



Reference: T21/00733

Mr Scott Farrell
Chair, Payment Systems Review
Commonwealth Treasury
Level 29, 201 Kent Street
SYDNEY NSW 2000

Via email: PaymentsReview@Treasury.gov.au

Dear Mr Farrell

We appreciate the opportunity to provide feedback to the Payments System Review. Please find enclosed a submission from the NSW Small Business Commission.

Small businesses have become increasingly reliant on electronic payment providers given changing consumer preferences away from cash. COVID-19 has intensified these trends which are unlikely to reverse.

Our submission makes the following recommendations, which we believe would serve to strengthen Australia's payments system for the benefit of small businesses and consumers:

1. Clear and transparent processes for both remediating a system outage as well as compensatory mechanisms to support affected businesses should be established. This includes the development and establishment of a service guarantee which sets out clear expectations of service providers and merchants in the event of system outages.
2. Necessary steps should be taken to maximise the potential benefits of Low-Cost Routing to businesses, including consideration of regulatory interventions.
3. The Commonwealth should consider extending a data right for merchants to empower small business and improve competition in the electronic payments system.

Should you wish to discuss these matters further, please contact Megan Bennett, Executive Officer, on either [REDACTED] or [REDACTED].

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission
19 February 2021



Small
Business
Commissioner

Submission to Payment Systems Review

Commonwealth Treasury

February 2021

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List of Recommendations

Recommendation 1 – Establishment of a Service Guarantee

Clear and transparent processes for both remediating a system outage as well as compensatory mechanisms to support affected businesses should be established. This includes the development and establishment of a **service guarantee** which sets out clear expectations of service providers and merchants in the event of system outages.

Recommendation 2 – Maximising Benefits of Low-Cost Routing

Necessary steps should be taken to maximise the potential benefits of Low- Cost Routing to businesses, including consideration of regulatory interventions.

Recommendation 3 – Improving competition in the electronic payments system

The Commonwealth should consider extending a data right for merchants to empower small business and improve competition in the electronic payments system.

Contact Information

For further Information or clarification on issues raised in this submission, please contact:

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Introduction

The NSW Small Business Commission is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services to small businesses across NSW.

The Commission's role includes:

- encouraging government agencies and larger businesses to enter productive working relationships with small businesses;
- facilitating and encouraging the fair treatment of small businesses; and
- promoting a fair operating environment in which small businesses can flourish.

The Commission notes the terms of reference requires the review to assess the current structure of the governance and regulation of the payments system and ways to improve the understanding of businesses of alternative payment methods. This submission seeks to draw attention to the needs of small business when considering the appropriateness of the regulatory architecture.

This submission proposes consideration of:

- a service guarantee for businesses affected by system outages;
- actions to place downward pressure on merchant service fees by promoting low-cost routing; and
- empowering small business in the market through a data right to enable more effective competition.

We welcome the opportunity to meet and further discuss the ideas outlined in this submission.

Background

Small businesses are increasingly reliant and adopting non-cash payments. The COVID-19 pandemic has further increased the preference for, and use of, non-cash payments.¹ Consequently, small businesses now have a dependency on electronic payment systems.

The RBA data indicates that on average every Australian bank card holder visited the ATM or withdrew cash at the register just 23 times in the past financial year, down from 40 each in 2008. When measured by the value of consumer payments (rather than the number), the share of cash payments fell to around 10 per cent, from just under 40 per cent in 2007.²

This highlights the importance of ensuring regulatory settings promote reliability, efficiency and choice for Australian businesses who rely on Australia's electronic payments network.

¹ Studies have examined internet search data to better understand consumer concerns relating to cash use, for example see: Auer, R., Cornelli, G. and Frost, J., 2020. *Covid-19, cash, and the future of payments* (No. 3). Bank for International Settlements.

² Caddy, J., Delaney, L., Fisher, C. and Noone, C., 2020. Consumer Payment Behaviour in Australia| Bulletin–March Quarter 2020. *Bulletin*, (March)

A service guarantee for businesses affected by system outages

The Commission has received representations from small businesses raising concerns in relation to a recent high-profile outage of merchant payments facilities, impacting approximately 32,000 businesses across Australia. Small business concerns related to:

- the duration of system outages and the experiences of some businesses who encountered significant delays in systems returning to normal operation; and
- processes for small businesses in accessing compensation for consequential losses associated with system outages.

The Commission understands that impacted businesses are being contacted by the acquirer to initiate a discussion regarding compensation for losses incurred during the outage.

While efforts to compensate affected businesses are welcome, the Commission observed that businesses impacted by the outage were frustrated and concerned by the lack of a transparent process through which concerns could be addressed and compensation sought. This was especially true for small businesses, who were more likely to only have one Point of Sale (POS).

While there are generally strong incentives for service providers to maintain reliable networks, the risk of service interruptions is unavoidable. For this reason, the Commission is of the view that there is a need to establish clearer and more transparent processes for both remediating a system outage as well as compensatory mechanisms to support affected businesses.

The Commission proposes this be formalised through a **service guarantee** which establishes:

- minimum reliability standards that merchants can reasonably expect a provider to meet, informed by industry benchmarks as well as the reasonable needs of merchants;
- the rights and responsibilities of merchants when encountering a system outage, including reasonable efforts expected of merchants to mitigate any consequential losses that could materialise; and
- merchant rights to compensation for consequential losses incurred where minimum reliability standards are not met, including processes, evidentiary requirements and timeframes for accessing compensation.

The Commission proposes a service guarantee as a mechanism to:

- establish minimum reliability standards expected of providers;
- promote greater awareness among small businesses of the potential for outages to interrupt their business;
- draw attention to any actions that small businesses can take to mitigate the impact of outages before they occur;
- facilitate equitable, consistent and accessible compensation for small businesses that may be unaware of how to access compensation offered by providers; and
- complement existing competitive pressures that incentivise improved performance, reliability and customer service by making differentiated product offerings more visible for small businesses.

While accepting there are unique complexities within the payments system, other service guarantees — such as the *Telecommunications (Customer Service Guarantee) Standard 2011* — could be reviewed to model potential implementation options and requirements.

The Commission notes the current regulatory architecture is complex and is the subject of review. The Commission does not propose any specific instrument to give effect to the service guarantee, though would welcome approaches consistent with the co-regulatory approach currently used to meet desired outcomes in the payments system.

The Commission's reliability concerns primarily relate to acquirers in the payments system and not more novel forms of electronic payments upon which small businesses are generally less dependent. The scope of the service guarantee could be broadened to other non-cash payment methods over time.

With respect to compensation to cover merchants who experience payment systems outages, it is the Commission's view that this should, at a minimum, provide for the following:

- A clear statement, easily accessible by customers, which sets out the triggers for a claim of compensation to be made (for example outages over a certain length of time) and the means through which to make a claim of compensation; and
- A dispute resolution process, through which any disputes regarding compensation will be resolved.

Recommendation 1 – Establishment of a Service Guarantee

Clear and transparent processes for both remediating a system outage as well as compensatory mechanisms to support affected businesses should be established. This includes the development and establishment of a **service guarantee** which sets out clear expectations of service providers and merchants in the event of system outages.

The Commission accepts that further review, including a more detailed assessment of costs and benefits, would be needed to develop and refine this proposal.

Merchant service fees and low-cost routing

Merchant service fees can represent a significant cost to small businesses and while businesses can opt to pass on the fees as a surcharge to customers, this may impact their competitiveness, particularly when their competitors may have negotiated different payment arrangements and lower fees.

'Low cost' and 'smart' routing are terms for the service payment systems providers can extend to their clients, to make sure a payment is handled through the cheapest accessible electronic route, whether manually or based on features of the transaction.

The Commission is concerned that take-up of low-cost routing (LCR) is lower than the benefits might otherwise imply. The Reserve Bank notes in its 2020 Annual Report that the take-up of low-cost routing (LCR) has been low and that this may,

‘...reflect a general lack of awareness among merchants of the potential benefits and implications of LCR, suggesting a role for more active promotion and education by acquirers.’³

The Bank further notes that,

‘...some acquirers still only offer LCR on a limited range of the terminals they support and their LCR implementations vary in the degree of sophistication and potential cost savings they offer merchants. For example, only a few acquirers offer a version of LCR that maximises merchant savings by enabling ‘dynamic’ (or smart) routing based on transaction value and payment network; most require merchants to nominate one scheme for all debit transactions, although it is typically the case that one scheme is not the lowest cost for all transactions.’⁴

The Commission maintains further work is required to assist businesses in taking advantage of the potential benefits of LCR. This includes reducing any existing barriers to promoting LCR to small businesses as well as addressing any structural impediments that inhibit the implementation of technical adjustments needed to reduce system costs.

Recommendation 2 – Maximising Benefits of Low-Cost Routing

Necessary steps should be taken to maximise the potential benefits of Low- Cost Routing to businesses, including consideration of regulatory interventions.

Empowering small business in the market through data rights

A diverse and competitive payments system is good for business and good for consumers.

However, it is the Commission’s view that currently, small businesses are limited in terms of awareness of the payment system options that may be open to them and how these options compare in an assessment of key criteria. It is important that businesses can quickly assess the performance and value for money of various offerings.

The Commission considers there is merit in exploring whether these arrangements could be used to both drive competition across the sector, by making it easier for small businesses to switch between providers and empower small businesses in finding a provider that is best suited to their individual needs.

Recommendation 3 – Improving competition in the electronic payments system

The Commonwealth should consider extending a data right for merchants to empower small business and improve competition in the electronic payments system.

³ <https://www.rba.gov.au/publications/annual-reports/psb/2020/retail-payments-regulation-and-policy-issues.html>

⁴ Ibid