. https://www.legislation.gov.au/Details/C2020C00352/Html/Volume_1#_Toc57032448
Emphasis own.

² This example is outlined in detail in the CHOICE submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: <https://www.choice.com.au/-/media/a841fc890d1a4789990e6c7d99ff777f.ashx?la=en>

³ <https://www.choice.com.au/about-us/media-releases/2019/february/consumer-groups-quit-disingenuous-mortgage-broker-forum>

⁴ Consumer groups have raised issues with cancelling direct debit payments. This is detailed in the latest joint consumer group submission to the RBA’s Review of Retail Payments Regulation: <https://www.choice.com.au/consumer-advocacy/policy-submissions/2020/january/joint-submission-to-the-rba-review-of-retail-payments-regulation-issues-paper>

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Not all payment providers are required to be members of the Australian Financial Complaints Authority (AFCA), the independent external dispute resolution body. Some payment providers, such as Afterpay and Paypal, have voluntarily joined AFCA but can cease their membership.

Some consumer rights with payments are inconsistent and difficult to get information about. Many payment systems offer consumers protections if something goes wrong with a transaction: if a payment is accidentally sent to the wrong party, is related to a purchase that is then never delivered or if there is a scam or fraudulent charge. Direct debits, for example, offer some protections if someone accidentally sends a payment to the wrong party. A consumer may be able to get the money returned if they realise the mistake within ten days and there are some further protections covered by the voluntary ePayments Code for up to seven months.⁵ However, this code only covers some banks and payments systems - it is not mandatory, and does not offer broad protection for all consumers and all possible payments.

Another point of inconsistency is chargeback rights. Chargeback rights are set by card schemes, like Mastercard and Visa, with different rules about when a chargeback can apply. In addition to this, banks have their own policies and procedures that can make accessing a chargeback difficult. There is little publicly available information. In a recent investigation, CHOICE found it difficult to get clear information about exactly when a chargeback would apply and how consumers could apply for one.⁶

CHOICE also found cases where consumers were asked to provide an impossible standard of evidence to access chargeback rights.⁷ One customer, Alison, purchased a pair of pink tracksuit pants but received a pair of navy slacks which had one pant leg longer than the other. She made a complaint about this to So Happy, the retailer, but was only told she could get a partial refund. Unhappy with this response, Alison asked Commonwealth Bank for a chargeback. Commonwealth Bank responded that Alison needed an "independent assessment from a licensed expert" to access a chargeback. Beyond the absurdity of asking a customer to source a "licensed expert" to assess trousers, this approach adds an unnecessary administrative burden on a customer trying to access a fair remedy. It is unclear if these restrictions are due to bank or payment scheme policies, or a combination of the two approaches.

Question 10: Supporting consumer engagement and advocacy in the payments system

Treasury should consider the benefits of formal support and resources to facilitate consumer engagement with any payments regulatory architecture and ongoing policy discussions.

Payments policy is complex and technical. Regulators could achieve better policy outcomes if resources were provided for active and consistent consumer expertise during payments policy consultations.

Consumer advocates have many opportunities to be involved in payments policy but rarely have the time and resources needed to engage with the detail. We ask this review to consider alternative and

⁵ Clauses 28 and 29, *ePayments Code* (ASIC), ed. Effective 29 March 2016.

⁶ <https://www.choice.com.au/money/credit-cards-and-loans/credit-cards/articles/chargebacks-how-do-they-work>

⁷ *Ibid.*

innovative consultation models that have emerged in recent years to ensure that consumer or end user perspectives are properly represented in complex debates.

For example, as part of its New Reg Trial, the Australian Energy Regulator has set up the Consumer Forum.⁸ The Forum is a paid group of representatives who have responsibility to conduct direct negotiations with networks on behalf of consumers as well as to source views of diverse groups and conduct research. This approach provides consistent resourcing for consumer advocacy in a way that recognises the significant resources industry groups can typically bring to complex policy consultations where they have a commercial interest.

For further information on any of the information outlined above, please contact Julia Steward at

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Yours sincerely,



Julia Steward
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⁸<https://www.aer.gov.au/system/files/CEPA%20-%20New%20Reg%20AusNet%20Trial%20-%20Interim%20Evaluation%20Report%20-%202020.pdf>