

22 January 2021

Secretariat
Payments System Review
The Treasury
Langton Crescent
PARKES ACT 2600

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Thank you for the opportunity to respond to the Treasury Department's Payments System Review: Issues Paper dated November 2020 (**Review**).

The Review is timely as Australia's payments system is on the cusp of a fundamental transformation driven by a combination of digital technologies, nimble new fintech players and changes in consumer and merchant payment preferences accelerated by the COVID-19 pandemic.

Additionally, the Reserve Bank of Australia (**RBA**) is conducting its Retail Payments Regulatory Review, which commenced in 2019 (**RBA Review**) but was postponed due to COVID-19 and there is a proposal to consolidate Australia's domestic payments systems which has potential implications for competition within the Australian domestic schemes, as well as with existing and emerging competitors in the Australian payments market through all channels.

Getting the regulatory architecture right will set Australia up for success in the digital economy for the short term and in years to come. However, a substandard regulatory architecture has the potential to stall technologically driven innovation and stymie future competition, efficiencies and enhanced end user outcomes.

eftpos' response comprises:

- Part A – eftpos' position statement
- Part B – eftpos' background
- Part C – responses to specific questions in the Review.

We would be pleased to meet to discuss any aspects of this submission. Please contact Robyn Sanders on 0419 577 096.

Yours sincerely



Robyn Sanders
General Counsel and Company Secretary

A. eftpos' position statement

As Australia emerges from the COVID-19 pandemic and the nation's appetite for digital transactions increases, this review into the regulatory architecture of the payments system is urgently required to ensure that it is fit-for-purpose and responsive to advances in payments technology and changes in consumer demand. It is timely that the current mix of industry self-regulation, independent regulatory oversight and government policy overlay is carefully considered to ensure that it is achieving the stated objectives of the Review of the Australian Payments System, with the right balance between promoting competition, innovation, efficiency, safety, resilience and stability of the system.

Domestic cards payment infrastructure is vital to achieve the competition, innovation and productivity objectives as set out in the Terms of Reference for the Review of the Australian Payments System, particularly in the short and medium term.

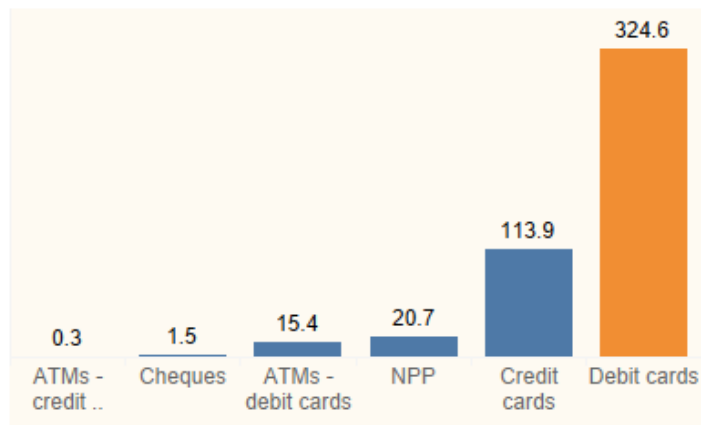
Cards, and debit cards in particular, are by far the most frequently used means of transacting in the economy. They are also the primary source of competition in Australia (70%), as demonstrated by the RBA's Retail payments Statistics, October and November 2020.

Number of Retail Payments

	Number (Million)
	Nov 2020
ATM withdrawals	33.3
Total card purchases on Australian-issued cards	1005.6
<i>of which: Credit and charge cards</i>	255.9
<i>of which: Debit cards</i>	749.6
Cards on issue	58.9
<i>of which: Credit and charge cards</i>	18.4
<i>of which: Debit cards</i>	40.5
New Payments Platform transactions	62.1
Cheque payments	3.2

Source: RBA

Number of debit card purchases in Australia, per person, per year



Source: Underlying data from RBA retail payments statistics, Oct 2020; ABS

Fundamentally, at a time of significant technologically driven change, the regulation of Australia's payments system needs to:

- Embrace a principles-based, technology neutral regulatory approach that provides all participants with a clear framework in which to develop their products and services and compete openly, while providing sufficient certainty about what will be regulated and how it will be regulated as well as flexibility in tiering to facilitate new entrants and innovations in a dynamic and rapidly evolving market.
- Ensure competition in three key ways:
 1. providing access to common platforms (ie anything that is commonly used to deliver payments – not confined to infrastructure as it could be a card, other form factors (standards etc) to generate efficiency;
 2. competition between platforms (ie choice) while ensuring the payments rails remain fit for purpose, up-to-date and provide for continuous improvement of service; and
 3. competition on platforms for products and services, ie fostering innovation.
- Be outcomes driven, focussing on innovation and competition to underpin a vibrant future payments system, with possible inclusion of 'innovation' as a regulatory objective in the Payments Systems (Regulation) Act (**PSRA**) thereby providing clear direction to regulators.
- Adopt a position of technology neutrality - regulators should be well informed about technology and its impacts on the payments market but should not be picking technology winners.
- Be transparent, with regulators publishing their regulatory approaches and all individual regulatory decisions, potentially through a publicly available register, for example, undertakings that impact scheme participants should not be confidential and known to some only of those scheme participants.
- Be efficient and make timely, evidence-based enforceable regulatory decisions - this requires clarity around regulatory responsibilities, regulators having a clear remit to act, identification of any potential regulatory conflicts of interest, and potential rationalisation of the current two self-regulatory bodies and five separate regulators.
- Structured so as not to create potential conflicts where a regulator may be an investor, user or service provider in the areas of activity it is tasked with regulating or where such conflicts could arise, have a defined set of principles that apply in those instances.
- Consider the interrelationship between any payments regulators and ensure there is a thorough understanding of the payments system, competition issues that arise within it and the impacts of technology and rules on the market and that the regulators are appropriately resourced to set and enforce regulation of it.
- Ensure a clear understanding of the roles and responsibilities of any payments regulator.

The current regulatory architecture and regime should be reviewed to address gaps, including the urgent need for:

- A defined approach to regulation – with clear principles, responsibilities, decision making timelines and enforcement capability through penalties, to maximise the benefits for end-users,
- Clear rules around multi-network card/account access in all channels and form factors to ensure competition is maintained in debit, where the majority of transactions by volume occur in Australia,
- Clear rules around Least Cost Routing to ensure the benefits it brings to Australian small business is realised quickly in all channels as the market moves through channels, and
- Competition, choice and transparency to be enshrined as fundamental principles to drive better cost of payments outcomes, innovation and productivity benefits.

eftpos has a strategy and product roadmap that can help to deliver the competition, innovation and productivity objectives set out in the Terms of Reference for the Review of the Australian Payments System, including, crucially, by reducing the cost of doing business for Australian small businesses and providing better access for fintechs. With the right regulatory architecture and settings as described above, these competition, innovation and productivity objectives could be met faster. More detail is in Part B.

B. eftpos background

eftpos is a mutual style corporation that is not motivated by profit and promotes choice and competition in the Australian market.

As the only Australian-owned separately designated payments system, eftpos is an essential part of the national payments infrastructure and is committed to providing efficient, cost-effective and market-specific payments solutions for the benefit of all Australians and enhance productivity across the economy.

The Company's Purpose is simple – to change the way Australians pay for the better, to do good for Australia.

Having made significant self-funded, investments in the company's and its members' core centralised infrastructure and digital capabilities in recent years, our Vision is to put eftpos at the centre of the digital ecosystem by making it easy for Australians to use their own money in a digital world.

Launched in the 1980s, eftpos introduced a fast, simple and secure payment system which was rapidly embraced by both shoppers and merchants. eftpos revolutionised the way we pay for goods and services, and as a result changed the retail landscape forever.

Today, eftpos competes in a dynamic environment against a number of payment systems, both domestic and international, not just at point of sale but also online, not just with cards but also mobile devices and is developing other tokenised form factors and payments-related services.

There are now more than 50 million eftpos-enabled cards in the market, including all account-based debit cards, with the exception of some international, smaller and neo-banks. As such, eftpos is well placed to deliver secure payments to almost all Australians with a bank account, not just in card-based point of sale channels but in digital channels as well. Real time processing is a feature and real time value is the norm for eftpos payments.

eftpos is owned and operated by Australians. All eftpos transactions are processed in Australia, using Australian-located infrastructure.

eftpos digital roadmap to 2022

eftpos is set up to deliver on its digital roadmap by 2022, the core building blocks of which include:

1. Further rollout of eftpos eCommerce solutions which aim to drive increased competition in digital payments, including digital Least Cost Routing to reduce costs for small, medium and large businesses in the online environment in the same way that LCR has done for point of sale merchants
2. Improved access for Australian fintechs through APIs, to provide better access to the eftpos network, 51 million cards/accounts and hundreds of thousands of merchants across the economy
3. A commercial digital identity solution, connectID, to improve security and create smoother experiences in the online world across the Australian economy
4. Digital wallets - increasingly, mobile digital wallets are becoming the primary App supporting day-to-day life in many countries
5. Richer digital messages, including deposit and withdrawal messaging which has already been implemented at some major and smaller banks
6. National QR code rollout for richer, secure and low-cost merchant and consumer payments.

eftpos is uniquely placed to deliver these features to the Australian payments system quickly and at low cost under an appropriate regulatory architecture and regime.

Our strategy and roadmap is designed to:

- Reduce the cost of doing business and support the economic recovery by driving competition, innovation and lower transaction costs
- Implement productivity-enhancing innovation and competition
- Improve access for and foster partnerships with fintechs to innovate on top of the eftpos rails
- Meet increasing demand for digital payments in a low cost and secure way
- Supports the shift towards a digital more productive economy
- Support efficiency, resilience and stability of the system

Recognising the importance of fintechs to the future success of the digital economy, eftpos has recently worked with Fintech Australia to appoint a Fintech advisory committee to look at even better ways to further improve access to the network in a secure way, while also managing risk in the payments system.

Infrastructure

Our new digital initiatives leverage our centralised payments infrastructure, the eftpos Hub, that was built in late 2014 and our Token Service Provider that went live in 2016. Together, these assets provide locally-based, world-class, fit for purpose, secure and accessible real time payments infrastructure. The resilient Hub infrastructure has been running at zero downtime since launch and enables local fintechs and financial institutions to access, innovate and compete on top of the eftpos payment rails.

Due to the nature and design of the eftpos platform and the pace of our transformation agenda, new initiatives are being introduced quickly to provide choice and competition, as well as encourage innovation during the nation's economic recovery. This is done at a low cost due to the accessible design and our use of global standards that are common to many payments systems supported by our members.

Mobile Wallets

To further our digital capability, in November 2020 eftpos announced the purchase of Beem It, the Australian payments App that enables consumers to send and receive money using their phones in seconds, regardless of who they bank with. Beem It is easy to use, secure and free to download and runs over both international card scheme and the eftpos rails. Beem It has proved to be extremely popular, particularly its instant payment, split bill and expenses tracking features, with over one and half million downloads and hundreds of thousands of regular users. However, it has significant potential to



do more in the digital economy when integrated with additional functionality such as digital identity, QR Codes and eCommerce.

The purchase of Beem IT is a key part of eftpos' strategy to diversify further into the digital ecosystem. Increasingly, mobile digital wallets are becoming the primary App supporting day-to-day life in many countries and it makes sense for eftpos, as a trusted Australian brand with access to hundreds of thousands of Australian merchants and millions of consumers, to move into digital payments via an Australian digital wallet before the space is dominated by BigTech multinationals. Beem It will deliver more valuable, easier and safer payments experiences for consumers and businesses over the coming year.

As a key component of the nation's payments ecosystem and infrastructure, eftpos will remain wallet agnostic and work with a wide range of fintechs and other digital partners to offer a fully digitised payments rail that supports a variety of competing digital wallets and other digital applications to encourage further innovation. To that end, eftpos is already supporting Apple Pay, Samsung Pay and Google Pay and we have seen eftpos mobile transactions grow more than 350% year-on-year to December 2020 across all supported mobile ecosystems.

eCommerce

Since late 2019, eftpos has been competing in eCommerce card-on-file payments and launched a commercial service in mid 2020, offering Australian businesses choice and potentially lower cost payment options online, via least cost routing. This will become available to more merchants as more of the larger institutions enable it. eftpos has also launched real time deposit and withdrawal digital payment messages, which will be used by Beem It in Q1 2020 and considered for other use cases.

These initiatives drive competition in eCommerce for the benefit of merchants and their customers, at a time when more Australians are looking to the internet to service their everyday shopping needs.

While we are meeting some competitive obstacles that could have been addressed if there was clear regulatory principles already in place or by specific regulatory intervention, eftpos will continue to announce more eCommerce solutions over the coming months, including fraud tools designed specifically for the Australian market and other online payment innovations that will assist the Government's digital payments and innovation agenda for the benefit of consumers, businesses and government.

Digital identity

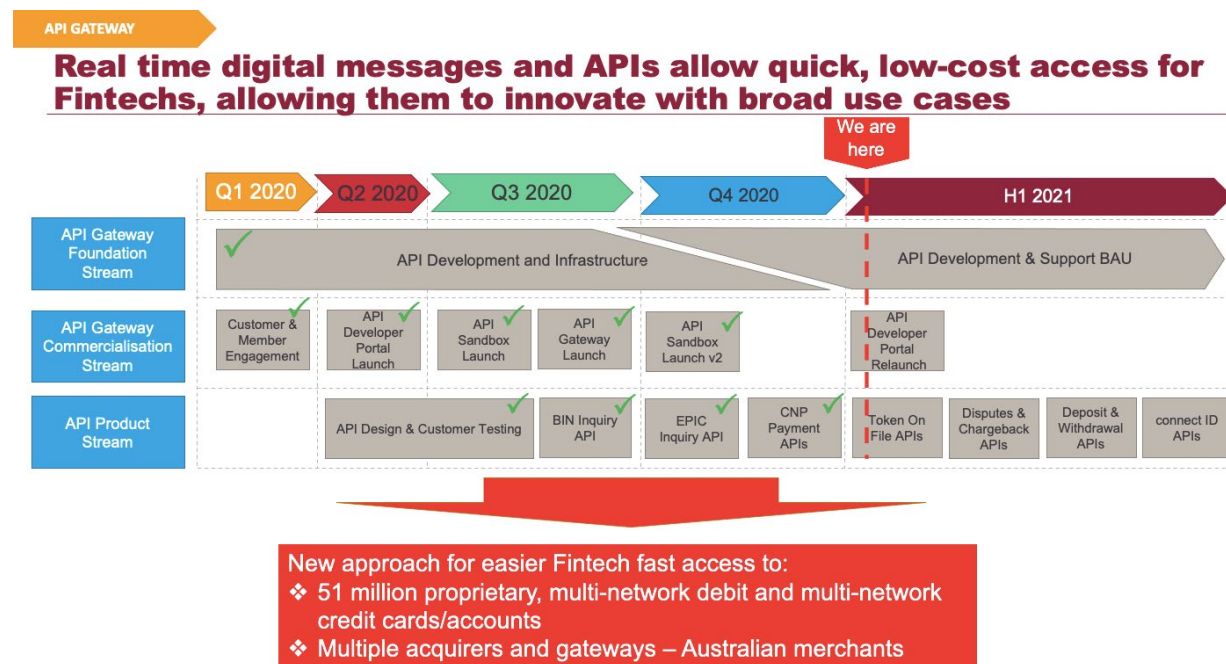
eftpos is piloting its connectID digital identity solution with a variety of partners, including the South Australian and Queensland Governments as well as Australia Post. connectID is expected to be launched commercially in mid early 2021 and is a digital identity broker, enabling organisations to verify identities with each other in accordance with the Digital Transformation Agency's Trusted Digital Identity Framework (TDIF) and the banking industry's TrustID framework.

connect ID enables the hosts of an individual's identity credentials to respond to queries from other organisations (relying parties) that need to verify that individual during a transaction or interaction. It answers identity requests from government and industry and allows organisations or businesses to record that identity verification has occurred, without storing any personally identifiable information.

APIs and Fintech access

In October 2020, eftpos launched the first commercial offering developed through its public API program with fintechs and other digital partners. The eftpos API Gateway is now live with three APIs and provides quick, low-cost access for fintechs, allowing them to innovate on top of the eftpos rails at the infrastructure, commercial and product development levels, or become a merchant within the eftpos Payment System.

eftpos is currently working with about a dozen individual Australian fintechs and also engaging the broader fintech community through organisations such as Stone & Chalk, Fintech Australia and The Regtech Association, as well as the newly appointed eftpos Fintech Advisory Committee.



QR Code rollout

eftpos aims to rollout QR Codes in 2021.

Driving QR code adoption more broadly into the economy will enable more secure and richer payments experiences.

In other markets, the cost of QR code payments is about 25% of cost of the standard POS transactions.

C. List of consultation questions

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

No. Currently there are five regulators and two self-regulatory bodies responsible for the regulation of Australia's payments system, which elevates the risk of overlapping roles, gaps and uncertainty about how these organisations work together and interact with each other.

In a distributed regulatory environment with rapid technological changes in the market, it is vitally important to have a co-ordinated overall vision and strategy, together with core principles for regulators to apply and participants to understand and reference when developing their products and services. There is great potential for gaps and confusion to arise when there are several regulators with narrow but overlapping remits.

More specifically, principles-based regulation of conduct which is product and provider agnostic would provide better flexibility and enable innovations to be consistently regulated.

In addition to Treasury and the five regulators involved in payments regulation, there are two non-government bodies that are currently responsible for establishing a top-level vision and strategy for Australia's payments industry. The first is the Australian Payments Council (**APC**) which coordinates with the PSB and publishes a high-level plan for Australia's payment system. The second is the

Australian Payments Network (**AusPayNet**) which is a self-regulatory industry body which seeks to facilitate the industry to implement the APC plan.

While APC sets the plan, it has no ability to enforce the vision or strategy and so must rely on the industry and AusPayNet to have it implemented.

A co-ordinated approach is needed for not just the vision and strategy for payments but also the regulatory principles that are needed to ensure success for that vision and strategy. By way of illustrative example only, having a vision to provide simple digitized payment experiences for merchants and consumers will mean nothing without a strategy and plan dealing with the foundational and incremental build elements needed to get there and still less if there are no known regulatory principles that will support the movement towards a dynamic, competitive and efficient digitized payment experience marketplace that provides a selection of safe and reliable options for those merchants consumers to choose.

2. 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 current arrangements for managing risk and efficiency in the payments system are complex, confusing and lead to inefficiencies. APRA specialises in prudential regulation and risk management (including system stability, financial and operational risk management), the ACCC covers competition and consumer protection, the PSB sets the RBA's payment system policy and the RBA oversees competition, efficiency and system stability, and ASIC covers consumer protection, fairness and market integrity. It is clear that there are overlaps and the potential for gaps.

With respect to the payments system, the RBA is the primary supervisor. It is mandated to achieve competition, safety, stability and efficiency in the system. The RBA's work is informed by the work of APRA, the ACCC and ASIC. The regulators collaborate on common issues, such as the RBA/ACCC investigation into the access arrangements for one industry participant and recognition by ACCC of the impact of big tech on payments and data innovations is part of the current review by the RBA into regulation of payments.

However, there is a need to provide greater clarity specifically in terms of the arrangements for supervising competition and innovation in the payments system. Currently this role is given both to the RBA and the ACCC. If the RBA acts to address a matter of competition, then typically the ACCC does not intervene. However, if the RBA is not addressing a competition matter or there is agreement between the RBA and the ACCC, the ACCC will pursue issues of anti-competitive behaviour. This dual responsibility results in some confusion and potential delay in addressing issues.

This makes it vital that, where two regulators are retained, there be clarity in relation to the roles of the ACCC as the broader competition regulator and the RBA as the current payments specialist in the regulation of competition in the payments system, as well as formalised processes of coordination and information provision, with a strong focus on the two regulators working together to respond in a timely manner to competition issues in the digital environment. Consideration could be given to inviting the ACCC to participate as a full-time member of the Council of Financial Regulators to ensure sufficient focus on competition.

There is a need for regulatory principles that provide a clear statement of the risks to be addressed (e.g. liquidity, competition, illegal activity like money laundering, resiliency/operational risk) and the areas to be regulated (e.g. is it the case that anyone involved in payments is to be regulated or only those involved in value exchange; is conduct that has the effect of preventing or delaying entry into a market or access to a "platform" to be a per se breach?).

Regulation should also include clear principles for each of the activities that are to be regulated, be outcomes driven, founded on the need to drive competition and innovation at both the platform and the service/product level, to remain technology neutral, and facilitate clear and timely action to combat anti-competitive behaviour wherever and whenever it occurs (e.g. by making clear that no participant is to

undertake conduct that has the purpose or effect of preventing or delaying entry by another into the market; having a clear position on commercial access to platforms and channels).

Finally, in order to achieve the right balance between risk/efficiency of the payments system and effectiveness for end users, regulation must be structured in a way that is clear, concise, public and enforceable, with regulators appropriately resourced and funded (including through revenues from fines or other penalties levied for breaches of the regulation) and given sufficient enforcement powers.

3. 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?

While there is definitely a place for each of self-regulation, formal regulation and government policy, there is a clear need to ensure that the policy is clearly articulated and cascaded, formal regulation is principles based to enable certainty and flexibility and self-regulation aligns with both the policy and formal regulation to deliver intent and is enforceable against all participants. In our view, there is a need for slightly more formal principles-based regulation to support the persuasion mechanism in order to achieve the optimum outcomes.

The balance needs to allow industry participants to operate commercially in accordance with clearly enunciated regulatory principles, while giving greater weight to regulatory interventions that ensure a competitive, level playing field for all participants, enabling innovation and better outcomes for consumers and merchants.

At the time of the passage of the PSRA, there was little public interest in the performance of the payments system. It was a much simpler system dominated by the major banks who owned the infrastructure and determined most of the rules for interoperability. Electronic payments were still comparatively new and competitors and participants in the electronic payments market were few.

The rise of technology and a significant move towards digital payments means the PSRA should be updated to be fit-for-purpose for the modern era, where there are a plethora of competitors and different participant types engaged in an expanded value chain, including consideration of the express inclusion of 'innovation' as a regulatory objective. At a minimum, the PSRA should empower the RBA to function more proactively to achieve regulatory outcomes in a timely way and to cover a wider set of participants in the payments ecosystem.

Going forward, the appropriate mix of self-regulation, regulatory powers and policy in our view is:

- Government sets regulatory policy for payments as part of its overall legislative agenda, reflected in an updated PSRA, which sets a clear principles-led direction, with sufficient flexibility to enable regulators and the industry to respond on a timely basis to individual issues and circumstances;
- formal regulation is principles-based, clear, concise, public, transparent and enforceable and addresses the risks that have been identified as needing regulation, to provide the framework for business to occur while adhering to the overall policy agenda;
- self-regulation can address how the overall payments policy agenda can be delivered, importantly not re-litigating whether the policy agenda is appropriate or what regulation is in place to enable business to occur and having enforceability against all participants; and
- there is coordination and visibility between the three limbs and amongst the mix of regulators that are tasked with setting and enforcing the regulation.

4. 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?

Yes. If the PSRA is adjusted to enable designation of the retail payment system (being any product or service offerings enabling exchange of value between consumers and merchants or additional activities also sought to be regulated to support competition and innovation for a vibrant economy) and include

reference to innovation as being in the public interest, then a consistent set of regulatory principles could be applied to any participant in the value chain of such offerings performing the same activities and there could be enforceability between participants. This is a similar approach to that taken in other industries, for example the telco industry.

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

Please see our comments in response to question 2 about the mix of and roles of regulators. In addition, eftpos believes this is best achieved through a combination of clearly enunciated and transparent policy, vision, strategy, regulatory principles and a whole-of-industry understanding of the roles and responsibilities of individual regulators and self-regulatory bodies, including how they will work together in a coordinated way on issues of common interest.

Once the roles of the regulators are clear and the regulatory principles are articulated, eg that the payments infrastructure is safe, efficient and accessible, then commercial enterprises should be able to develop and market their products to end users in accordance with those clear principles.

End user requirements are best driven through commercial incentives and a well-functioning competitive market that encourages investment and innovation within a clear set of regulatory guidelines.

A regulatory approach that maintains a strong commitment to transparency; focuses on whole-of-industry decisions; places a strong emphasis on consulting broadly with user groups (including merchants); and provides maximum clarity on the rules, their application and enforcement is most likely to achieve genuine buy-in by participants in the interests of end users.

Education is best provided by regulators or industry bodies rather than separate commercial enterprises to ensure product and technology agnostic insights are shared with consumers.

6. 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?

The regulatory architecture should facilitate the following objectives in our view:

- (a) The payments rails must be efficient, safe and accessible, with the flexibility to connect with the payments infrastructure directly or indirectly to enable open access;
- (b) Regulation must encourage maximum competition and innovation on a level playing field and regulatory decisions should be technologically neutral;
- (c) Regulation should facilitate new entrants and innovation through tiering and temporary exemptions within clear timeframes and/or volume thresholds before full regulations apply. However, the effect of tiering and exemptions is needed to be fully understood before being implemented.

Features of a regulatory architecture that enables effective response to emerging innovations to the benefit of end-users are likely to include:

- Identifying the regulatory risks that need to be addressed and the scope of the powers of the regulators that are tasked to oversee those risks;
- Determining upfront whether a system of multiple coordinating regulators with distinct, narrow or overlapping remits or a central regulator for payments is preferable;

- Determining the degree to which consultation with broader user groups is required to ensure that a regulator is not influenced only by existing large participants;
- Understanding the pace at which innovation is likely to occur by adequately resourcing and equipping regulator(s) and policy makers so they are up-to-date with trends and market practices that need to be factored into regulatory and policy decisions, including when there is a requirement to take urgent action in the event of inappropriate conduct. This is relevant when considering consultation timeframes.

In terms of changes to existing structures, roles and mandates that are likely to help enable best practice regulatory governance, we note that the current multiplicity of regulators involves a significant number of overlapping regulatory remits:

- APRA and ASIC have prudential adequacy remits;
- RBA and ACCC have competition and efficiency in payments remits;
- APRA and RBA have resilience remits;
- ASIC and ACCC have consumer protection remits;
- ASIC and AUSTRAC have fit for purpose responsible person remits;
- Only the ACCC covers the whole field of participants in the payments industry and that is from the competition and consumer protection lenses only.

These overlapping remits and the sheer number of regulators inevitably encourages forum shopping by participants. They also increase the risk of inconsistency and create layers of additional regulatory complexity, which in turn discourage future investment and innovation.

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

For new entrants, it is important that the regulatory environment allows them to bring their products and solutions to market in a timely manner. To help enable this to occur:

- The updated PSRA and the regulatory principles should actively encourage competition and choice which is enabled by technologically driven innovation and investment.
- An agreed future industry roadmap would provide guidance for existing and new investors and encourage a more efficient approach to investment.
- A clear regulatory framework would enable all participants, including new entrants, to develop their products and services in an environment that enables efficient access on fair commercial terms to a choice of competing payments platforms.
- Consideration be given to establishing access obligations, rules or standards that provide clarity for existing platforms as well as new entrants seeking to innovate on top of the payments rails.
- There is a need for clarity in regard to regulatory responsibilities, including how the various regulators and industry self-regulatory bodies will work in a coordinated way.
- Relevant regulator positions and decisions should be readily accessible by participants, including new entrants.
- The regulatory framework could be practically enhanced through industry codes that address technical requirements and ensure the effective management of security and risk.
- The regulatory regime should include well-defined, efficient processes for enforcement.

8. 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?

Use of data is a balance between the desires of government and businesses to extract greater value from the data they capture or generate (digital identity, products and services) and the rights of individuals to control the use of their personal information to the extent to which that forms part of the data set sought to be used (such as privacy and consumer data right).

In many ways, data is becoming as valuable a commodity as currency and while it can be transferred by delivery (as traditional fiat currency can), the residual rights of the underlying data subject (if there is one for the specific nature of the data) needs to be retained and recognised. Additionally, data can be used as a protective mechanism for verification of actors in digital experiences, which include payments. As such, policy and regulation that supports that use supports the government's digital transformation agenda.

Working back from the desired outcome (policy) of enabling use of data to better serve end users allows consideration of the enablers and blockers to achievement of that outcome. Policy settings about what are permitted and prohibited uses will provide guidance without prescription for use of data. Knowing and reviewing all laws on each side of the equation then allows consideration of whether those laws require amendment to accommodate the policy outcomes without creating significant risk to the individual (part of the purpose of the Digital Transformation Agency consultation into digital identity currently underway). When that review is done, it may be more an issue of guidelines and manner of either compliance or enforcement which is creating the perception of hindering the desired outcome.

Data should be accessible as long as there is a clear framework in which to develop products and services and compete openly, while protecting privacy and the integrity of the payments system.

9. 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?

In this rapidly evolving environment, there is a real need for ongoing consumer and business education, particularly as payments are increasingly not just a transactional event but part of a broader consumer experience as well as a means of differentiating business offering.

The focus of this education should be on enabling users to understand and derive maximum benefit from digital systems and applications. For businesses, these benefits are likely to be profound in terms of increased choice, reduced transactions costs and an ability to transact with customers and suppliers in real time, anywhere and anyhow, with access to much richer data sets. For consumers, these digital technologies mean greater convenience, an ability to access global marketplaces and a vastly increased choice of debit, credit and other financial products. In addition, the digital economy and payments need strong customer ID, an area in which eftpos is well progressed.

A planned approach to payments education that builds understanding across all generations would be the best outcome, starting at schools and progressing through the various life stages. Trusted regulators and the industry have a key role to play, in what could be a primary task for the self-regulatory body within the payments regulatory architecture. This is because, participant specific education will likely be skewed towards that entity's payment methods and discounted by sceptical consumers. There is also a need for broad education about digital identity, what it is, and how it can help make financial transactions more secure, protect individuals against identity theft and reduce the need for repetitive paperwork.

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

It is hard to look at countries and say '*that regulatory model works*' with a view to potentially emulating the successful models in Australia for two main reasons.

1. Context matters: national regulatory approaches must be seen in the context of an individual country
2. Every country does some things well and much less well in other areas.

In terms of encouraging innovation and competition, the most prominent examples of strong regulatory action are in the EU and also UK.

In the EU, the PSD1 and PSD2 regulations have been aimed at encouraging new entrants to enter the payments market in a way that ensures adequate protection for payment users. Specifically, this has meant:

- Allowing non-banks easier access to payment systems via a proportionate licensing regime and open access requirements. Additionally, Open Banking regulations that allow organisations to make financial or information transactions on an account held by another organisation are specifically aimed at increasing innovation.
- The competition directorate (DGIV) and directorate for financial services (DG FISMA) work extremely closely together and have joint positions on all major issues.

In the UK, the Payments Systems Regulator (PSR) decided that continued bank ownership of account to account infrastructure was not compatible with the national innovation and competition policy objectives and forced a change in ownership (understanding also that there is no domestic debit card infrastructure as the banks sold that to Mastercard many years ago). This move has been echoed in a number of other markets such as Morocco where again existing ownership models ran counter to national policy objectives.

Other markets, such as Singapore and India for, which are sometimes described as regulatory examples for payments are highly directed economies and are simply not comparable to Australia because of their systems of government and the relationship between government and the banks.

In Canada, which is more comparable to Australia, the Government has implemented a new retail payments oversight framework overseen by the Bank of Canada which will regulate a number of payments industry participants that were previously unregulated. The domestic payments infrastructure is run by two separate organisations - Payments Canada has been set up to consolidate and run bank A2A schemes and systems, and in parallel the Interac organisation runs debit cards. Interac, in addition to running the card system, has a successful real time transfer capability which is highly popular with consumers. It is envisaged that a real time service to be developed by Payments Canada will have to compete with the Interac service.

The Canadian regulators also established a Code of Conduct. The Code has evolved over the years but it is still a vital tool in ensuring that the low cost model of the Interac debit scheme is available to merchants and accounts for the vast majority of debit payments in that country.

In the US, the Durbin amendment, a part of the 2010 Dodd-Frank Act, requires that merchants have the ability to choose from at least two unaffiliated debit-card networks to route transactions, including on mobile transactions which enshrines competition in that space.

11. 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?

There are three main lessons that can be drawn from international experience in addition to the points made in response to Q10.

1. There needs to be clear policy objectives in favour of (1) lower payment charges for merchants (2) a free choice for consumers and merchants of payment methods. All scheme rules, technical restrictions and commercial practices that work against these objectives should be the subject of regulation and enforcement.
2. Ownership and control of payment systems and schemes needs to be considered as a significant factor in terms of competition and innovation. Some of the most successful regulatory interventions in markets ranging from Austria to Brazil and Morocco have resulted from actions to change the structure of payment infrastructures to increase competition. In all three markets, Austria, Brazil and Morocco, banks preferred to keep card payments non-

competitive and high margin with the result that they didn't manage to promote electronic payment instead of cash. In Austria and Morocco, the banks were forced to sell the infrastructure company to an entity that would permit new market entrants to enter the issuing and acquiring space. In Brazil, the regulator ended single brand acquiring monopolies owned collectively by the banks by abolishing exclusivity and requiring duality.

3. In the future, end-user benefits will be maximised if there are competing platforms, technologies and business models operating in a market where a truly independent regulator has a principles-led approach to regulation and takes swift action to correct actions that distort the level playing field.