Parliamentary Joint Committee on Corporations and Financial Services

Mobile Payment and Digital Wallet Financial Services

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Abbreviations

ABA	Australian Banking Association
ACCC	Australian Competition and Consumer Commission
ACM	Netherlands Authority for Consumers and Markets
ACMA	Australian Communications and Media Authority
ADI	authorised deposit-taking institution
AFIA	Australian Finance Industry Association
AFR	Australian Financial Review
APC	Australian Payments Council
APRA	Australian Prudential Regulation Authority
ARA	Australian Retailers Association
ASIC	Australian Securities and Investments Commission
AusPayNet	Australian Payments Network
AUSTRAC	Australian Transaction Reports and Analysis Centre
BLE	Bluetooth Low Energy
BNPL	Buy Now Pay Later
CBA	Commonwealth Bank of Australia
CFR	Council of Financial Regulators
CMSPI	CMS Payments Intelligence
COSBOA	Council of Small Business Organisations of Australia
CTF/AML	counter-terrorism financing and anti-money laundering
EU	European Union
FCA	Financial Conduct Authority
FSS	Fast Settlement Service
HCE	Host Card Emulation
IAP	in-app payment or purchase
LCR	least-cost routing
NFR	near-field communication
NPP	New Payments Platform
PIN	personal identification number
POS	point-of-sale
PPF	purchased payment facility
PSR	Payment System Regulator
QR code	quick read code
RBA	Reserve Bank of Australia
SVF	stored value facility
UWB	ultra-wideband

List of Recommendations

Recommendation 1

4.73 **The committee recommends Treasury enhance its skills, capacity, and expertise in the payments space to become more proactive in developing policy and exhibiting leadership.**

Recommendation 2

4.77 **The committee recommends the Australian Government task the Treasury with legislative change to enable financial regulators to regulate stored-value facilities in-line with recommendations made by the Council of Financial Regulators.**

Recommendation 3

4.81 **The committee recommends the Australian Payments Network voluntarily provide to relevant regulators quarterly aggregated information on non-compliance among its members.**

Recommendation 4

4.84 **The committee recommends Treasury consult regulators and industry on the effectiveness of payments system self-regulation and table in Parliament by the end of 2023 a review that outlines any gaps in the current self-regulatory model.**

Recommendation 5

4.89 **The committee recommends the Australian Securities and Investments Commission continue to monitor the ePayments Code and ensure the Code is updated as and when necessary, and provide recommendations to government on whether and how to expand the Code to payment platform providers.**

Recommendation 6

4.90 **The committee recommends the Australian Finance Industry Association continues to monitor the effectiveness of the Buy Now Pay Later Code of Practice and ensure the Code is updated as and when necessary.**

Recommendation 7

4.91 **The committee recommends the Australian Securities and Investments Commission be given the power to make the ePayments Code mandatory for all industry participants.**

Recommendation 8

4.93 **The committee recommends the definition of a payments system within the** ***Payment Systems (Regulation) Act 1988*** **be expanded to encompass new and emerging payments systems and platforms, in keeping with the findings of the Treasury Payments System Review.**

Recommendation 9

5.111 **The committee recommends Treasury consult with relevant agencies to provide policy advice on the merits of regulating payment platform providers as participants in the payments ecosystem, including:**

- **setting out the laws to which these providers are already subject;**
- **detailing the specific regulatory gaps that exist today or may emerge in the future; and**
- **providing advice on the best ways of including payment platform providers within existing payment system regulation.**

Recommendation 10

5.113 **The committee recommends the Australian Competition and Consumer Commission investigation into Apple's restrictions on direct third party access to the chips that enable mobile payments on its devices consider:**

- **consumer harms and benefits;**
- **the impact on competition and innovation;**
- **the extent to which similar practices exist in other sectors and industries; and**
- **whether developers have practical and viable alternatives to using Apple Pay to process mobile payments.**

Recommendation 11

6.73 **The committee recommends the Treasurer direct the Australian Competition and Consumer Commission to conduct an in-depth examination of the merits of different regulatory and technological approaches to enabling least-cost routing on mobile transactions, including the merits of consumers retaining the ability to route transactions over their preferred network if they choose to do so.**

Recommendation 12

6.86 **The committee recommends payment systems make their fee structures more transparent to consumers, merchants, and regulators.**

Recommendation 13

6.139 The committee recommends the committee consider an inquiry into the Buy Now Pay Later industry 18 months after the industry Code of Practice came into effect.

Recommendation 14

6.145 The committee recommends the Australian Securities and Investments Commission regularly update its Moneysmart website to ensure it appropriately captures changes in the payments sector.

Executive Summary

Australia's payments ecosystem is of fundamental importance to Australia's economy and society, supporting around 55 million payments worth up to $650 billion each day. The system is highly complex and is evolving rapidly. New platforms and technologies are changing the ways in which consumers and businesses transact. The growth of mobile payments has been particularly rapid against the backdrop of the COVID-19 pandemic, and is predicted to become the most popular contactless way for Australians to pay by the end of 2021.

These changes are disrupting the position enjoyed by many of Australia's major banks and financial institutions that have traditionally been at the centre of the payments system. A growing number of powerful multinational technology firms (like Apple, Google, and others) are playing increasingly central roles within Australia's payments architecture–often with little regulatory oversight. The global reach and market dominance of these so-called 'fintechs' has at times left domestic partners looking to use their platforms and services with little influence and few opportunities to negotiate favourable agreements.

Recent changes to the payments ecosystem have uncovered gaps and inconsistencies in the current regulatory framework. Much of the existing legislation governing the payments space is predicated on outdated structures and systems. Moreover, the effectiveness of the multitude of regulators covering the payments ecosystem has been undermined by outdated concepts of what constitutes a payment platform or service. These gaps have allowed some of the most important players in the system to operate beyond the reach of our regulators.

The fundamental importance of the payments ecosystem, the speed and scale of recent changes, and the regulatory gaps that have emerged, mean Australia does not have the luxury of watching and waiting as developments unfold. Instead, this report recommends government urgently develop proactive policy and implement legislative and regulatory change. In particular, the committee recommends the Treasury report to Parliament on gaps in the current self-regulatory model and provide policy advice on the merits of regulating payment platform providers as participants in the payments ecosystem. The committee also calls for the definition of a payments system within key regulations to be expanded to encompass new and emerging payments technologies and platforms.

Transformations in the payments ecosystem have also exposed consumers to new issues and new threats. Evidence before this committee suggests that anti-competitive practices may be jeopardising consumer choice, stifling innovation, and driving up payment costs. The breadth of access to sensitive consumer information is also an area of concern for the committee, related primarily to the potential misuse of transaction data (such as for marketing) or the hijacking of this data for nefarious purposes.

Perhaps the most contentious and prominent issue relates to Apple's control of the near-field communication antenna in its mobile devices. Unlike its competitors, Apple limits third-party access to these chips, in effect requiring payments to be processed with its Apple Pay digital wallet by default, which yields the multinational technology firm a small cut of each of these transactions.

Ultimately, while the committee is concerned that Apple's business practices in this respect may have restricted competition and limited some innovation in this space, the committee is not convinced of the need for regulatory intervention at this time. The committee nevertheless welcomes the recently launched inquiry by the Australian Competition and Consumer Commission into this issue and the committee recommends key issues for the Commission to consider in this investigation.

In contrast to the fees charged by Apple for the use of its payment technology, Google does not charge a fee for the use of its Google Pay payments platform. Many of the witnesses and submitters to this inquiry promoted Google's approach as promoting competition and innovation in the payments space. The committee, however, is concerned that the business model underpinning Google Pay may lead to significant issues related to the privacy and the use of customer data.

Another key area of debate related to least-cost routing (LCR), a process through which merchants route transactions through the card scheme that attracts the lowest costs. While this capability exists on most physical cards in Australia, it is not currently supported for mobile payments, often driving up the costs of acceptance for merchants and ultimately consumers. The committee welcomes further attention from regulatory agencies on this issue. At this time, however, the committee remains unconvinced that legislation is required to mandate LCR for mobile payments.

Throughout this inquiry, evidence before the committee suggested the rapid evolution of Australia's payments ecosystem is likely to continue. It is therefore critical that our legislation, regulators, and regulatory approaches are nimble and flexible enough to adapt to the future of the sector–whatever it looks like. Ensuring this flexibility will require first, that legislation and regulations are updated to become as technology-neutral as possible, rather than wedded to particular ideas of how and what constitute payment platforms and systems. Second, new powers should be vested in the government to allow it to designate firms as participants in the payments system to ensure they fall under existing legislation and that regulations keep pace with practice.

Chapter 1
Introduction

1.1 On 25 March 2021, the Parliamentary Joint Committee on Corporations and Financial Services began a self-referred inquiry into mobile payment and digital wallet financial services, with particular reference to:

(a) the nature of commercial relationships and business models, including any imbalance in bargaining power, operating between providers of mobile payment digital wallet services and:

(i) providers of financial services in Australia;
(ii) merchants and vendors; and
(iii) consumers;

(b) differences between commercial relationships in Australia and other jurisdictions;
(c) the implications for competition and consumer protection;
(d) the adequacy, performance and international comparison of Australian legislation, regulations, self-regulation, industry codes, standards and dispute resolution arrangements; and
(e) any related matter.

Conduct of the inquiry

1.2 The committee advertised the inquiry on its webpage and invited submissions from a range of relevant stakeholders.

1.3 The committee received 23 public submissions, listed at Appendix 1.

1.4 In addition to this, the committee received confidential correspondence.

1.5 Questions on notice were asked of relevant actors to provide further information necessary for this inquiry. A list of answers to these questions is also provided at Appendix 1.

1.6 The committee held virtual public hearings on 26 and 27 July, and 3 September 2021. A list of witnesses who participated in these hearings is provided at Appendix 2.

1.7 The committee undertook the inquiry following established parliamentary practices and procedures, and sought the views of a wide range of organisations and individuals. Public hearings were accessible to members of the public: proceedings were broadcast online and transcripts of the hearings are available on the inquiry webpage.

Acknowledgements

1.8 The committee thanks the individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at public hearings.

References to Hansard

1.9 In this report, references to *Committee Hansard* are proof transcripts. Page numbers may vary between proof and official transcripts.

Structure of the report

1.10 This report is structured as follows:

- Chapter 1: an introduction to the inquiry, including its terms of reference, the conduct of the inquiry, and key terms used throughout the report;
- Chapter 2: an overview of the payments ecosystem, outlining both old and new payment rails;
- Chapter 3: an overview of the technologies that enable digital wallets and mobile payments, and details of the major platforms and services offered in Australia;
- Chapter 4: details of the regulatory environment in Australia as well as jurisdictional comparisons;
- Chapter 5: competition issues related to mobile payments and digital wallets, including market dominance, app store terms and conditions, and third party access to the near-field communication chip on mobile devices; and
- Chapter 6: other issues related to fees, security and risk, consumer protections, financial inclusion and accessibility, and cross-border payments and remittances.

Terms used in this report

1.11 This section clarifies four key terms used throughout this report.

1.12 First, borrowing from the Treasury, this report describes the payment system as a complex and interconnected 'ecosystem'.[1] This term reflects how the traditional payments system has grown and evolved to encompass new players and new technologies over recent years (see Chapter 2).

1.13 This report also adopts the widely-used term payment 'rails' to describe the systems through which non-cash payment instruments are processed and reconciled. The committee did not receive direct evidence on the origin of this term, but the Treasury uses an analogy of the payment system constituting

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[1] The Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, pp. 3-4.

'rails' that 'facilitate a payment by providing services that sit "on top" of the system'.[2]

1.14 This report uses 'EFTPOS' to refer to the 'electronic funds transfer at point of sale' platform that processes debit transactions in Australia. It uses 'eftpos' to refer to the company that manages the EFTPOS platform in Australia, eftpos Payments Australia. There does not appear to be wide acceptance of this distinction, and the two terms were often used interchangeably by witnesses and submitters to this inquiry. The report therefore uses 'eftpos' when it clearly refers to the company and 'EFTPOS' to refer to the system, as far as it is able to make the distinction.

1.15 References to the Buy Now Pay Later provider, Zip Co, are used separately from Zip Pay, which is one of the products offered to consumers by Zip Co.

[2] The Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, pp. 12-13.

Chapter 2
The payments ecosystem

2.1 This chapter outlines the payment system in Australia that enables customers to transact with merchants and businesses without physical money. It provides a brief overview of the traditional payment rails that underpin mobile payments and describes the new payment rails that are building on these or replacing aspects of the traditional ecosystem.

Overview of payments in Australia

2.2 The Reserve Bank of Australia (Reserve Bank or RBA) described the payments system as 'arrangements which allow consumers, businesses and other organisations to transfer funds usually held in an account at a financial institution to one another'. These payments include both payment instruments used to make transactions (that is, a means for exchanging monetary value, such as cash, cards, cheques, and electronic funds transfers) as well as arrangements that move funds from accounts at one financial institution to another.[1]

2.3 Payment systems generally involve at least two financial institutions or payment providers, thereby requiring payments to be settled or 'cleared' between them. Clearing typically occurs at scheduled times each day and is therefore not resolved in real time.

2.4 Most payment instruments in Australia are cleared through members of the Australian Payments Network (AusPayNet), a limited liability company and a self-regulatory body for the payments industry that covers 98 per cent of non-cash payment values in Australia.[2]

2.5 Payment clearing relevant to mobile payments and digital wallets is understood to be handled by eftpos, credit and debit card schemes (predominantly Visa and Mastercard), and the electronic bill payment system, BPAY.

2.6 Around 55 million transactions are made in Australia each day, accounting for up to $650 billion.[3]

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[1] Reserve Bank of Australia, 'Payments System', www.rba.gov.au/payments-and-infrastructure/payments-system.html (accessed 28 June 2021).

[2] AusPayNet, www.auspaynet.com.au/network#core-systems (accessed 4 June 2021).

[3] Josh Frydenberg, 'A payment system fit for digital purposes', *Australian Financial Review*, 30 August 2021.

Traditional payment rails

2.7 Australia's payment platforms or networks enable money to move from a payer to a payee. These so-called 'payment rails' underpin most non-cash transactions between a customer and merchant at a point of sale (POS) as well as many online transactions.

2.8 As an example of how these rails operate, when a customer inserts a credit card into a merchant's POS terminal, the terminal reads and digitally transmits the customer's account information contained on the card to the merchant's bank (the acquirer). The acquirer then requests authorisation for the transaction from the customer's bank (the issuer). If the transaction is approved, the issuer provides authorisation back to the merchant via the acquirer. The issuer then transfers the funds to the acquirer, which in turn deposits the funds in the merchant's account. This flow of information and funds constitutes the payment rails on which most non-cash transactions flow, including most mobile payments.

2.9 One of the main payment systems in Australia is the EFTPOS system, a series of interlinked networks operated principally by the major banks. Participating merchants rent from a financial institution a POS terminal that connects to the EFTPOS network. Customers with supported debit cards can make payments at these terminals, which may be verified with a chip and a personal identification number (PIN). Merchants that also accept credit card payments must enter into separate agreements with each credit card company.

2.10 Card transactions of this type typically attract a transaction or interchange fee (usually a percentage of the value of the transaction that is set by the schemes and regulated by the RBA) that is paid by the merchant and shared by the issuer, acquirer, and payment instrument provider. The merchant either absorbs these fees or passes them on to the customer in the form of a surcharge.

2.11 Surcharging is generally permitted in Australia, providing it reflects the cost of using the payment method and is not 'excessive' (that is, is not greater than the actual cost of acceptance).[4]

2.12 While merchants are permitted to impose a surcharge on customers to recoup interchange fees, independent payments consultancy, CMS Payments Intelligence (CMSPI), noted that only 4 per cent of transactions in Australia attracted a surcharge in 2019, likely due to strong competition among retailers.[5]

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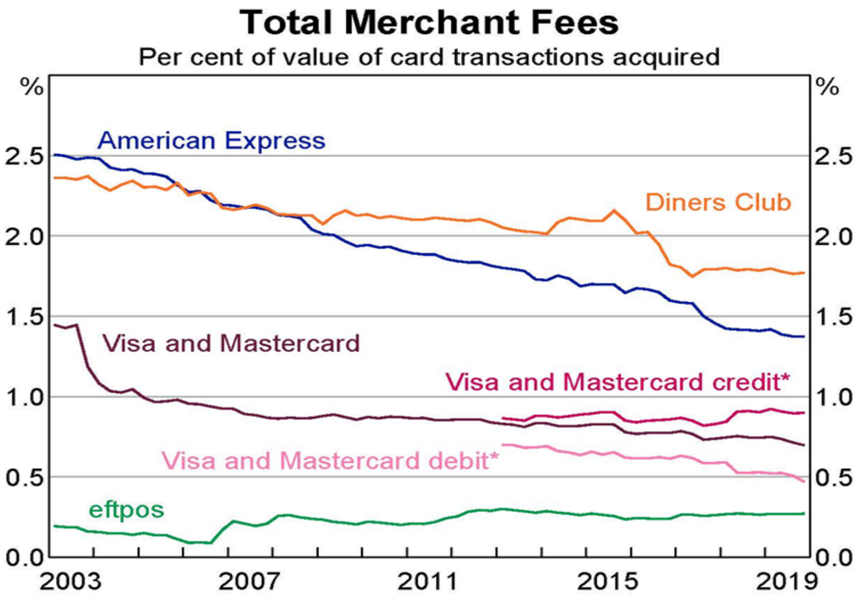
4 Government of Australia, *Competition and Consumer Amendment (Payment Surcharges) Act 2016*, sections 55 and 55B.

5 CMS Payment Intelligence, *Submission 18*, p. 2.

2.13 Buy-now-pay-later providers generally prohibit surcharging in their agreements with merchants, as discussed further in Chapter 6.

Figure 2.1 Total merchant fees as a percentage of value of card transactions acquired



Source: Reserve Bank of Australia, www.rba.gov.au/publications/bulletin/2020/mar/the-cost-of-card-payments-for-merchants.html *(accessed 20 September 2021).*

2.14 The average eftpos interchange fee imposed on merchants in 2019 was 0.3 per cent of the value of each transaction, while the average for a debit card transaction made via the Visa or Mastercard networks was 0.5 per cent. Visa and Mastercard credit card transactions were higher at 0.9 per cent on average, with American Express and Diners Club averaging between 1.4 and 1.8 per cent of the value of each transaction, respectively.[6]

2.15 Most debit cards in Australia have dual network support, enabling transactions through either the EFTPOS network or the relevant credit card scheme.[7] Customers can select at the POS whether to make a payment through cheque (CHQ) or savings (SAV), thereby routing the transaction through the (generally cheaper) EFTPOS network, or credit (CR), thereby routing the transaction through the relevant card scheme.

2.16 Contactless or 'tap-and-go' transactions below a specified value are also increasingly supported by cards and POS terminals across Australia. Contactless transactions require cards with embedded radio-frequency identification (RFID) chips to be passed close to a merchant's card reader. The

6 Kateryna Occhiutto, 'The cost of card payments for merchants,' in *Bulletin*, Reserve Bank of Australia, March 2020, p. 21.

7 eftpos and Beem It claim that more than 36 million cards in Australia have dual network support. See eftpos and Beem It, *Submission 14*, p. 3.

necessary identifiers are transmitted from the chip, through the terminal, to the card issuer for approval, just as when a card is physically inserted into the terminal.

2.17 Contactless card transactions do not require a customer to actively select the network through which their payment information is routed. These transactions are routed through international credit card networks by default, but merchants with certain POS terminals can choose the payment route that incurs the lowest fees in a process known as 'least-cost routing' (LCR) or 'merchant choice routing' (see Chapter 6 for more on LCR).[8]

2.18 LCR is not currently supported on virtual cards used for POS payments via a mobile device. As eftpos CEO Mr Stephen Benton noted, 'mobile payments technology [in Australia] has not been updated for least-cost routing'.[9] These mobile payments are instead routed by default through the international card scheme, usually at a higher cost to the merchant.[10]

2.19 Industry analyst Mr Lance Blockley described LCR a generally an 'all-or-nothing decision', in which merchants must opt to route all eligible transactions through the network of their choice (be it eftpos or an international card scheme). Dynamic least-cost routing, however, allows each transaction to be routed through the network that incurs the lowest cost at the time—which may vary depending on the overall value of the transaction.[11]

New payment rails

2.20 The long-standing systems and processes that constitute the traditional payment rails have been disrupted over recent years, with new actors and platforms increasingly playing a central role within the sector. In addition to the customer, merchant, acquirer, issuer, and card scheme that participate in a traditional POS transaction, today's mobile payments also involve the payment platform provider, a fraud mitigation engine, and a tokenisation service, among other participants.

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8 See Reserve Bank of Australia, 'Least-cost Routing of Debit Card Transactions', www.rba.gov.au/payments-and-infrastructure/debit-cards/least-cost-routing.html (accessed 22 June 2021).

9 Mr Stephen Benton, CEO, eftpos Payments Australia, *Committee Hansard*, 26 July 2021, p. 23.

10 Clancy Yeates, 'The hidden cost of the tap-and-go boom', *The Sydney Morning Herald*, 8 October 2017; CMS Payment Intelligence, *Submission 18*, p. 4; and Mr Steven Benton, CEO, eftpos Payments Australia, *Committee Hansard*, 26 July 2021, p. 26

11 Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 12.

2.21 Mr Blockley told the committee, 'as payments have become more and more electronic in Australia and around the world, there are more and more people in that value chain'.[12]

2.22 Australian Finance Industry Association (AFIA) CEO, Ms Diane Tate, gave evidence that, 'what we're seeing is that the end-to-end value chain is being disrupted and disintermediated'.[13]

2.23 Mr Matt Comyn, Commonwealth Bank of Australia (CBA) CEO, similarly claimed, 'digital wallets are an excellent example of how technology is challenging the traditional way we think of financial systems'.[14]

2.24 The Treasury review of the payments system summarised these developments as follows:

> New technology has revolutionised the way we make payments, highlighting also the increasing role of new entrants that provide a variety of 'add-on services'.[15]

2.25 Among the recent developments effecting payments in Australia is the New Payments Platform (NPP). The NPP is a real-time open access infrastructure for low-value payments that began operating in Australia in early 2018, underpinned by the RBA's Fast Settlement Service (FSS, a system through which approved financial institutions settle payment obligations to each other). The NPP is a joint venture backed by 13 Australian banks and financial service providers.[16]

2.26 The NPP plans to support both QR code-based transactions and tap-and-go payments (see Chapter 3), as well as a range of peer-to-peer and business-to-business capabilities.

2.27 NPP launched with 'Osko', a payments 'overlay' run by BPAY that allows customers of participating institutions to make near real-time (under one minute) payments to one another through their web banking portal or mobile banking application (app). Some participating financial institutions now route

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12 Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 13.

13 Ms Diane Tate, CEO, Australian Financial Industry Association, *Committee Hansard*, 26 July 2021, p. 41.

14 Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 1.

15 The Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, pp. 3-4.

16 These include the Australia and New Zealand Banking Group Limited, Australian Settlements Limited, Bendigo and Adelaide Bank Limited, Citigroup Pty Limited, Commonwealth Bank of Australia, Cuscal, HSBC Bank Australia Limited, Indue Ltd, ING Bank (Australia), Macquarie Group Limited, National Australia Bank Limited, and Reserve Bank of Australia. See NPPA, nppa.com.au/the-company (accessed 17 June 2021).

payments addressed to Bank State Branch (BSB) and account numbers through the NPP.[17]

2.28 eftpos and BPAY applied in December 2020 to the Australian Competition and Consumer Commission (ACCC) for authorisation to merge with NPP Australia under a new entity known as Australian Payments Plus or AP+.[18] The Commission issued a determination on 9 September 2021 granting permission for the merger.[19]

17 Emilie Fitzgerald and Alexandra Rush, 'Two Years of Fast Payments in Australia,' in *Bulletin*, Reserve Bank of Australia, March 2020, p. 2.

18 James Eyers, 'Eftpos, BPay, NPP agree to merge, to help banks take on card giants', *Australian Financial Review*, 15 December 2020. See also Lance Sinclair Blockley, 'Expert industry opinion In relation to the application to the Australian Competition and Consumer Commission for authorisation of the proposed amalgamation of BPay Group PTY limited and BPay LTD, eftpos Payments Australia Limited and NPP Australia Limited', 18 March 2021, submission to Australian Competition and Consumer Commission regarding the proposed merger.

19 Australian Competition and Consumer Commission, 'Proposed amalgamation of BPAY, eftpos and NPPA', www.accc.gov.au/public-registers/mergers-registers/merger-authorisations-register/proposed-amalgamation-of-bpay-eftpos-and-nppa (accessed 20 September 2021).

Chapter 3
Mobile payments and digital wallets in Australia

3.1 This chapter outlines how digital wallets and mobile payments operate in Australia. It briefly describes the major platforms and services on offer in the Australian market and provides an overview of the level of uptake among Australian consumers of these products over recent years.

Digital wallets

3.2 A digital wallet or 'e-wallet' is a software application (app) or service that allows users to store or transfer funds or to make transactions. Some digital wallets use hardware built into a mobile device to enable users to make card-less or contactless payments to merchants at a point-of-sale (POS). Others facilitate online transfers and transactions between customers and merchants.

3.3 Some digital wallets also offer additional services related to digital currencies, identity cards, gift cards, tickets, and transportation passes, among other services.

3.4 Digital wallets can be either 'open' or 'closed.' Open wallets enable transactions between any customer and merchant with the appropriate technology to submit, receive, and process a transaction. Closed wallets allow customers to transact only with a single merchant or a specific group of merchants, and generally do not enable users to withdraw cash.

3.5 Digital wallets typically offer either passthrough or cash storage facilities. Passthrough digital wallets are payment systems that hold no cash and function as a platform or overlay for customers to draw on existing financial accounts when making a transfer or transaction. The main passthrough digital wallets in Australia include Apple Pay and Google Pay, among other products detailed below.[1]

3.6 Passthrough services are generally linked to credit or debit cards issued by an authorised deposit-taking institution (ADI, a financial institution that is licensed to operate a banking business), and run on top of existing banking, credit card, and EFTPOS infrastructure—the payment rails (see Chapter 2). Industry analyst Mr Lance Blockley described the relationship between electronic payment products and the payment rails as follows: 'these products

1 Google Vice-President, Product Management and Partnerships, Ms Diana Layfield, objected to the description of Google Pay as a passthrough platform; 'we do not sit in the money flow at all. We're not even, in a pass-through model, involved in the funds transfer. We merely facilitate the technology for that funds transfer', in *Committee Hansard*, 26 July 2021, p. 54.

do not have autonomy from the current payments system, even if customers perceive them to be separate or independent'.[2]

3.7 Apple similarly noted in its submission:

> Apple does not issue credit, debit or prepaid cards, and does not process, authorise or execute transactions. Apple is not a bank, a financial institution or payment service provider. Rather, Apple has partnered with banks and other financial institutions to enable them to securely store payment credentials on Apple devices which their customers use to make payments.[3]

3.8 Other digital wallets allow users to load and store cash (usually in fiat currency—a government-issued currency—but sometimes as digital currency) that can be spent or transferred within the app to other users of the app, withdrawn through a linked bank account, or used for a transaction with a merchant. Most providers of these types of digital wallets—commonly known as a stored-value facility (SVF)—do not pay interest on the balance held on the service by a customer.[4]

3.9 Technological developments associated with digital wallets have enabled financial service providers to offer new payment services, such as integrating POS financing or buy-now-pay-later (BNPL) services to allow for instant credit. Some also offer additional features like enhanced security, bill splitting, discounts, online coupons, loyalty card storage, or cross-border remittance payments.

3.10 Payment platforms and SVFs have become somewhat blurred in some jurisdictions, in which digital wallets may offer both passthrough and storage facilities. Similarly, some loyalty and digital gift cards facilitate peer-to-peer transfers, while other closed cards can span multiple sectors and provide consumers with a wide range of services which mirror many of the characteristics of more open systems.[5]

3.11 In its submission, the Reserve Bank of Australia (RBA or Reserve Bank) noted that digital wallet providers may have significantly different business models. On the one hand, Apple limits direct access by third parties to parts of its devices, thereby requiring all payments to go through Apple's own digital

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[2] Lance Blockley, 'Expert industry opinion: In relation to the Application to the Australian Competition and Consumer Commission for Authorisation of the Proposed Amalgamation of BPAY Group Pty Limited and BPAY Pty Ltd, eftpos Payments Australia Limited and NPP Australia Limited', 18 March 2021, p. 19.

[3] Apple, *Submission 20*, p. 1.

[4] Council of Financial Regulators, *Review of Retail Payments Regulation: Stored-value Facilities*, September 2018, p. 4 and 14.

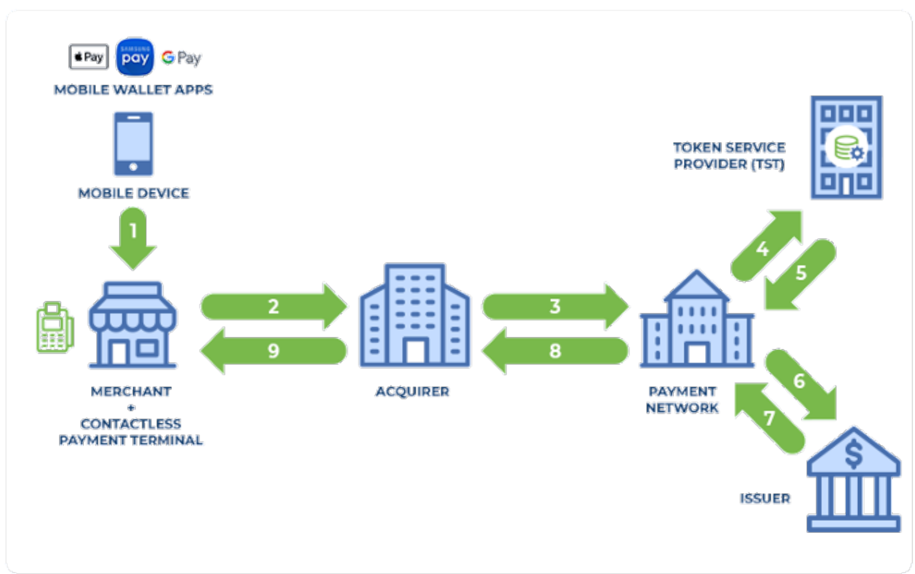
[5] AusPayNet submission to Council of Financial Regulators Review of Retail Payments Regulation, 19 October 2018.

wallet by default, a proportion of which Apple charges to card issuers (see Chapter 5 for more on third party access to the chips required for mobile payments). On the other hand, Google allows third-party access to its devices, but is understood to use transaction data to market or promote its own services in some jurisdictions.[6]

Mobile payments

3.12 Many digital wallets use a set of standardised protocols for communicating between two electronic devices that enable 'tap-and-go' payments to be initiated by a customer using a near-field communication (NFC) chip or antenna in the user's mobile device. In Australia, these transactions typically work through existing debit and credit card tap-and-go functionality at a POS. An NFC-enabled device has a 'token'—a digitised (or virtual) and anonymised version of a credit or debit card, issued by an Authorised Financial Institution (AFI) that is stored securely on the customer's device or in the cloud. When a transaction is initiated by a customer, the token is transmitted to the merchant's terminal and then on to the acquirer and issuer for authorisation—as for transactions processed through the traditional payment rails detailed in the previous chapter and in Figure 3.1 below.[7]

Figure 3.1 An NFC-initiated mobile payment



Source: David Acosta, 'Here's How Google Pay, Apple Pay & Samsung Pay Protect Your Card Details', 22 February 2021, Advantio, www.advantio.com/blog/heres-how-google-pay-apple-pay-samsung-pay-protect-your-card-details *(accessed 5 July 2021).*

3.13 NFC-enabled digital wallets are either part of an 'open' ecosystem, in which third-parties can build products with direct access to the chip, or are 'closed', in which the operating system restricts direct access to only the manufacturer's

[6] Reserve Bank of Australia, *Submission 8*, p. 4.

[7] For details see also Reserve Bank of Australia, *Submission 8*, pp. 3-4.

own digital wallet. NFC chips on Android devices are open, meaning any digital wallet on the device can be authorised by the customer to initiate transactions through the chip.

3.14 In contrast, Apple devices in most jurisdictions have closed NFC chips, meaning only cards or tokens stored within Apple's own Wallet app have full access to the NFC chip. For card issuers to make use of native 'tap-and-go' functionality on an Apple device, they must enter into agreements with Apple to have their cards accessible through Apple's own Wallet app. Transactions initiated by Apple Wallet are made through Apple's own Apple Pay architecture, and thereby incur additional fees taken by Apple from the interchange fee.

3.15 Some third party apps are understood to have access to some features of the NFC chip on Apple devices to facilitate mobile payments. A bank's own app, for example, may be able to initiate an NFC payment from within the banking app itself rather than from the operating system.[8]

3.16 Regrettably, submissions did not address the capability for Apple devices to initiate mobile payments through third party applications without going through Apple's own Wallet app. Evidence from Apple indicated third party apps can initiate contactless transactions within the app itself,[9] but the committee has been provided with little evidence from which to form a view regarding the limitations or opportunities associated with this capability.

QR Code

3.17 Some other digital wallets use a mobile device's camera to read a two-dimensional barcode (a quick read or QR code) that contains information that enables a consumer or merchant to initiate a transaction at a POS or to enable peer-to-peer transfers. Transactions based on QR codes (or 'scan-to-pay') have more commonly been linked to SVFs than passthrough wallets, often bypassing the traditional card-based payment ecosystem (although this need not be the case).

3.18 Given the rapid uptake of QR codes during the COVID-19 pandemic, EY (formerly Ernst & Young) pointed to growing opportunities for QR codes to provide a more secure and enhanced consumer experience for Australian consumers.[10]

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8 Apple, *Submission 20*, p. 1.

9 Apple, *Submission 20*, p. 1.

10 EY, *Submission 3*, p. 10.

3.19 eftpos-owned Beem It is currently building a national QR code payment service that is scheduled to be rolled out from in 2021.[11]

3.20 AusPayNet is currently developing industry-wide standards for the implementation of POS QR codes.[12]

3.21 Submissions to this inquiry predicted that QR-based transactions would see rapid growth in Australia, driven largely by the relatively low-costs of entry for both merchants and consumers, the limited hardware requirements required for mass uptake, and accessibility for consumers.[13]

Online transactions

3.22 Mobile payments can consist of purchases made on a website or in-app payments from a mobile device. Online transactions are generally processed through a credit card scheme (increasingly via a mobile payments platform like Apple Pay or Google Pay) or a digital wallet with an SVF (such as PayPal).

Bluetooth Low Energy

3.23 Like NFC, Bluetooth Low Energy (BLE) offers short-range wireless data transfers that can facilitate mobile payments. But BLE transfers data faster, more securely, and over a longer distance than NFC, offering the potential for transactions to take place away from a POS with even less involvement from customers than current tap-and-go transactions allow. BLE may also allow customers to leave their mobile device in their pocket and can eliminate checkout queues by enabling multiple customers to pay simultaneously.

3.24 Most recent smartphones and some POS terminals support BLE.

3.25 A mobile app developer described one potential use case for BLE-based transactions:

> To enable contactless payment, customers must download the merchant or payment app and opt in to use Beacon for contactless payments. Once they opt-in and authorize future beacons payments at the store, any time they walk into the store, the technology will trigger a vibration or sound to confirm a successful check in. Your photo might appear on the cashier's screen at the Point-of-Sale (POS) terminal. A customer doesn't even have to open the app to enable any of these. The authorized application can detect when you're about to checkout, will process your payment and email you the receipt. Customers, who are against the idea of automated payment at

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11 eftpos and Beem It, *Submission 14*, p. 2; and Mr Stephen Benton, CEO, eftpos Payments Australia, *Committee Hansard*, 26 July 2021, p. 23.

12 Mr Andy White, CEO, AusPayNet, *Committee Hansard*, 26 July 2021, p. 19.

13 See for example Dr Harjinder Sing and Associate Professor Nigar Sultana, *Submission 2*, p. 2.

checkout, can also opt to authorize each transaction with a passcode or fingerprint sensor.[14]

3.26 Industry analyst Mr Lance Blockley acknowledged that while BLE and other emerging payments technologies could bypass the need to regulate access to the NFC chip, existing infrastructure that currently supports NFC payments is already fully deployed. Supporting new technologies would require significant investment to roll out.[15]

3.27 FinTech Australia CEO, Ms Rebecca Schot-Guppy, argued that access to the NFC chip was still critical for mobile payments, telling the committee, 'it would probably be too costly in terms of terminal access and build-out' to support alternative payments technologies (such as BLE) at this time.[16] The committee understands that the relative costs and benefits of supporting BLE or other technologies are likely to vary by retailer size.

Ultra-wideband mobile payments

3.28 Another technology that could impact the mobile payments industry is ultra-wideband (UWB). UWB—found in many recent Apple and Android mobile devices—is a low-power technology for sending encoded data over short distances that provides precise distance and location information. Early UWB trials have enabled consumers to make purchases over NFC without having to take their phones out of their pocket or bag, as well as supporting a range of non-payment services.[17] UWB promises a more passive payment experience compared with the active consumer engagement required for NFC payments.

3.29 The limited range and precise location information differentiate UWB from BLE. The committee understands, however, that the use of both technologies to support mobile payments remains largely conceptual as neither has yet been implemented at scale.

Digital marketplaces (app stores)

3.30 Digital marketplaces or 'app stores' are virtual stores in which customers can search for and install digital wallets and other apps on their mobile devices. The Australian Competition and Consumer Commission (ACCC) considers

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14 BLE Mobile Apps, 'Bring Contactless Payment to Your Store with Bluetooth LE (BLE)', www.blemobileapps.com/blog/contactless-payment-bluetooth-le (accessed 23 June 2021).

15 Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 13.

16 Ms Rebecca Schot-Guppy, CEO, FinTech Australia, *Committee Hansard*, 27 July 2021, p. 33.

17 Consult Hyperion, 'Ultra Wideband Payments', 13 January 2020, chyp.com/2020/01/13/ultra-wideband-payments/ (accessed 15 July 2021).

these app stores to be ‘critical gateways’ for linking consumers to app developers and service providers.[18]

3.31 App stores are typically run by device manufacturers, with the two main app stores in Australia being the Apple App Store and Google Play Store. Apple prohibits the installation of other app stores on its devices, meaning all apps must be downloaded through its own marketplace. Google devices (running the Android operating system) can install other app stores, but come with Google’s own Play Store preinstalled. The ACCC consequently noted that, ‘the ownership and control of their respective OS [operating system] give Apple and Google control over the distribution of mobile apps on their respective mobile ecosystems’.[19]

3.32 Epic Games—a games developer and owner of a competing app marketplace, the Epic Games Store—described the distribution of apps on mobile devices:

> Mobile apps are predominantly distributed on app marketplaces which are digital storefronts that provide a centralised distribution platform for developers to offer and distribute their apps, and for consumers to discover, download, and update apps. App marketplaces provide benefits to both consumers and app developers. They offer a secure and easily accessible way for consumers to navigate and browse the millions of available apps, and help them find and install the apps that best meet their needs.[20]

3.33 Both Apple and Google collect fees for purchases made within apps distributed through their respective marketplaces. These transactions are called in-app purchases (IAP), which have typically attracted a standard commission of up to 30 per cent of the value paid by consumers. Subscriptions or recurring payments to app developers, as well as physical purchases made through an app, have generally incurred lower fees. Smaller developers may also be eligible for reduced fees for IAPs in some marketplaces, as detailed in Chapter 6.

3.34 Apple recently announced changes to the Apple App Store terms and conditions that would allow app developers to inform customers of alternative methods of paying for IAP outside Apple’s own payment processing platform, Apple Pay (see below).[21] It is currently unclear to the committee whether these changes impact app developers in Australia or if they only apply in certain other jurisdictions.

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[18] Australian Competition and Consumer Commission, *Digital platform services inquiry: Interim report no. 2: App marketplaces*, March 2021, p. 3.

[19] Australian Competition and Consumer Commission, *Digital platform services inquiry: Interim report no. 2: App marketplaces*, March 2021, p. 4.

[20] Epic Games, *Submission 15*, p. 3.

[21] Alex Hern, ‘Apple agrees to App Store changes letting developers email users about payment options’, *The Guardian*, 27 August 2021.

Major platforms and technologies

Apple Pay

3.35 Apple Pay is a passthrough mobile and online payment platform operated by Apple that is available only on Apple devices. Around 6.5 per cent of Australians are estimated to use Apple Pay.[22] Apple collects a proportion of the interchange fee charged by the issuing and acquiring banks for every transaction. This fee is estimated to generally be between 0.04 per cent and 0.06 per cent of debit card transactions in Australia—a rate that is believed to be lower in Australia than many other international jurisdictions but higher than in Europe.[23]

3.36 Apple restricts third party access to the NFC chip on its mobile devices, requiring payments on its devices that are made through the operating system to use its own Apple Pay digital wallet by default.[24] Apple claims developers can enable their apps to initiate contactless payments directly from within the app, rather than use Apple Pay.[25]

3.37 Apple Pay initially supported only payments routed through the international card schemes. It has since added support for payments to be routed over EFTPOS.[26]

3.38 Apple is also reported to be developing a BNPL service known as Apple Pay Later.[27]

Google Pay

3.39 Google launched Google Pay in Australia in 2016 (as 'Android Pay'). Google Pay supports contactless payments at a POS using phones with NFC chips and is open to third parties to integrate into their own apps and services. Google claims it does not charge customers, card issuers, merchants, or acquiring banks to use the platform in Australia, but evidence suggests Google may collect information on transactions made through Google Pay for marketing and advertising purposes.[28]

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22 Roy Morgan, 'Apple Pay drives contactless mobile payment increase', 12 May 2020.

23 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Babahan Eulaiwi, *Submission 1*, p. 3.

24 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Babahan Eulaiwi, *Submission 1*.

25 Apple, *Submission 20.1*, p. 4.

26 Apple, *Submission 20*, p. 7.

27 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Babahan Eulaiwi, *Submission 1*, p. 3.

28 Google, *Submission 15*, p. 5-6; and Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Babahan Eulaiwi, *Submission 1*, p. 2.

3.40 Google's wallet supports some public transport systems, including Melbourne's Myki.

3.41 Around 4.1 per cent of Australians are estimated to use Google's digital wallet service.[29]

3.42 Google Pay has added support for payments to be routed over EFTPOS.[30]

Samsung Pay

3.43 Samsung's Samsung Pay is a mobile payment and digital wallet service that supports both NFC and magnetic secure transmission (MST, a technology that sends a magnetic signal to emulate the swiping of a physical card at a POS) to initiate transactions at a POS. The smart wallet also allows customers to use loyalty cards and touch on to supported public transport systems, as with Sydney's Opal network. Around 1 per cent of Australians are estimated to use Samsung Pay.[31]

Bank-specific services

3.44 Many Australian banks offer their own digital wallets. These usually work only with their own cards and operate on either the EFTPOS or scheme networks.[32]

3.45 The Commonwealth Bank of Australia (CBA) and the National Australia Bank are the only major banks in Australia believed to offer apps that directly support mobile payments on Android (as opposed to processing payments through Google Pay). Third party NFC access restrictions mean third-party digital wallet functionality is not supported on iOS devices.[33]

Other services

BNPL

3.46 Instalment payment products or 'Buy now, pay later' (BNPL) services enable customers to pay for only part of the cost of goods and services at the time of receipt and pay off the remainder of the cost in instalments. BNPL has primarily been offered in Australia for online payments only, but is increasingly available as a service at the POS.

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29 Roy Morgan, 'Apple Pay drives contactless mobile payment increase', 12 May 2020.

30 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 48.

31 Roy Morgan, 'Apple Pay drives contactless mobile payment increase', 12 May 2020.

32 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Babahan Eulaiwi, *Submission 1*, p. 2.

33 Google, *Submission 15*, p. 7; and Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 51.

3.47 Some BNPL services are stored in a digital wallet that enables contactless payments. Others operate through a barcode or QR code-based transaction, or via an app linked to a debit or credit card that supports tap-and-go payments.

3.48 The BNPL market in Australia has expanded rapidly in recent years with transactions reportedly growing by over 50 per cent in the second half of 2020 compared to the same period the previous year.[34] Evidence before the committee nevertheless suggests the entire BNPL market makes up only around 1.7 per cent of the broader payments sector.[35]

3.49 Australia's largest BNPL providers are Afterpay with 3.2 million customers, Zip Co, and Humm which each claimed 2.1 million customers in mid-2020.[36]

3.50 By late 2020, Afterpay and Zip Pay (one of Zip Co's consumer products) were available in 53 600 and 30 100 merchants, respectively.[37]

3.51 Some BNPL services charge users a monthly fee. Most users incur fees for late repayments. Merchants that enter into agreements to accept BNPL services also pay a fee to the BNPL provider for each transaction, which can be significantly higher than regular payment methods.[38]

3.52 Afterpay reported an average global merchant fee of just under 4 per cent of the value of each transaction, with Zip Pay averaging around 3 per cent. The rate BNPL providers charge to small businesses can reportedly be higher, at up to six per cent or more.[39]

3.53 Unlike card transactions, most merchants are contractually prohibited from surcharging customers to recoup BNPL fees.[40]

3.54 The revenue model for BNPL providers can vary significantly between providers. Eighty per cent of Afterpay's revenue for the 2018-2019 financial year was derived from merchant fees, with the remaining 20 per cent from missed payment fees. In contrast, Zip Co derived just 38 per cent of its revenue

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34 Chay Fisher, Cara Holland, and Tim West, 'Developments in the buy now, pay later market,' in *Bulletin*, Reserve Bank of Australia, March 2021, p. 60.

35 Ms Diane Tate, CEO, Australian Finance Industry Association, *Committee Hansard*, 26 July 2021, p. 46.

36 Chanticleer, 'The buy now, pay later stock that didn't soar', *Australian Financial Review*, 23 June 2020.

37 Chay Fisher, Cara Holland, and Tim West, 'Developments in the buy now, pay later market,' in *Bulletin*, Reserve Bank of Australia, March 2021, p. 62.

38 CPA Australia, *Submission 19*, p. 4.

39 Chay Fisher, Cara Holland, and Tim West, 'Developments in the buy now, pay later market,' in *Bulletin*, Reserve Bank of Australia, March 2021, p. 65.

40 James Eyers, 'RBA talking to Afterpay, Zip on thresholds for 'no surcharge' rules', *Australian Financial Review*, 18 March 2021.

from merchant fees, and just 1 per cent from missed payments, with the remaining 61 per cent from other consumer fee revenue (including a flat monthly fee).[41]

3.55 Some BNPL providers have also partnered with digital wallet providers to make their virtual credit cards available for contactless transactions, earning revenue through interchange fees and sales commissions.

3.56 A more recent development in the BNPL space is the increasing involvement of traditional banks. Several have introduced their own buy now pay later services or have bought into existing BNPL providers to offer instalment payment services to existing customers.[42]

PayPal

3.57 Although PayPal has traditionally been seen as an SVF, it functions as both a storage facility and a passthrough service for online payments. PayPal is currently the only digital wallet service to fall under APRA as a purchased payment facility (PPF, a facility under which a holder of a stored value may make a payment to another person on behalf of the user).[43]

3.58 PayPal Australia reports over 9 million active accounts and announced plans in March 2021 to add their own BNPL product.[44]

3.59 While traditionally available for online transactions only, PayPal announced in mid-2021 plans to offer a QR code-based app to allow in-person POS sales through its payment network.[45]

3.60 PayPal launched in 2021 its BNPL product, known as 'Pay in 4' in July 2021.[46]

Diem (formerly Libra) and Novi

3.61 Once launched, Facebook-backed Diem purports to offer a dollar-pegged cryptocurrency (Libra Coin) and digital wallet (Novi). Diem will facilitate secure transactions through its blockchain (a decentralised and distributed

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41 Australian Securities and Investments Commission, *Buy now pay later: An Industry Update: Report 672*, November 2020, p. 9.

42 See for example Commonwealth Bank of Australia, 'StepPay — a new way to buy now, pay later', https://www.commbank.com.au/banking/buy-now-pay-later/steppay.html (accessed 8 October 2021); and James Eyers, 'ANZ bites the buy now, pay later bullet', *Australian Financial Review*, 7 October 2021.

43 Council of Financial Regulators, *Review of Retail Payments Regulation*, p. 4.

44 Alex Gluyas, 'PayPal chases Afterpay market share with QR codes', *Australian Financial Review*, 22 June 2021.

45 PayPal, 'PayPal announces launch of 'PayPal Pay in 4' buy now, pay later offering in Australia', media release, newsroom.au.paypal-corp.com/PayPal_announces_launch_of_PayPal-Pay-in-4_-buy_now_pay_later_offering_in_Australia (accessed 4 June 2021).

46 Chanticleer, 'PayPal crashes the payments party, *Australian Financial Review*, 14 July 2021.

digital ledger or database) with what it claims to be 'near zero' transaction fees. The service will also enable money to be transferred via Facebook's services—including Novi, WhatsApp, and Facebook—and may also be made available directly to merchants via a POS.[47]

3.62 According to its white paper, Diem promises to augment Libra Coin by including single-currency stablecoins (that is, linked to an underlying asset in the form of a national currency) to complement fiat currencies, so as not to interfere with monetary sovereignty and monetary policy.[48] Diem is expected to be rolled out in the US market in late 2021.[49]

AliPay

3.63 AliPay, China's largest payment app with over a billion users, was launched in Australia by CBA in 2018 to cater primarily to Chinese tourists.[50] An SVF-based wallet, Alipay supports both online payments and QR code-based transactions. Alipay has said it has no plans to roll out its app to Australian customers.[51]

WeChat Pay

3.64 WeChat Pay is a Chinese-owned digital wallet that enables customers to pay bills, purchase goods and services, transfer money to other users, and initiate in-person POS transactions. Uptake in Australia was initially driven by the need to provide payment solutions for Chinese tourists. WeChat Pay today boasts around 690 000 users in Australia.[52] WeChat Pay was reportedly available in over 10 000 shops and restaurants in Australia in 2017.[53]

Beem It

3.65 Beem It is a digital wallet and instant payment platform backed by a consortium of Australian banks. Beem It currently links to a Visa or Mastercard debit card. The service facilitates instant payments and offers a

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47 James Eyers, 'Facebook's crypto launch is just months away', *Australian Financial Review*, 16 June 2021.

48 Diem, *White Paper*, diem.com/en-us/white-paper (accessed 4 June 2021).

49 James Eyers, 'Facebook's crypto launch is just months away', *Australian Financial Review*, 16 June 2021.

50 Commonwealth Bank of Australia, 'Alipay', www.commbank.com.au/business/merchant-services/eftpos-terminals/albert/alipay.html#disclaimer (accessed 8 June 2021).

51 James Eyers, 'Alipay: we want to help retailers and won't disrupt banks', *Australian Financial Review*, 7 March 2019.

52 Karen Maley, 'Why the payments system is a national security concern', *Australian Financial Review*, 14 September 2021.

53 Meg Jing Zeng, 'Thinking of taking up WeChat? Here's what you need to know', *The Conversation*, 18 December 2017..

range of additional features, including bill-splitting, loyalty card storage, peer-to-peer transfers, and payment tracking. Beem It was bought last year by eftpos.[54]

Shopify

3.66 Shopify is an online e-commerce platform used primarily to create online shopping websites and process online payments. Shopify offers subscription-based software that processes online sales payments. Earlier this year it announced plans to launch 'a fully integrated point-of-sale solution that unifies their online and offline businesses'.[55]

3.67 This inquiry, however, is not concerned directly with online payments. Online payments are within scope only in so far as these payments are initiated through mobile devices or use digital wallet services.

POLi Payments

3.68 POLi Payments is a fully owned subsidiary of Australia Post that facilitates online payments to a select group of merchants. Payments are linked directly to a customer's bank account. Customers are therefore not required to hold a credit card. Merchants pay a fee for accepting POLi (up to 1 per cent of the value of the transaction up to a maximum of $3.00) and are discouraged from surcharging. ASIC has exempted POLi Payments from the requirement to hold a financial services license.[56]

Uptake among Australians

3.69 Amid public health concerns and steady growth driven by the speed, simplicity, and convenience of mobile payments, the CBA predicted that digital wallets were set by the end of 2021 to become the most popular method of contactless payment in Australia. Data from the bank showed that the number of monthly digital wallets transactions grew by 90 per cent from March 2020 to March 2021 ($36m to $68m), with the monthly value of digital wallets transactions more than doubling during that time ($1bn to $2.1bn, or 110 per cent).[57]

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54 eftpos and Beem It, *Submission 14*, p. 1.

55 Shopify, 'Shopify brings integrated retail hardware and payments to Australia to help future-proof retailers', media release, 26 May 2021, news.shopify.com/shopify-brings-integrated-retail-hardware-and-payments-to-australia-to-help-future-proof-retailers (accessed 21 June 2021).)

56 Poli Payments, 'Customer FAQs', www.polipayments.com/FAQs#Does_POLi_Payments_Pty_Ltd_hold_a_financial_services_license? (accessed 7 July 2021).

57 Commonwealth Bank of Australia, 'CBA predicts digital wallets set to become the most popular contactless way to pay', media release, 19 May 2021, www.commbank.com.au/articles/newsroom/2021/05/digital-wallets-contactless-soar.html (accessed 27 May 2021).

3.70 Mobile payments offer opportunities that small businesses have been particularly keen to take up. NFC-enabled mobile card readers—like the Square Reader from US-based digital payments company, Square—are available with little or no upfront cost, and funds deposited into a merchants' account within a day or two. Not only do these systems facilitate frictionless transactions and increase productivity, but they can also enable small businesses to collect and analyse customer data to better inform business strategies.

3.71 Also driving the uptake of digital wallets and mobile payments among Australians is the ubiquity of smartphones and the growth in wearable devices with integrated technology that facilitates mobile transactions. Uptake has also been driven by a rapid evolution of product offerings over recent years (especially non-traditional SVF providers), as well as the ability for customers to access capital—particularly through BNPL facilities.

3.72 Many of the submissions to this inquiry emphasised the role of the global pandemic in accelerating the pace of adoption of contactless payments, digital wallets, and mobile payments in Australia.[58]

3.73 EY stated, 'COVID-19 vastly accelerated the adoption of contactless payments'.[59]

Adoption of mobile payments

3.74 Estimates of the rate at which digital wallets have been adopted by Australians vary widely, but broadly point to a rapid uptake in adoption among customers.[60]

3.75 RBA figures from 2019 showed that digital wallet transactions accounted for 8 per cent of POS card transactions, up from 2 per cent in 2016. This figure is expected to have increased significantly during the pandemic according to consulting firm Deloitte.[61] Indeed, the committee heard from Dr Lien Duong that over 10 per cent of Australians used contactless payment services in 2020.[62]

3.76 In its submission to this inquiry, the Australian Banking Association described digital wallets as 'an essential means of making payments.'[63]

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58 See for example RBA, *Submission 8*, p. 2; and CMSPI, *Submission 18*, p. 4.

59 EY, *Submission 3*, p. 3.

60 See for example, Roy Morgan, 'Apple Pay drives contactless mobile payment increase', 12 May 2020; and Worldpay, *Global Payments Report*, 2021.

61 Deloitte, *Mobile Nation: The 5G Future*, 2019, p. 25.

62 Dr Lien Duong, *Committee Hansard*, 27 July 2021, p. 20.

63 Australian Banking Association, *Submission 16*, p. 1.

3.77 CBA reported in March 2021 that more than 40 per cent of contactless transactions among its customers were made via digital wallets.[64] CBA submitted, 'Australia has one of the highest penetration rates and fastest adoption rates of new payments technologies, including digital wallets and tap-and-go.'[65] CBA CEO, Mr Matt Comyn, predicted that the majority of POS transactions in Australia would be made with a digital wallet by the end of this year.[66]

3.78 EY estimated that 'one in two Australians have set up a digital wallet in the last 12 months'.[67] According to EY, high demand for mobile payments among consumers, combined with a conducive business and regulatory landscape, has led Australia to be seen, 'as one of the world leaders in Financial Services and technology'.[68]

Figure 3.2 How Australians pay

Source: Reserve Bank of Australia, How Australians Pay: 2019 Consumer Payments Survey.

3.79 eftpos pointed to similar patterns of adoption among Australian consumers, leading to some retailers seeing between 10 to 30 per cent of their POS

64 Commonwealth Bank of Australia, 'CBA predicts digital wallets set to become the most popular contactless way to pay', media release, 19 May 2021, www.commbank.com.au/articles/newsroom/2021/05/digital-wallets-contactless-soar.html (accessed 27 May 2021).

65 Commonwealth Bank of Australia, *Submission 10*, p. 5.

66 Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 1; see also Commonwealth Bank of Australia, *Submission 10*, p. 4.

67 EY, *Submission 3*, p. 2.

68 EY, *Submission 3*, p. 2.

transactions made on mobile devices.[69] eftpos CEO, Mr Stephen Benton, told the committee that tap-and-go card payments and sales through digital wallets represented nearly nine billion transactions a year—over two-thirds of all electronic retail transactions.[70]

3.80 Despite the uptake of contactless digital wallets among consumers and businesses, CPA Australia noted, 'while the percentage of Australian small businesses offering new payment options increased in 2020 from 2019, they continue to lag in comparison to their counterparts in Asia'.[71]

69 Eftpos and Beem It, *Submission 14*, p. 2.

70 Mr Stephen Benton, CEO eftpos Payments Australia, *Committee Hansard*, 26 July 2021, p. 23.

71 CPA Australia, *Submission 19*, p. 5.

Chapter 4
The regulatory environment

4.1 This chapter looks at the regulatory environment for the payments ecosystem in Australia. It provides an overview of the main regulatory agencies and self-regulation mechanisms, and details the principal acts, instruments, and codes. It then describes the approach to mobile payments regulation in Australia, considers potential regulatory gaps, and summarises some of the reviews of the regulatory framework. It also provides a brief comparison of international approaches to payments regulation in select jurisdictions. This chapter concludes with the committee's views and recommendations.

The regulatory approach

4.2 Australia currently operates a multi-regulator model for digital wallet providers through a combination of financial services regulation and industry self-regulation. APRA, ASIC, and RBA each have regulatory roles in relation to digital wallets and mobile payments (see Box 4.1).

Box 4.1 The regulators

The regulatory environment for mobile payments and digital wallets in Australia is primarily administered by the following actors:

Reserve Bank of Australia (RBA): the RBA is the principal regulator of the payments system that oversees the stability of the financial system as a whole, with responsibility for stored value facilities (SVFs) that are not governed by APRA.

Australian Prudential Regulation Authority (APRA): APRA is responsible for prudential regulation. It licences and supervises large purchased payments facilities (PPFs, with payment obligations above $10m) that are 'widely available' (>50 users) and redeemable in Australian dollars on the basis that these services are comparable to bank deposits.

Australian Securities and Investments Commission (ASIC): ASIC is responsible for market conduct and elements of consumer protection, including in relation to SVFs. ASIC has generally exempted small and low-value facilities from regulation, as well as gift voucher and gift card programmes, and similar closed facilities. ASIC is also responsible for regulating entities that provide credit. ASIC administers the ePayments code and offers an enhanced regulatory sandbox in which certain regulations are relaxed to enable the testing of eligible innovative financial service products for up to 12 months.

Australian Competition and Consumer Commission (ACCC): while responsibility for consumer protections related to financial services lies with ASIC, the ACCC retains responsibility for consumer guarantees under Australian

Consumer Law. In 2020 the competition regulator began a five-year Digital Platform Services Inquiry. Its second interim report was released in March 2021.[1]

Council of Financial Regulators (CFR): The CFR is the coordinating body for Australia's financial regulatory agencies, and facilitates coordination and information sharing across regulators, including APRA, ASIC, the RBA, and Treasury.

Australian Transaction Reports and Analysis Centre (AUSTRAC): larger open SVFs (accounts that hold $1,000 or more) may carry certain anti-money laundering and counter-terrorism financing (AML/CTF) obligations and fall within AUSTRAC's jurisdiction. PayPal, for example, reports to AUSTRAC.[2]

Australian Payments Network (AusPayNet): AusPayNet is the self-regulating industry association for the payments system in Australia, with members from financial institutions, retailers, payment service providers, and technology companies, among others. AusPayNet's industry self-regulation includes an independent sanctions tribunal and financial penalties for non-compliance. Ultimately, non-compliant members face suspension or termination with the effect that they can no longer process payments.[3] Some of the big technology platforms are reported to have chosen not to join the industry association.[4]

Other agencies and departments have regulatory and oversight responsibilities for aspects of the payments ecosystem, including the Department of Foreign Affairs and Trade and the Office of the Australian Information Commissioner.[5]

4.3 There are a variety of acts, instruments, and codes that form the regulatory framework for the payments ecosystem (see Box 4.2).

Box 4.2 Relevant acts, instruments and codes

***Payment Systems (Regulation) Act 1998* (PSRA):** the PSRA is administered by the RBA and grants the RBA the power to regulate payment systems and PPFs, including SVFs. The PSRA establishes the Reserve Bank's power to designate a payment system. Under Section 7 of the PSRA, a payment system is (somewhat narrowly) defined as 'a funds transfer system that facilitates the circulation of

1 Australian Competition and Consumer Commission, *Digital platform services inquiry: Interim report No. 2: App marketplaces*, March 2021.

2 Mr Peter Soros, Deputy Chief Executive Officer, Regulation, Education and Policy, AUSTRAC, Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament, *Committee Hansard*, 19 March 2021, pp. 4-5.

3 Mr Andy White, CEO, AusPayNet, *Committee Hansard*, 26 July 2021, pp. 20-21.

4 Mr Albert Naffah, General Manager, Payments and the Data Economy, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 2.

5 The Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, p. 12, fn 13.

money, and includes any instruments and procedures that relate to the system'.

Corporations Act 2001 **(Corporations Act):** the financial services regulatory regime administered by ASIC.

Australian Securities and Investments Commission Act 2001 **(ASIC Act):** the general consumer law protections administered by ASIC, including prohibitions related to financial products and services against unconscionable conduct, false or misleading representations, or misleading and deceptive conduct with respect to financial products and services.

ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211: a legislative instrument that provides conditional exemptions for certain types of non-cash payment facilities, administered by ASIC, including some low-value SVFs, loyalty and gift schemes, and road tolls.

ePayments Code: administered by ASIC, the voluntary code of practice regulates electronic payments, including ATM, BPAY, EFTPOS and credit or debit card transactions, online payments, and internet and mobile banking.[6] It covers transactions made both through mobile payments and digital wallets for providers that subscribe to the Code. Key protections in the Code relate to the disclosure to customers of product terms, conditions, and fees; security safeguards relating to customer information; exempting customers from liability for unauthorised transactions; procedures for returning funds to customers for mistaken transfers; and complaints handling processes. ASIC is currently reviewing the ePayments Code to ensure it remains fit for purpose, including considering extending some of the protections of the Code to small businesses on an opt-out basis.[7] Several large institutions (including the Commonwealth Bank of Australia) have expressed support for making an updated Code mandatory for all SVFs and mobile payment service providers.[8] The 2014 Financial Systems Inquiry also recommended making the Code mandatory.[9] The Government has accepted recommendations that the Code be made mandatory.[10] The committee understands that neither Apple nor Google are signatories to the code.

Banking Code of Practice (Banking Code): the Banking Code sets the (enforceable) standards for the industry in relation to individuals and small business customers, including mobile payments or digital wallets that fall within the Code's definition of a 'banking service'. It is administered by the Australian Banking Association, approved by ASIC, with compliance monitored by a committee. The Banking Code is currently under independent review.

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6 Australian Securities and Investments Commission, *ePayments Code*, 29 March 2016, p. 2.

7 Australian Securities and Investments Commission, *Review of the ePayments Code: Scope of the review*, March 2019, pp. 6-7; and ASIC, *Submission 9*, p. 7.

8 Commonwealth Bank of Australia submission to Council of Financial Regulators, *Review of Retail Payments Regulation*, 19 October 2018.

9 Department of the Treasury, *Financial System Inquiry*, December 2014.

10 Ms Nghi Luu, Assistant Secretary, Markets Group, Department of the Treasury, *Committee Hansard*, 27 July 2021, p. 36.

AFIA Buy Now Pay Later (BNPL) Code of Practice: the world's first BNPL Code sets standards for the sector with respect to consumer protections and customer service, and supports compliance with legal and industry obligations. Specifically, the BNPL Code caps late fees, institutes a minimum age of 18 years for users, and includes protections for customers who cannot meet repayments, among other commitments.[11] AFIA claimed the voluntary Code—which came into effect in March 2021—has been agreed by providers that make up 98 per cent of the BNPL market in Australia.[12] Compliance with the BNPL Code is monitored by a committee and is enforceable through AFIA, which can investigate complaints referred by unsatisfied BNPL customers. AFIA can impose sanctions, require remediation, demand product changes, and name and shame non-compliant members.[13]

4.4 Broadly, regulation divides over whether the service holds funds (as with an SVF) or simply initiates payments. Open passthrough facilities, such as those linked to credit cards, generally fall under existing regulations and largely come under ASIC's jurisdiction, including through the ePayments code. Closed wallets have generally been exempted from regulation given the single-use and typically low-value nature of these services, and consequently the limited systemic risk they pose. Open SVFs providing digital wallet and mobile services in Australia are regulated as purchased payment facilities (PPFs, see Figure 4.1). PPFs are a unique regulatory construct without international equivalency that form a special class of authorised deposit-taking institutions (ADIs). PPFs come under the oversight of APRA, ASIC or the RBA, depending on payment obligations and the number of users on each service. Small SVFs that can only be used at a limited number of merchants are typically exempt from many regulatory requirements.[14]

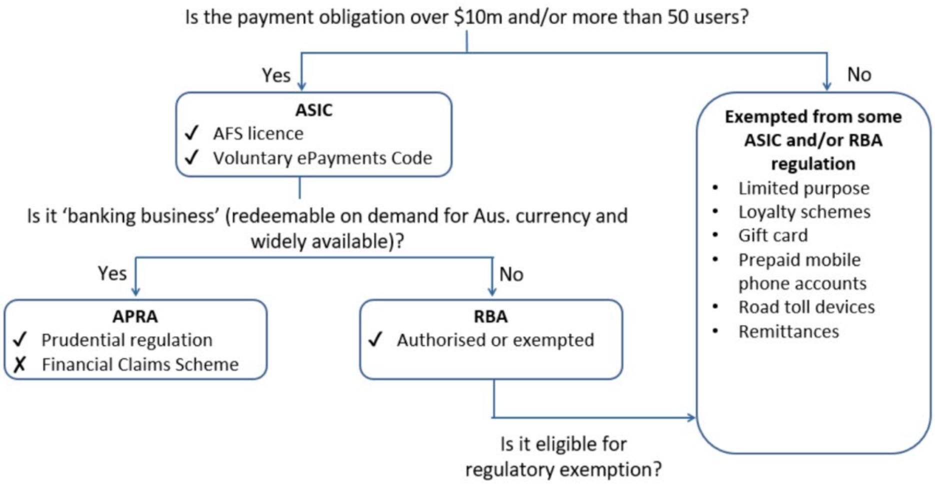
11 Australian Finance Industry Association, *Buy Now Pay Later Code of Practice*, 1 March 2021.

12 Current signatories include Afterpay, Brighte, Humm Group, Klarna, Latitude, Openpay, Payright, and Zip Co. See Australian Finance Industry Association, *AFIA Buy Now Pay Later (BNPL) Code of Practice*; and Ms Diane Tate, CEO, Australian Finance Industry Association, Committee Hansard, 26 July 2021, p. 45.

13 Mr Peter Gray, Co-founder, Zip Co, *Committee Hansard*, 26 July 2021, p. 36; and Ms Diane Tate, CEO, Australian Finance Industry Association, *Committee Hansard*, 26 July 2021, p. 45.

14 Council of Financial Regulators, *Review of Retail Payments Regulation: Stored-value Facilities*, September 2018, p. 4.

Figure 4.1 The PPF regulatory framework



Source: CFR, Review of Retail Payments Regulation: Stored-value Facilities, September 2018, p. 10.

4.5 There have been a number of recent reviews into the regulatory framework for the payments system (see Table 4.1).

4.6 The CFR review into SVFs recommended the regulatory framework be streamlined and updated to replace PPFs with tiered SVFs based on risk and regulated by APRA and ASIC (rather than the RBA), with APRA being responsible for prudential supervision of larger or higher risk facilities. The CFR also recommended SVF providers be required to hold an Australian Financial Services license and comply with the ePayments Code.[15]

4.7 The Government has announced it will introduce a new regulatory framework for SVFs, as recommended by the CFR. Treasury reports that the CFR continues to refine the details of the proposed reforms, some of which may require legislative change. The portfolio agency also reported to the committee that APRA was reviewing its PPF prudential framework.[16]

4.8 The government commissioned in 2020 a Review of the Australian Payments System, led by Mr Scott Farrell, known as the Farrell Review. The Review was released in August 2021. Among the 15 proposed reforms to the payments system, the review recommended the introduction of a national-interest trigger, whereby the Treasurer would be empowered to designate firms as participants in the payment system and issue them binding directions.[17]

4.9 The Farrell Review also recommended the government:

- develop a strategic plan for the payments sector;
- foster greater coordination between regulators;

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15 Council of Financial Regulators, *Regulation of Stored-value Facilities in Australia*, October 2019.

16 Department of the Treasury, answer to question on notice (QoN 02), (received 23 August 2021).

17 Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, recommendation 7.

- establish a tiered payments licensing system under ASIC;
- mandate all recipients of payments licenses sign on to the ePayments code; and
- expand the PSRA to cover new and emerging payment systems and better equip the RBA to regulate these platforms.[18]

Perceptions of complexity and regulatory overlap

4.10 The multi-regulator model has led to perceptions of complexity and regulatory overlaps, as well as possible gaps in the regulatory framework.[19]

4.11 Industry analyst Mr Lance Blockley described Australia's regulatory system as 'very confusing for new entrants'.[20]

4.12 AusPayNet described the regulatory environment as 'inconsistent and complex', failing to 'adequately incorporate new business models', and 'overly burdensome' for market participants.[21] The payments industry association argued for the need to 'simplify the regulatory framework in a way such that it aids and adapts to innovation'.[22]

4.13 The Commonwealth Bank of Australia (CBA) described digital wallet services as subject to 'inconsistent regulatory treatment, with some providers operating outside of the existing formal and self-regulatory framework that govern the payments system in Australia'.[23]

4.14 Zip Co's Chief Executive Officer, Mr Peter Gray, described the regulatory environment for the payments industry as follows:

> In providing cutting-edge services and products, we operate in a variety of regulatory landscapes and are faced with a myriad of current and potential regulation from different regulators that does not speak to the technology or products that we have created. As a quick snapshot, we're currently regulated or overseen by ASIC, the ACCC, AFCA, AUSTRAC, the OAIC, APRA, Treasury and the ASX, and now, in addition, the RBA is also making moves.[24]

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18 Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, recommendations 3, 13, 9, 10, and 6 respectively.

19 See for example Department of the Treasury, *Financial Systems Inquiry 2014*, December 2014); and Productivity Commission, *Competition in the Australian Financial System: Productivity Commission Inquiry Report*, 29 June 2018.

20 Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 14.

21 AusPayNet, *Submission 7*, p. 1.

22 AusPayNet, *Submission 7*, p. 2.

23 CBA, *Submission 10*, p. 7.

24 Mr Peter Gray, CEO, Zip Co, FinTech Select Committee, *Committee Hansard*, 19 February 2020, p. 31.

4.15 Mr Gray also described a degree of regulatory overlap in the BNPL industry with respect to responsible lending obligations, which he asserted were covered by both the ACCC and ASIC, as well as surcharging, which he suggested fell under both the RBA and ASIC.[25]

4.16 In parallel with the committee's inquiry, the federal Treasurer, the Hon Josh Frydenburg MP, acknowledged 'the need to deal with multiple regulators is leading to delays which add to costs and increase barriers to entry for new players'.[26]

4.17 Accounting firm EY (formerly Ernst & Young) characterised the regulatory environment in Australia as 'one of the most highly regulated financial service ecosystems in the world', which EY cautioned may stifle innovation and the adoption of new products.[27]

Potential regulatory gaps

4.18 The committee heard evidence that the payments ecosystem faces potential regulatory gaps, primarily related to the regulatory architecture as well as rapid technological changes within the system.

Regulatory architecture and regulatory gaps

4.19 The committee was warned of the potential for regulatory gaps and associated risks to the system and to consumers arising from a mismatch between the mandate of regulatory agencies and the functions of major players within the broader ecosystem. For example, non-financial institutions have introduced e-wallet capabilities, sometimes leading to products that may fall outside existing regulatory frameworks.

4.20 CBA cautioned that 'some new competitors take advantage of business models that are not subject to the same level of regulatory oversight as traditional business models'.[28]

4.21 Further, CBA CEO, Mr Comyn, suggested some of the big technology platforms and payment providers were relying on regulatory 'carve-outs' that resulted from outdated regulations and frameworks, and had also chosen not

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[25] Mr Peter Gray, CEO, Zip Co, Fintech Select Committee, *Committee Hansard*, 19 February 2020, p. 35.

[26] Cited in James Frost, 'Treasurer to pull Apple, Google into line', *Australian Financial Review*, 30 August 2021.

[27] EY, *Submission 3*, p. 9.

[28] Commonwealth Bank of Australia submission to Council of Financial Regulators, *Review of Retail Payments Regulation*, 19 October 2018, p. 2.

to subject themselves to industry self-regulation like AusPayNet or the ePayments Code.[29]

4.22 Mr Bezzi disputed that payments platforms were using a regulatory carve-out, telling the committee that payments providers do not come under APRA's remit because they are not an ADI and similarly do not fit within the services covered by the Reserve Bank's payments regulations.[30]

4.23 Ms Layfield told the committee:

> We are not a payments provider ourselves. We are a technology platform and technology service provider that seeks to enable others, both merchants and financial institutions as well as users, to extend the benefit of digital payments to their customers and make these benefits accessible to everyone.[31]

4.24 When pressed by the committee on whether Google was part of the Australian payments ecosystem, Ms Layfield claimed, 'we are a technology provider', asserting:

> You have to distinguish between financial services companies who provide services associated with payments, who provide the underlying accounts to users from which where [sic] they make payments, from the network players who provide the card network infrastructure to technology players who provide an ability on a platform to create a payments app.[32]

4.25 Ms Layfield further stated:

> [Google Pay is] essentially a token provider and a technology provider. We facilitate that transaction. We do not sit in the money flow at all. We're not even in a pass-through model, involved in the funds transfer. We merely facilitate the technology for that funds transfer.[33]

4.26 Dr Anthony Richards acknowledged that while the Reserve Bank has regulatory powers over payments systems:

> It's not obvious that mobile payments providers [like Apple Pay and Google Pay] should be defined as participants in payments systems, so it's

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29 Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 2; and Mr Albert Naffah, General Manager, Payments and the Data Economy, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 2.

30 Mr Marcus Bezzi, Executive General Manager, Specialist Advice and Services, Australian Competition and Consumer Commission, *Committee Hansard*, 27 July 2021, p. 29.

31 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 48.

32 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 53.

33 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 54.

> not clear that the Reserve Bank currently has a regulatory mandate over mobile payments providers.[34]

4.27 The RBA also told the committee:

> While the case for regulatory attention on digital wallets appears to be growing, it is unclear that the Bank currently has regulatory powers in this area. Accordingly, it is likely that the ACCC would take the lead, with cooperation from the Bank, should competition issues warrant regulatory scrutiny. For example, the limits to the Bank's powers in this area could affect the Bank's ability to seek relevant data or other information from wallet providers.[35]

4.28 The RBA reportedly recommended to the Farrell Review that the Government consider expanding the Reserve Bank's mandate to include a broader range of entities within the payments ecosystem.[36]

4.29 Dr Richards nevertheless insisted that the RBA has a 'very close working relationship with the ACCC' and that the two regulators were coordinating closely in this area.[37]

Rapid pace of change in the sector

4.30 A second area in which regulatory gaps may emerge relates to recent innovations and the rapid pace of change within the sector. Treasurer, the Hon Josh Frydenberg MP, noted that the pace of change within the payments system had outpaced the regulatory architecture:

> Ultimately, if we do nothing to reform the current framework, it will be Silicon Valley alone that determines the future of our payments system, a critical piece of our economic infrastructure.[38]

4.31 The RBA acknowledged in its submission to this inquiry that there had been 'significant technological changes that have occurred since the current regulatory framework was introduced two decades ago'.[39]

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34 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 2.

35 Reserve Bank of Australia, answer to questions taken on notice (QoN 02), 26 July 2021 (received 13 August 2021).

36 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 2.

37 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 2.

38 Josh Frydenberg, 'A payment system fit for digital purposes', *Australian Financial Review*, 30 August 2021.

39 Reserve Bank of Australia, *Submission 8*, p. 6.

4.32 The Farrell Review outlined the need for regulatory reform, noting:

> Today's regulatory architecture was designed to accommodate the technology, providers and business models of the payments system more than two decades ago… There was no separation between the ownership of a payments system (i.e. the 'plumbing' or the 'rails') and the ability to facilitate a payment by providing services that sit 'on top' of the system.[40]

4.33 The Review also observed:

> The disintermediation of the payments process by fintechs has changed the competitive dynamics within the payment ecosystem. It has led to more layers of competition and new issues relating to access to payment systems… The shift in the source of risks within the payments ecosystem warrant a change in the regulatory approach to ensure payments remain safe, efficient and effective for consumers and businesses.[41]

4.34 The Treasurer echoed these concerns, claiming 'the regulatory framework governing the payments system has not evolved. In fact, it remains largely unchanged from what the Wallis inquiry put in place two decades ago'.[42]

4.35 AusPayNet CEO, Mr Andy White, described regulation in Australia as capturing only 'money at rest', meaning it has focused on deposit-taking or prudential risk rather than 'money in movement' or information related to transactions.[43] There is consequently a regulatory gap, he suggested, in relation to the licensing of payment providers.[44]

4.36 Mr White pointed specifically to BNPL as falling outside AusPayNet industry self-regulation.[45]

4.37 Ms Layfield described how the company is subject to regulation in other jurisdictions (such as an e-payments licence) 'where we touch the money flow' associated with purchases made through the Google Play store.[46]

4.38 Co-founder of BNPL provider Zip Co, Mr Peter Gray, cautioned against adopting a 'Whac-A-Mole' approach to payments regulation, in which regulators are constantly implementing outdated policies in an attempt to catch up with innovation. Mr Gray instead encouraged the committee to

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40 Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, pp. 12-13.

41 Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, p. 13.

42 Josh Frydenberg, 'A payment system fit for digital purposes', *Australian Financial Review*, 30 August 2021. The 1996 Financial Systems Inquiry or 'Wallis Inquiry' established some of the main regulatory elements of today's payments system.

43 Mr Andy White, CEO, AusPayNet, *Committee Hansard*, 26 July 2021, p. 18.

44 Mr Andy White, CEO, AusPayNet, *Committee Hansard*, 26 July 2021, p. 19.

45 Mr Andy White, CEO, AusPayNet, *Committee Hansard*, 26 July 2021, p. 19.

46 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 54.

promote technologically agnostic approaches to regulation that could better accommodate future developments in the payments sector.[47]

4.39 FinTech Australia Chair and Paypa Plane CEO, Ms Simone Joyce, advocated for better targeted regulations, warning that Australia's reliance on ADIs as the gatekeepers of the national payments infrastructure had impeded the ability of fintechs and startups from entering or innovating in the payments space.[48]

Reviews of the regulatory framework

4.40 The following table provides an overview of the main reviews of the payments system carried out over the last ten years.

Table 4.1 Recent reviews of the regulatory framework for the payments system

Review	Scope	Reporting
Review of the Australian Payments System ('Farrell Review')	Review of the regulatory architecture of the payments system to ensure it is fit for purpose, supports innovation, and benefits both businesses and consumers. Led by Mr Scott Farrell with secretariat support provided by Treasury.	October 2020—May 2021; final report released August 2021.[49]
RBA Review of Retail Payments Regulation	Considers potential gaps in the payments system and emerging regulatory issues in the payments space.	November 2019—present.
Council of Financial Regulators' review of the Regulation of Stored-value Facilities in Australia	Review of the regulation of SVFs	2018—2019; final report released October 2019.[50]

47 Mr Peter Gray, CEO, Zip Co, Fintech Select Committee, *Committee Hansard*, 19 February 2020, p. 31 and 37.

48 Ms Simone Joyce, Chair, FinTech Australia and CEO, Paypa Plane, *Committee Hansard*, 27 July 2021, p. 33.

49 Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021.

50 Council of Financial Regulators, *Regulation of Stored-value Facilities in Australia*, October 2019.

Productivity Commission inquiry into Competition in the Australian Financial System	Review of the provision of financial services and the interaction of market participants, issues facing the consumers of financial services, and the functions and activities of the regulators.	July 2017—June 2018; final report released August 2018.[51]

International approaches to payments regulation

4.41 This section examines comparable jurisdictions that have proactively regulated the mobile payments sector.

Singapore

4.42 Singapore's Payments Services Act 2019 is a comprehensive licensing regime for platform companies, payment service providers, and digital wallets. Singapore operates a two-tiered licensing arrangement under the central bank, within which SVFs are regulated as 'e-money'. Tiers are based on the value of monthly transactions that pass through each facility. Regulatory requirements differ for larger facilities, related primarily to their initial capital requirements, mandated risk mitigation measures, and their obligation to establish a physical presence in the country. Larger individual SVF accounts in Singapore are regulated as bank deposits. Regulated SVFs are stored in fiat currency as opposed to virtual currency, and include peer-to-peer transfers but exclude limited purpose funds, such as gift cards, single-merchant cards, or public transport cards. SVFs are required to have AML/CFT provisions.[52]

4.43 Singapore regulates virtual currency wallets separately given their perceived inherent vulnerability to money laundering and terrorism financing risks.

Hong Kong

4.44 Hong Kong administers a licensing regime under which SVFs are regulated by the central bank, which maintains a public register of licensees. The regime does not apply to non-storage payment systems (passthrough wallets). Hong Kong has also reportedly launched a scheme to encourage merchants to support mobile POS payments. Hong Kong is expected to require real-name registration for customers wanting to take advantage of the full functionality of digital wallets, such as inter-bank or cross-border transfers. Digital wallet vendors will also be expected to conduct real-time verification of customers.[53]

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[51] Productivity Commission, *Competition in the Australian Financial System: Productivity Commission Inquiry Report*, 29 June 2018.

[52] Council of Financial Regulators, *Review of Retail Payments Regulation: Stored-value Facilities*, September 2018, p. 7.

[53] CPA Australia, *Submission 8*, p. 8.

New Zealand

4.45 New Zealand's legal frameworks and regulatory regime is considered technology-neutral, applying equally to FinTech and traditional financial services providers.[54]

European Union

4.46 The European Union (EU) runs a two-tiered licensing regime in which regulatory requirements differ according to risk and in which reporting and initial capital requirements differ. As with Singapore, SVFs in the EU are regulated as 'e-money'. All e-money providers must be authorised by a national authority and be included on a public register.[55]

4.47 The European Commission is currently investigating whether Apple's third-party NFC access restrictions and its terms and conditions distort competition, reduce consumer choice, or constitute violations of EU competition laws.[56]

4.48 The EU is separately considering legislation to ensure competitive neutrality between device manufacturers and app developers that would provide third-parties with the same levels of access to hardware features as manufactures on fair and reasonable terms.[57]

Germany

4.49 Germany passed legislation that requires mobile phone manufacturers from early 2020 to open access to their tech to other payment service providers, including the NFC chip for an 'appropriate fee'.[58] This law effectively enables competition for mobile payment processing on Apple devices. The RBA noted in correspondence with the committee, 'the law was widely interpreted as a response to Apple Pay's restriction on direct access to the iPhone's NFC technology'.[59]

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54 MinterEllisonRuddWatts, *Regulation of FinTech: Jurisdiction Analysis*, 20 May 2019.

55 Council of Financial Regulators, *Review of Retail Payments Regulation*, pp. 6–7.

56 Dr Grantley Taylor, *Committee Hansard*, 27 July 2021, p. 22; and European Commission, 'Antitrust: Commission opens investigations into Apple's App Store rules', 16 June 2020, ec.europa.eu/commission/presscorner/detail/en/ip_20_1073 (accessed 15 July 2021); and European Commission, 'Antitrust: Commission opens investigation into Apple practices regarding Apple Pay', 16 June 2020, ec.europa.eu/commission/presscorner/detail/en/ip_20_1075 (accessed 15 July 2021).

57 Reserve Bank of Australia, answer to question on notice, 26 July 2021 (QoN 01), (received 13 August 2021).

58 See section 58a of German Payment Services Supervision Act.

59 Reserve Bank of Australia, answer to question on notice, 26 July 2021 (QoN 01), (received 13 August 2021).

4.50 Dr Lien Duong nevertheless told the committee that no German bank had actually developed a competing digital wallet for Apple devices, likely because the fees device manufacturers were permitted to charge under the legislation were prohibitive.[60]

4.51 German legislators passed updated legislation in early 2021 requiring that fees paid to device manufacturers by digital wallet providers would not be in excess of actual costs.[61] These amendments also expanded the scope of the legislation to devices other than smartphones, but allowed device manufacturers to refuse access if doing so would compromise the integrity and security of the device.[62]

4.52 An amendment to the German Competition Act (GWB Digitalisation Act) gave the market regulator new intervention powers in early 2021, allowing it to prohibit large digital companies from engaging in activities deemed to be anti-competitive. Under this legislation, the regulator has initiated proceedings against Apple, Facebook, Amazon, and Google.[63]

4.53 While EU regulations prohibit merchant surcharging for most consumer cards, the German Federal Court ruled in March 2021 that merchants were allowed to impose a customer surcharge for the use of certain mobile payments—including PayPal—providing the charge does not exceed the direct costs borne by the merchant.[64]

4.54 The committee was also told that German consumers are permitted to opt out of data tracking and that policies are being considered that would require digital platforms to indicate which personal information would be kept and the specific purpose for which it would be shared with third parties.[65]

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[60] Dr Lien Duong, *Committee Hansard,* 27 July 2021, p. 21; and Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Baban Eulaiwi, answer to question on notice (QoN 02), 27 July 2021 (received 5 August 2021).

[61] Dr Lien Duong, *Committee Hansard*, 27 July 2021, p. 21. See also Professor Grantley Taylor, *Committee Hansard*, 27 July 2021, p. 22; and Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Baban Eulaiwi, answer to question on notice (QoN 02), 27 July 2021 (received 5 August 2021).

[62] Reserve Bank of Australia, answer to question on notice, 26 July 2021 (QoN 01), (received 13 August 2021).

[63] CPA Australia, answer to questions taken on notice, 27 July 2021, (QoN 01), (received 11 August 2021).

[64] Bird & Bird, 'German Federal Court: German merchants are allowed to surcharge Paypal and Sofort', March 2021.

[65] Dr Jana Schmitz, Technical Adviser, Assurance and Emerging Technologies, CPA Australia, *Committee Hansard*, 27 July 2021, p. 14.

The Netherlands

4.55 Concerned at the potential detriment to innovation and consumer choice, the Netherlands Authority for Consumers and Markets (ACM) launched an investigation in 2020 into third party access to NFC chips.[66]

4.56 ACM closed the investigation in July 2021 without concluding that Apple had breached existing regulations. The Authority nevertheless advocated for amendments to European regulations that would require device manufacturers to offer third party access to payment technologies, such as the NFC chip.[67]

The United Kingdom

4.57 The UK's former regulatory regime was constituted by e-money regulations, payment services regulations, consumer protections, data protections, and other regulatory frameworks. In 2015, the UK established an independent industry-funded Payment System Regulator (PSR) under the Financial Conduct Authority (FCA, the UK's financial services regulator) to ensure the interests of consumers and businesses, promote effective competition, and drive innovation in the payments sector.

4.58 The PSR's regulatory and competition powers include requiring providers to allow smaller competitors to access their payments systems, setting standards and imposing requirements on industry, amending fees and charges, and addressing anti-competitive behaviour, among other powers.[68]

4.59 The Prudential Regulation Authority and the Bank of England also regulate financial service firms in the UK, while the Competition and Markets Authority is responsible for competition issues that arise within the payments system.[69]

4.60 The UK is considering bringing unregulated BNPL products under the FCA.[70]

4.61 The UK's Digital Markets Taskforce has proposed an enforceable code of conduct to prevent powerful BigTech firms from taking advantage of their power and position. The code would apply to firms with a designated

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66 Authority for Consumers and Markets, 'ACM launches an investigation into users' freedom of choice regarding payment apps on smartphones', 4 December 2020.

67 Reserve Bank of Australia, answer to question on notice, 26 July 2021 (QoN 01), (received 13 August 2021); and Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Baban Eulaiwi, answers to questions on notice, 27 July 2021 (received 5 August 2021).

68 Payment Systems Regulator, 'The PSR purpose', www.psr.org.uk/about-us/the-psr-purpose/ (accessed 15 July 2015).

69 Department of the Treasury, *Payments system review: From system to ecosystem*, June 2021, p. 32.

70 Christopher Woolard, *The Woolard Review: A review of change and innovation in the unsecured credit market*, Financial Conduct Authority, 2 February 2021.

'strategic market status'—that is, the most powerful digital firms operating in the country.[71]

4.62 As in Australia, the UK runs a fintech sandbox framework, under which regulatory requirements are relaxed for small scale and time-limited product trials to promote innovation.[72]

United States

4.63 At least 10 US states are reportedly considering bills that would mandate device manufacturers and app marketplace owners to open in-app payment systems to third parties.[73]

4.64 The US is also considering mandating least-cost routing (see Chapters 2 and 6).[74]

South Korea

4.65 At the time of writing, South Korea was reported to be considering legislation to ban app store owners from forcing app developers to use the app store's own payment systems. The legislation would also make it illegal to prevent app store developers from telling customers about alternative ways to purchase content and services elsewhere.[75]

4.66 ACCC Chair, Rod Sims, noted the South Korean approach, telling the Australian Financial Review his inclination was 'to take a more holistic approach' to app store regulation that would take more time to put in place.[76]

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71 UK Competition and Markets Authority, 'Policy paper: The CMA's Digital Markets Strategy', February 2021, www.gov.uk/government/publications/competition-and-markets-authoritys-digital-markets-strategy/the-cmas-digital-markets-strategy-february-2021-refresh (accessed 15 July 2021).

72 AusPayNet, *Submission 7*, p. 3.

73 Match Group, *Submission 13*, p. 3.

74 Board of Governors of the Federal Reserve System, 'Federal Reserve Board invites public comment on proposed changes to Regulation II regarding network availability for card-not-present debit card transactions and publishes a biennial report containing summary information on debit card transactions in 2019', media release, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210507a.htm (accessed 1 October 2021).

75 John Davidson, 'No quick answer to Google and Apple's app store shakedowns: ACCC', *Australian Financial Review*, 24 August 2021.

76 John Davidson, 'No quick answer to Google and Apple's app store shakedowns: ACCC', *Australian Financial Review*, 24 August 2021.

Committee view

Engagement in the inquiry by Treasury and regulatory agencies

4.67 Evidence from a range of submitters and witnesses emphasised the fundamental importance of the payments ecosystem, the scale and rapidity of recent changes, and the enormous scale of the potential ramifications of these changes for business, citizens, and the country more broadly.

4.68 In this respect, the committee acknowledges the constructive engagement by the Reserve Bank and the ACCC during the inquiry. The informative submissions and witness evidence provided by the RBA and the ACCC in relation to the regulation of the payments system greatly assisted the committee's understanding of the complex issues at play.

4.69 In contrast, the committee is disappointed at the lack of evidence provided by Treasury and APRA and their failure to engage constructively with the inquiry. The committee was struck by the paucity of the contributions made by Treasury and APRA on a matter of such importance and notes that neither Treasury nor APRA chose to make submissions to the inquiry.

4.70 The committee reminds Treasury of the importance of adopting a constructive approach to parliamentary inquiries. The purpose of a department appearing before a committee in a policy inquiry is to contribute information and knowledge. Indeed, it is a fundamental axiom of a parliamentary inquiry that a committee have access to a broad range of information and knowledge to properly inform itself. The committee therefore expects relevant departments and agencies to make an early submission that sets out the background to the inquiry, details the major policy issues, and is available for other submitters to make use of. The committee also expects relevant departments and agencies to respond to answers taken on notice fully and promptly, and to be ready to answer all relevant questions from the committee. In this respect, the committee considers Treasury did not adequately fulfil its obligations to properly inform the Parliament and the committee during this inquiry.

4.71 Further, the committee is deeply concerned about the absence of Treasury in many of the most critical policy discussions laid out in this report. Treasury is the portfolio agency and it should therefore have the requisite skills to lead technical and policy discussions related to the payments industry. Yet, Treasury's failure to contribute substantive evidence to this inquiry suggests it currently lacks the skill or the will (or both) to play a leadership role in this space.

4.72 The committee also notes that it has encountered similar concerns with the department in previous inquiries. It therefore does not attribute Treasury's shortcomings to the individuals who participated as witnesses in this inquiry, but rather regards the issues as a systemic failure on the part of the department.

Recommendation 1

4.73 The committee recommends Treasury enhance its skills, capacity, and expertise in the payments space to become more proactive in developing policy and exhibiting leadership.

Regulatory overlap

4.74 The committee recognises the issue of regulatory overlap is complex. When regulation is structured by the function of each regulator, regulated entities will likely be subject to multiple regulatory functions. But similarly, when regulating an entity by its economic function, regulated entities will likely have multiple economic functions and will therefore still come under the jurisdiction of multiple regulators. A degree of regulatory overlap is therefore likely to develop whether regulation is geared towards the function of the regulator or the function of the entity being regulated. It is not evident to the committee that a restructuring of the regulatory environment towards the function of the entity being regulated would overcome the concerns raised by witnesses concerning regulatory overlap.

Regulatory gaps

4.75 Evidence to this inquiry, as well as reviews and inquiries over many years have shone light on the gaps and inconsistencies in the current regulatory environment. Reforms are urgently needed to the mandate of regulators and to the regulatory architecture to better accommodate the evolving nature of the payments ecosystem in Australia. That said, with the release of the Farrell Review, the committee is cautiously optimistic that much-needed reforms are progressing.

4.76 In the committee's view, regulation around stored-value facilities is outdated and in need of an update. The committee endorses recommendations proposed by the Council of Financial Regulators in relation to the regulation of SVFs (including the need to replace PPFs with tiered SVFs based on risk and the need for SVF providers to hold an AFS license and comply with the ePayments Code). The committee is not of the view that closed SVFs should be captured by further regulation through these changes. To this end, the committee recommends the Australian Government develop legislation to enable ASIC and APRA to administer stored-value facilities in line with CFR recommendations.

Recommendation 2

4.77 The committee recommends the Australian Government task the Treasury with legislative change to enable financial regulators to regulate stored-value facilities in-line with recommendations made by the Council of Financial Regulators.

Industry self-regulation

4.78 Evidence before the committee suggests industry self-regulation through AusPayNet has been effective and largely fit-for-purpose. Nevertheless, the committee has concerns with this model on two fronts.

4.79 First, regulators appear to have no direct insight into the non-compliance of AusPayNet members and may therefore be unaware of the extent to which certain issues or patterns of issues have arisen within the payments sector to-date (although the committee understands certain issues may separately be reported to regulators by industry members themselves).

4.80 The committee recognises the need to maintain industry engagement in a self-regulatory model, and the sensitivities and risks that may arise from publishing data about industry non-compliance. Nevertheless, issues may develop in a self-regulatory system that is not fully transparent to regulators. The committee therefore recommends that AusPayNet provide the relevant regulators, on a voluntary basis, quarterly aggregated data on non-compliance among its members.

Recommendation 3

4.81 The committee recommends the Australian Payments Network voluntarily provide to relevant regulators quarterly aggregated information on non-compliance among its members.

4.82 Second, with changes rapidly impacting the payments landscape and the potential for large multinationals to fall under payments system self-regulation in the future, the committee is concerned that the effectiveness of this model could be eroded.

4.83 The committee therefore encourages Treasury and the Reserve Bank to formally assess the extent to which the current model of self-regulation for the payments system[77] is working, and, if it becomes necessary, explore the value of moving towards a quasi- or co-regulatory model for the payments industry.

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[77] The committee notes BNPL products and services are not considered payments systems in their own right, but instead sit on top of the card schemes. BNPL providers would therefore not currently fall within the scope of the following recommendation. See for example, AusPayNet, 'Payments system at a glance: Payments regulation in Australia', https://www.auspaynet.com.au/resources/New-To-Payments-2a (accessed 21 October 2021).

To this end, Treasury should table a review of payments regulation in Parliament by the end of 2023.

Recommendation 4

4.84 The committee recommends Treasury consult regulators and industry on the effectiveness of payments system self-regulation and table in Parliament by the end of 2023 a review that outlines any gaps in the current self-regulatory model.

4.85 The committee welcomes other efforts by industry to self-regulate, including the establishment of the world-first BNPL Code of Practice and the ePayments Code. In principle, the committee recognises that industry-led self-regulation may be more agile, lower-cost, and more responsive to technological changes than regulations governed by legislation. The committee is nevertheless concerned that both codes remain voluntary and may quickly become outdated if they are not regularly revised.

4.86 The committee is also concerned that some key actors within the payments ecosystem, like payment platform providers, are not currently subject to the code, nor is it clear that they would be subject even were the ePayments Code to be mandated—as the government has announced it intends to do, in line with CFR recommendations.

4.87 To this end, the committee makes two recommendations. First, that ASIC continue to monitor the ePayments Code and ensure the code is updated as and when necessary with a view to ensuring it can adapt to technological advances. In particular, the committee looks forward to the findings of ASIC's review with respect to whether the code should become mandatory. The committee would like to see, however, further consultation of which actors should be subject to the code, with particular attention to payment platform providers like Apple and Google.

4.88 Second, given the potential consumer harms, the relative immaturity of the BNPL sector, and the rapid technological changes that underpin the provision of BNPL services, industry-self regulation may quickly be surpassed by the changing environment if it is not regularly updated. To this end, the committee recommends the finance industry association, AFIA, continues to monitor the effectiveness of the BNPL Code to ensure the code is updated as and when necessary.

Recommendation 5

4.89 The committee recommends the Australian Securities and Investments Commission continue to monitor the ePayments Code and ensure the Code is updated as and when necessary, and provide recommendations to government on whether and how to expand the Code to payment platform providers.

Recommendation 6

4.90 The committee recommends the Australian Finance Industry Association continues to monitor the effectiveness of the Buy Now Pay Later Code of Practice and ensure the Code is updated as and when necessary.

Recommendation 7

4.91 The committee recommends the Australian Securities and Investments Commission be given the power to make the ePayments Code mandatory for all industry participants.

Fit-for purpose regulation

4.92 The committee notes the regulatory environment in Australia has not kept pace with the rapid changes experienced across the payments ecosystem over recent decades. The very concept of a payments system articulated in the *Payments System (Regulation) Act 1988* no longer adequately captures all its relevant components today. Definitions within the Act should therefore be updated to reflect the system as it exists today, and, as far as possible, attempt to capture what the payments systems of tomorrow will look like.

Recommendation 8

4.93 The committee recommends the definition of a payments system within the *Payment Systems (Regulation) Act 1988* be expanded to encompass new and emerging payments systems and platforms, in keeping with the findings of the Treasury Payments System Review.

Chapter 5
Competition issues

5.1 Many submissions to this inquiry raised issues related to competition and anti-competitive behaviour by actors within the mobile payments sector. This chapter provides a background on the power dynamics within this sector and outlines the key competition-related issues identified throughout this inquiry, including:

- market dominance;
- app store controls, including terms of access, in-app bundling, gatekeeping, and self-preferencing; and
- third-party access to the near-field communication (NFC) antenna.

5.2 This chapter then provides a committee view on competition issues and recommendations.

Background on competition within the payments industry

5.3 Reserve Bank of Australia (Reserve Bank or RBA) governor, Dr Philip Lowe, noted in an address to the AusPayNet summit in late 2020 that digital wallets raised new competition issues, particularly related to access to the NFC chip on Apple devices, data privacy related to transactions made via Google Pay, and fees charged by Apple to merchants for using its payments platform.[1]

5.4 The Australian Competition and Consumer Commission (ACCC) in March 2021 released its second interim report on its inquiry into digital platform services, which focused on app marketplaces. The interim report pointed to several possible issues related to competition:

> … the market power of each of Apple and Google; the terms of access to app marketplaces for app developers, including payment arrangements; the effectiveness of self regulation, including arrangements to deal with harmful apps and consumer complaints; and concerns with alleged self-preferencing and the use of data. These issues affect competition with potentially significant impacts for both app developers and consumers.[2]

5.5 The device-centric nature of many wallets underpins many of the competition-related issues in this industry. Apple's mobile devices support only Apple's own Apple Pay natively at the level of the operating system. Samsung Pay, Garmin Pay, and Fitbit Pay are similarly supported only by hardware produced by each of these manufacturers, respectively. Many

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1 Philip Lowe, 'Innovation and Regulation in the Australian Payments System', Address to the Australian Payments Network, Reserve Bank of Australia, 7 December 2020.

2 Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: Interim report no. 2: App Marketplaces*, March 2021.

customers are consequently tied to specific digital wallets and are prohibited from making use of other wallets because of their choice of mobile device.

5.6 In a submission to this inquiry, FinTech Australia noted:

> Competition in the sector is currently at risk due to the limited number of competing mobile device manufacturers and operating system developers. The limited range of hardware and software solutions play a critical role as the overarching infrastructure for mobile payments. In turn, there is a risk that a lack of competition in these sectors will reduce consumer choice and business innovation, as well as increase costs for domestic innovators and start-ups.[3]

5.7 As a result, FinTech Australia cautioned that the 'existing power imbalance between the present technology giants and new start-ups is likely to impact competition and stifle innovation'.[4]

5.8 Digital wallets can also be unique to specific financial institutions, like bank-specific apps, or may be tied to specific payment networks, like Visa's Visa Checkout or Mastercard's Masterpass—both now defunct.[5]

5.9 Barriers to entry can also discourage new entrants into the mobile payments space. The two-sided market dynamics (see Box 5.1, below) associated with the payments industry can discourage merchants from supporting or investing in payment platforms that do not already have a sufficient client base, just as most customers are unlikely to adopt a payments solution that is not already widely supported by merchants. New payment platforms therefore generally require an existing client base or a unique feature set to attract customers.

5.10 The RBA noted that these dynamics within the mobile payments industry have led to a 'tendency for a small number of players to dominate industries such as payments, where there are strong network effects and economies of scale and scope'.[6]

5.11 EY (formerly Ernst & Young) also noted that competition within the payments space could increase the level of fragmentation between services, which could

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3 FinTech Australia, *Submission 21*, p. 4.

4 FinTech Australia, *Submission 21*, p. 4.

5 Ellen Cannon, 'What Is Visa Checkout? How This Digital Wallet Used to Work', *NerdWallet*, 19 January 2021, www.nerdwallet.com/article/credit-cards/what-is-visa-checkout (accessed 21 June 2021); and Ellen Cannon, 'Mastercard Masterpass: An Efficient Way to Shop Online', *NerdWallet*, 19 January 2021, www.nerdwallet.com/article/credit-cards/what-is-mastercard-masterpass (accessed 21 June 2021).

6 Tony Richards, Christ Thompson, and Cameron Dark, 'Retail Central bank Digital Currency: Design Considerations, Rationales and Implications', in *Bulletin*, Reserve Bank of Australia, March 2020, p. 38.

in turn compromise the consumer experience in terms of the interoperability of different platforms, and may undermine inclusion and accessibility.[7]

Box 5.1 Two-sided markets

Digital wallets and mobile payments are often described as 'two-sided markets' or 'two-sided networks'. A two-sided market is one in which service providers sell their product to enable an interaction between two distinct user groups. In the case of digital wallets, providers offer a service to both customers and merchants by enabling transactions between these two groups.

Two-sided markets are a common feature of financial services, including traditional payment systems like credit cards.

Two-sided markets benefit from the network effect, in which the product becomes more appealing as uptake increases. In contrast, a negative network effect can result from market fragmentation. Two-sided markets offer the potential for providers to tap into two revenue streams but the success of a product is dependent on adoption by both groups.

Buy-now-pay-later providers also generally operate a two-sided market, in which they partner with retailers as well as provide a service to consumers that enable each group to transact with the other.

Market dominance

5.12 The committee was repeatedly told that the mobile payments industry in Australia is dominated by Apple and Google, which combined account for nearly 100 per cent of point-of-sale (POS) transactions from mobile devices. One survey estimated Apple's share of the mobile operating system market in Australia in June 2021 at nearly 56 per cent, with Google claiming a 43 per cent market share.[8]

5.13 In contrast, Apple's market share in Asia is reported to be 16 per cent, with Google claiming nearly 83 per cent of the mobile operating system market. In India, Apple reportedly has around 3 per cent of the market relative to Google's 96 per cent.[9]

5.14 The Australian Financial Industry Association (AFIA) described the situation in Australia as an 'asymmetry of influence' in which mobile device (or

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7 EY, *Submission 3*, p. 9.

8 The remaining 1 per cent market share was attributed to Samsung and other unknown devices. See GlobalStats Statcounter, gs.statcounter.com/os-market-share/mobile/australia (accessed 5 July 2021).

9 GlobalStats Statcounter, gs.statcounter.com/os-market-share/mobile/australia (accessed 5 July 2021).

'handset') manufacturers are able to impose their own terms and conditions on developers and service providers using their platforms.[10]

5.15 The Commonwealth Bank of Australia (CBA or Commonwealth Bank) noted in its submission, 'Apple and Google are effectively the only two mobile operating systems in Australia'.[11]

5.16 The Commonwealth Bank also noted:

> Mobile device manufacturers act as a gatekeeper over a key channel of distribution of a range of products and services, including essential financial services such as payments. As customers tend to stay with the same mobile OS [operating system], and typically have a single mobile device, digital platforms have sole control and therefore a substantial degree of power over the markets within their ecosystem, enabling them to dictate the fees, contract terms and conditions of the Australian businesses that rely on them.[12]

5.17 CBA CEO, Mr Matt Comyn, told the committee, 'about 80 per cent of [mobile transactions] are through Apple'. He consequently described Apple Pay as having 'probably become largely essential for financial institutions.'[13]

5.18 CBA provided further evidence to the committee based on an analysis of contactless payments made through its primary scheme partner, Mastercard:

> Of the CBA digital wallet payments made by tapping a phone or related device, 80 per cent are made using Apple devices (e.g. Apple iPhone, Apple Watch). CBA considers it likely that this proportion would be indicative of Apple's share of payments made by digital wallets in Australia.[14]

5.19 Apple, however, disputed this figure, claiming its share of credit and debit card expenditure in Australia is under 10 per cent. Apple told the committee:

> The misleading 80% figure shared initially by Commonwealth Bank and cited in future dialogue and media reports does not represent Apple Pay's share of any market. It is simply the percentage of Apple Pay transactions from Commonwealth Bank's overall digital wallet payments at point of sale.[15]

5.20 Beem It CEO, Mr Mark Britt, also raised concerns that mobile payments in Australia are dominated by Apple and Google, both of which are also mobile

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10 Australian Financial Industry Association, *Submission 12*, p. 3.

11 Commonwealth Bank of Australia, *Submission 10*, p. 5.

12 Commonwealth Bank of Australia, *Submission 10*, p. 6.

13 Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 2 and 4.

14 Commonwealth Bank of Australia, answers to questions taken on notice on 27 July 2021, *Market statistics*, p. 2.

15 Apple, *Submission 20.1*, p. 4.

handset manufacturers. He warned of what he termed the threat of 'platform tyranny' by handset manufacturers without adequate regulatory intervention.[16]

5.21 FinTech Australia CEO, Ms Rebecca Schott-Guppy, also told the committee, 'Apple acts as a strict gatekeeper to the digital wallet on iPhones'. She also cautioned that Apple's control over the NFC chip (see below), if left unchecked, 'will ultimately lead to a monopoly within the payments space'.[17]

5.22 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantly Taylor, and Dr Baban Eulaiwi told the committee that 'many regulators around the world have been increasingly concerned about Apple's commercial dominance on its Apple Pay mobile wallet'.[18]

5.23 The ACCC's submission pointed to similar risks associated with the dominance of the payments industry by Apple and Google. It warned of inadequate arrangements across the sector for dealing with harmful apps or consumer complaints, and identified examples of anti-competitive behaviour among platform owners, including promoting their own apps over those of their competitors or collecting data to help maintain the market dominance of their own apps.[19]

5.24 The ACCC had previously cautioned that the dominance of Apple's App Store and Google's Play Store in distributing mobile apps in Australia is impacting both competition and consumers, arguing that measures were needed to address this.[20]

5.25 Dr Duong and colleagues similarly claimed 'there is an imbalance in bargaining power between Australian payment service providers and Apple'.[21]

5.26 The RBA observed:

> [Mobile payment platforms] have very large user bases and benefit from strong network effects, which is likely to result in them being in a strong negotiating position with payment system participants and can make it difficult for smaller firms to compete.[22]

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16 Mr Mark Britt, CEO Beem It, *Committee Hansard*, 26 July 2021, p. 28.

17 Ms Rebecca Schot-Guppy, CEO, Fintech Australia, *Committee Hansard*, 27 July 2021, p. 31.

18 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantly Taylor, and Dr Baban Eulaiwi, *Submission 1*, p. 5.

19 Australian Competition and Consumer Commission, *Submission 11*, pp. 6-7.

20 Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: Interim report no. 2: App Marketplaces*, March 2021.

21 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantly Taylor, and Dr Baban Eulaiwi, *Submission 1*, p. 5.

22 Reserve Bank of Australia, *Submission 8*, p. 5.

5.27 Epic Games claimed in its submission:

> Apple and Google face limited competitive constrains in mobile app distribution and resultingly [sic] have market power in their dealings with app developers, which is likely to be significant. App developers wishing to access iOS and Android [Google's mobile operating system] have few, if any, viable alternatives for app distribution… It is also highly likely that this market power enables them to unilaterally set and enforce the rules that app developers must satisfy, including requirements that prevent app developers from distributing their apps on competing or alternative distribution platforms and from offering alternative payment systems for in-app purchases of digital content.[23]

5.28 Jana Scmitz from CPA Australia told the committee:

> Apple's significant market share has basically made Apple Pay a must-have service for Australian businesses if they want to offer their customers digital payment services. What that also means is that Apple, as the platform owner, dictates contractual terms, fees and conditions, which Australian businesses more or less have to comply with or are forced to accept those terms and conditions.[24]

5.29 FinTech Australia CEO, Ms Rebecca Schot-Guppy, told the committee, 'competition in the [payments] sector is currently at risk due to the limited number of competing payment platforms'.[25] She also highlighted risks associated with the market power of a small number of firms:

> One of the most pressing competition issues we have already witnessed is that mega platforms such as those run by Google, Apple, Amazon and Shopify, among others, have immense market power. This doesn't just impact competing platforms but they can also dictate the products and services that appear on their platforms. These companies, because they are mega platforms, are also gatekeepers, which gives them enormous power to enter new markets and hinder the business of their competitors.[26]

5.30 Several witnesses drew the committee's attention to the News Media Bargaining Code (see Box 5.2, below), pointing to the code as an example of how to deal with monopoly market power. For example, Dr Lien Duong told the committee, 'we could probably do something similar in the area of mobile payments and digital wallets to ensure competition and innovation in this area'.[27]

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23 Epic Games, *Submission 15*, p. 3.

24 Dr Jana Schmitz, Technical Adviser, Assurance and Emerging Technologies, CPA Australia, 27 July 2021, p. 14.

25 Ms Rebecca Schot-Guppy, CEO, Fintech Australia, *Committee Hansard*, 27 July 2021, p. 31.

26 Ms Rebecca Schot-Guppy, CEO, Fintech Australia, *Committee Hansard*, 27 July 2021, p. 31.

27 Dr Lien Duong, *Committee Hansard*, 27 July 2021, p. 23.

Box 5.2 News Media Bargaining Code

The Australian Communications and Media Authority (ACMA) described the Code as 'a mandatory code to help support the sustainability of public interest journalism in Australia'. The Code aims to address 'bargaining power imbalances between digital platforms and Australian news businesses' by enabling news businesses to 'bargain individually or collectively with digital platforms over payment for the inclusion of news on the platforms and services'.

Digital platforms must participate in the Code if the Treasurer determines that it should apply to them.[28]

5.31 CBA also drew comparisons with the situation the news bargaining code was designed to address:

> In both cases, a small number of very large companies are providing platforms, or gateways, to services provided by other companies — be they media services or payment services.
>
> The platforms in question benefit from strong network effects, meaning they have come to dominate the markets in which they operate. This means that when the platform providers negotiate with companies on access to their platforms, they face very little risk that their offer will be rejected, almost regardless of the terms proposed.
>
> The imbalance in negotiating power means that the platform providers can demand a share of revenue that is not reflective of their contribution to providing the underlying financial service.[29]

5.32 CBA described the News Media Bargaining Code as requiring negotiation in good faith, with arbitration where negotiations fail.[30]

App marketplace controls and self-preferencing

5.33 This section outlines four sets of interrelated issues raised in submissions to this inquiry related to the terms under which Apple and Google grant access to their mobile operating systems for app developers and service providers, and the ability of each platform owner to promote their own services over those of third parties. These include:

- the terms of access under which developers can offer their apps and services on each platform;

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28 Australian Communications and Media Authority, *News media bargaining code*, www.acma.gov.au/news-media-bargaining-code (accessed 23 August 2021).

29 Commonwealth Bank of Australia, answers to questions taken on notice on 27 July 2021, *Media Bargaining Code*, (received 21 September 2021).

30 Commonwealth Bank of Australia, answers to questions taken on notice on 27 July 2021, *Media Bargaining Code*, (received 21 September 2021).

- requirements for developers to process in-app transactions through the payments platform run by the respective device manufacturer (in-app payment system bundling or IAP bundling);
- device manufacturers allegedly serving as so-called 'gatekeepers' that limit or intermediate the access of developers to customers; and
- self-preferencing, through which device manufacturers are alleged to use control of their respective app marketplace to increase the likelihood of customers adopting their own apps rather than those developed by third parties.

5.34 Submissions to this inquiry alleged that app developers and financial service providers are required to enter into agreements with Apple on a 'take-it-or-leave-it' basis if they wish to have their apps included on the Apple App Store or Wallet app.[31]

5.35 The Australian Finance Industry Association (AFIA) highlighted in its submission:

> [Payment] providers are required to enter into agreements with Apple to provide their customers with the ability to make contactless payments. Apple imposes non-negotiable conditions on providers, has different agreements for providers based on size (some with more onerous requirements than others), and it charges providers fees on a per transaction basis for the use of its Apple Pay service.[32]

5.36 The submission from Epic Games detailed Apple's contractual requirements of developers:

> In order to develop and offer iOS-compatible apps in the App Store, mobile app developers must enter into a number of standard, non-negotiable agreements set by Apple, including the Apple Developer Program Licence Agreement ("PLA"). The PLA, in turn, requires compliance with the App Store Review Guidelines ("App Store Guidelines"). In addition, the PLA requires app mobile developers like Epic to enter into a separate agreement with Apple in a standard form (known as "Schedule 2" to the PLA) if they want iOS device users to purchase in-app content.
>
> By the terms of the PLA, App Store Guidelines and Schedule 2, Apple imposes a number of restraints on app developers such as Epic, including but not limited to requiring app developers to:
>
> (a) agree to distribute their apps to iOS device users only through the App Store, and not distribute them to iOS device users through any other channel;
> (b) agree to appoint Apple Inc and its subsidiaries, including Apple Pty Limited, to distribute their apps via the App Store;

31 See, for example, Dr Lien Duong, Dr Duc-Son Pham, Professor Grantly Taylor, and Dr Baban Eulaiwi, *Submission 1*, p. 2.

32 Australian Financial Industry Association, *Submission 12*, pp. 2-3.

(c) agree to only use Apple's IAP for the processing of payments for in-app content purchased by iOS device users; and

(d) agree that Apple Inc and its subsidiaries, including Apple Pty Limited, will deduct a 30% commission from the price paid by users for in-app content (other than in relation to certain long-term subscription users and smaller developers under Apple's Small Business Program).[33]

5.37 Epic raised similar concerns related to Google's alleged 'non-negotiable' terms and conditions (the Google Play Developer Distribution Agreement, DDA) that reportedly requires that developers not seek to distribute apps other than through the Play Store, that in-app payments are processed exclusively through Google Play Billing, and that developers agree to a 30 per cent commission on all app and in-app sales (other than for some subscriptions).[34]

5.38 Epic described these terms as resulting in 'significant detriment to Australian consumers'.[35]

5.39 Google told the committee:

> Google does not "push" onerous terms on developers. All apps are subject to the same set of rules and policies (i.e., the Developer Distribution Agreement, or "DDA" and the Developer Program Policies or "DPP") so that the users and developers can have consistent experiences in using our Play store.[36]

5.40 The Australian Financial Review (AFR) noted that in Apple's case, in addition to the 30 per cent commission, the Apple Store has contractual clauses 'preventing third-party app developers from informing their users that they can buy the same software and services outside the store, often at a lower cost.'[37]

5.41 The ACCC described these terms of access as part of broader competition issues related to Apple and Google's vertical integration:

> The competition concerns arising from restricting the access of rival third-party app developers to certain device features are part of a broader issue regarding the vertical integration of Apple (and separately, the vertical integration of Google/Android) which arises from their control of the relevant operating system, app marketplace and their own first-party apps. The consequences of vertical integration and the risk of self preferencing is a key issue for the ACCC in digital platform markets.[38]

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33 Epic Games, *Submission 17*, pp. 6-7.

34 Epic Games, *Submission 17*, pp. 7-8.

35 Epic Games, *Submission 17*, p. 8.

36 Google, answer to question on notice, taken on 26 July 2021, QoN 02 (received 16 August 2021).

37 John Davidson, 'No quick answer to Google and Apple's app store shakedowns: ACCC', *Australian Financial Review*, 24 August 2021.

38 Australian Competition and Consumer Commission, *Submission 11*, p. 4.

5.42 Another area of concern raised in submissions to this inquiry was the requirement that developers use the payment platforms offered by each device manufacturer. Apple's App Store and Google's Play Store both mandate the exclusive use of their in-app payment (IAP) systems for the provision of goods and services purchased through apps distributed on their platforms. This practice effectively excludes alternative competing payment platforms.

5.43 Developers, who are mandated to use the IAP processing facilities run by app store operators, report paying up to a 30 per cent commission for each transaction or in-app purchase, excluding physical services and subscription-based purchases. The issue of fees for processing IAPs is discussed further in Chapter 6.

5.44 Dating service developer, Match Group, expressed concern around what it termed the 'bundling of access to mobile app stores with the mandatory and exclusive use of the app store operator's prescribed in-app payment system'. Mobile app developers consequently have no choice regarding in-app payment processing platforms, resulting in a lack of innovation and pricing with respect to these platforms, claimed Match Group.[39]

5.45 Epic Games described IAP bundling as leading to 'anticompetitive harm' that leads to the foreclosure of alternative payment systems, higher prices paid by consumers, and stifles innovation.[40]

5.46 Restaurant & Catering Australia expressed similar concerns, claiming that Apple's terms and conditions 'effectively leave developers, small businesses and consumers no choice but to use Apple's own payment application and system for contactless transactions using Apple's mobile phones and technology'.[41]

5.47 EY also noted:

> In the innovation space, technology providers who wish to exist within the big tech ecosystem to access customers, are required to use native in-app payment methods. This removes competition, whilst taking a significant margin on payments and subscriptions. It also creates a significant disadvantage to mobile payments and digital wallet providers, as they are potentially limited in their ability to innovate, at the cost of either revenue or the customer experience.[42]

5.48 Allegations of anticompetitive IAP bundling triggered court action between Epic and Apple on 16 November 2020. The ACCC is seeking leave to appear in support of Epic as *amicus curiae* ('friend of the court'), as set out below:

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39 Match Group, *Submission 13*, p. 2.

40 Epic Games, *Submission 17*, p. 1.

41 Restaurant & Catering Australia, *Submission 6*, p. 2.

42 EY, *Submission 3*, p. 8.

> The ACCC has sought leave to appear at the hearing of Epic Games Inc's appeal to the Full Federal Court against an earlier Court decision to stay Epic's proceedings against Apple Inc.
>
> Epic instituted proceedings in the Federal Court of Australia against Apple in November 2020, making allegations that Apple had engaged in anti-competitive conduct in breach of the Competition and Consumer Act (CCA) in relation to the App Store.
>
> Epic alleges that Apple has breached the CCA by not allowing alternative app stores on its iOS operating system for Apple mobile devices, and by charging app developers a 30 per cent commission on in-app purchases of digital content.[43]

5.49 Epic also initiated legal proceedings against Google on 8 March 2021 under the *Competition and Consumer Act 2010* in relation to alleged restrictions placed on mobile app distribution and in-app payments.[44]

5.50 Mr Leuner told the committee, 'Apple, Facebook and Google are able to take their market power and potentially self-preference or foreclose rivals, using that data to cement their position, buying out potential threats and things like that'.[45]

5.51 CBA CEO, Mr Comyn, told the committee:

> Manufacturers of mobile handsets and associated software set the terms in which third parties can offer these app based services, particularly with respect to payments for and via services. They can also restrict apps that provide services that compete directly with those supplied by the manufacturer of the mobile device.
>
> Given the rapidly expanding market power of the largest app store providers, companies wishing to reach consumers must, by and large, comply with the terms set by the platform providers themselves. If they do not, they are electing to be absent from the ecosystem, forgoing a primary channel preferred by their customers.[46]

5.52 Ms Schot-Guppy told the committee that these payment platforms are 'increasingly acting as a player and a referee, using their dominant position to build and then preference their own digital financial products'.[47] She claimed, 'the duopoly of the smartphone operating systems means that control over app stores can be used to stifle and prevent competition' thereby reducing

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[43] Australian Competition and Consumer Commission, 'ACCC seeks leave to appear in Epic v Apple appeal', media release, 10 May 2021, www.accc.gov.au/media-release/accc-seeks-leave-to-appear-in-epic-v-apple-appeal (accessed 11 June 2021).

[44] Epic Games, *Submission 17*, p. 8.

[45] Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital, ACCC, *Committee Hansard*, 27 July 2021, p. 27.

[46] Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 1.

[47] Ms Rebecca Schot-Guppy, CEO, Fintech Australia, *Committee Hansard*, 27 July 2021, p. 31.

consumer choice, innovation, and potentially driving up costs.[48] Ms Schot-Guppy argued, 'if tech companies cannot prove to be impartial in how they treat competing products on their platforms, then they shouldn't be able to put competing products on the platforms they control'.[49]

5.53 With respect to the accusation of self-preferencing, Ms Longcroft noted:

> Google, at least in the Google Play store, treats our own apps on equal par with all other app developers in terms of the policies and services that they are subject to. We do not use that personal data for any purposes other than in accordance with our privacy policy. To my knowledge, we do not self-preference in that regard.[50]

5.54 Google also provided the following:

> Google and non-Google apps through our Play store generally have access to the same level of data or features, with some limited exceptions. Google apps may have access to data or features not shared with app developers due to technical limitations, security concerns or because the data is proprietary to Google.
>
> Any data we collect and share with developers about their apps protects the privacy and security of users. In line with our clear commitments, we do not share the personal information of users with companies, organisations or individuals outside of Google except in limited circumstances.[51]

5.55 The AFR outlined Apple's approach to the App Store in an interview with the company's CEO, Mr Tim Cook:

> Cook likens the App Store to "an economic miracle" through which more than $600 billion of commerce was pumped last year. As such, Apple's controls are a small hindrance to developers' access to an extraordinary opportunity.
>
> As an individual, you can sit in your basement, no matter where your basement is, and you can write an app. And with the touch of a button, you can distribute your app in 175 countries in the world and become a global seller, a global company. You're not negotiating with a lot of different retailers around the world. You're not having to worry about converting currencies. You're not worrying about local regulations. All of the heavy lifting of going into a country is done.[52]

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48 Ms Rebecca Schot-Guppy, CEO, Fintech Australia, *Committee Hansard*, 27 July 2021, p. 31.

49 Ms Rebecca Schot-Guppy, CEO, Fintech Australia, *Committee Hansard*, 27 July 2021, p. 32.

50 Ms Lucinda Longcroft, Director of Government Affairs and Public Policy for Australia and New Zealand, Google, *Committee Hansard*, 26 July 2021, p. 51.

51 Google, answer to question taken on notice on 26 July 2021, QoN 01 (received 17 August 2021).

52 Matthew Drummond, 'Why Tim Cook thinks Australia is a perfect tech breeding ground', *Australian Financial Review*, 20 August 2021.

5.56 The AFR went on to note:

> But there's also a very beautiful garden of smartly designed products that just work, intuitively and seamlessly, together. Once you're in, it's very hard to leave.[53]

5.57 In its report on digital marketplaces, the ACCC acknowledged that 'the practices and politics of both Apple and Google restrict competition to distribute mobile apps within their respective mobile ecosystems'. The competition regulator nevertheless noted that these practices enable each platform to increase competition between one another. Regulatory intervention that decreases competition within Apple's or Google's ecosystem could therefore reduce competition between the two platforms, the ACCC cautioned.[54]

5.58 The ACCC report suggested ways in which Apple and Google could improve the competitiveness of their respective app stores, such as allowing third parties to charge for their apps outside the app store and advertise that fact to customers. ACCC Chairman, Mr Rod Sims, advised that the competition regulator has not yet decided to mandate changes to app marketplaces in Australia, but continues to watch to ensure Apple and Google address the potential for consumer harm in their app store models.[55]

Third party access to the NFC chip

5.59 Much of the evidence before this committee criticised the extent to which developers had access to NFC chips on Apple devices. For example, the submission from the Australian Retailers Association (ARA), raised concerns with Apple restricting direct third party access to NFC chips on its devices, claiming, 'this prevents or at least severely restricts the potential for new payments innovations which can be used by retailers and consumers'.[56]

5.60 The ARA also cautioned,

> [These restrictions] effectively leave developers (including retailers) and consumers no choice but to use Apple's own payment application and system for contactless transactions using Apple mobile phones and technology.[57]

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53 Matthew Drummond, 'Why Tim Cook thinks Australia is a perfect tech breeding ground', *Australian Financial Review*, 20 August 2021.

54 Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: Interim report no. 2: App Marketplaces*, March 2021, p. 5 (emphasis in original).

55 John Davidson, 'Apple and Google told to open up app stores, or else', *Australian Financial Review*, 28 April 2021.

56 Australian Retailers Association, *Submission 5*, p. 2.

57 Australian Retailers Association, *Submission 5*, p. 2.

5.61 The ARA submitted that Apple's design approach to the NFC antenna has undermined innovations in the payments sector, limiting the ability of developers to offer loyalty programs and coupons.[58]

5.62 Apple refuted ARA's claims stating, 'the user experience cited by the ARA has been available in Australia since October 2017 with Woolworths Rewards, which enables consumers to use their loyalty card with NFC on Apple devices'.[59]

5.63 CBA CEO, Mr Matt Comyn, claimed Apple's control over the NFC chip meant, 'there can be no competing wallets on the iOS operating system'.[60]

5.64 Industry analyst Mr Lance Blockley told the committee that the 'quarantine and fee for NFC access would hold back competition because it holds back the development of new, innovative wallets'.[61]

5.65 Apple rejected these claims, arguing that its approach to third party access to the NFC antenna on its devices ensures the security of its customers, fosters competition by enabling customers to easily switch between cards, and enables non-payment uses of NFC (such as car keys, tickets, or health insurance cards). 'It is exactly this ease of switching cards that some banks are hoping to prevent' argued Apple, 'by calling for an architecture that gives a single bank app control of the NFC functionality on Apple devices to the detriment of other banks and non-bank developers'.[62]

5.66 Apple further stated:

> Calls by some banks to regulate and require that Apple adopt the same approach as its main competitor, Android, stifles competition, reduces innovation, and deprives customers of a better, more secure experience.

5.67 Apple also submitted that the Host Card Emulation (HCE) model used on Android (Google's mobile operating system) devices effectively grants a single app control over the NFC antenna, to the exclusion of other apps and use cases:

> Allowing Commonwealth Bank to have sole control of the NFC controller would assist them in not only locking out competitors but also prevent innovation around non-bank use cases such as car keys or health insurance cards.[63]

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[58] Australian Retailers Association, *Submission 5*, p. 2.

[59] Apple, answer to written question on notice (QoN001-01) (received 23 July 2021).

[60] Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 3.

[61] Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 11.

[62] Apple, *Submission 20.1*, p. 2.

[63] Apple, *Submission 20.1*, p. 3.

5.68 The issue of third-party access to NFC chips on Apple devices was the subject of a request in 2016 by five Australian financial institutions (AFIs) seeking permission from the ACCC to engage in limited collective negotiation with Apple. While the ACCC agreed with the AFIs that 'public benefits would potentially arise in terms of greater competition,' it ultimately concluded that the public detriments outweighed these benefits, specifically in terms of the distortion to the competition between Apple and Google, the lessening of competition between the banks, and market distortions.[64]

5.69 Summarising the determination, the ACCC's Executive Manager for Mergers, Exemptions and Digital, Mr Tom Leuner, told the committee, 'in what was ultimately a very finely balanced decision, the ACCC felt that it was not convinced that there was a net public benefit from that collective negotiation, and therefore it didn't authorise it'.[65]

5.70 Professor Taylor acknowledged competing opinions on this issue, telling the committee, 'there are arguments as to whether opening up access to Apple's NFC interface facilitates competition or whether it will actually impede competition'.[66]

5.71 In its submission to this inquiry, Apple defended its third-party NFC restrictions, claiming the architecture supports contactless transactions in the transport industry, universities, public transport, among other sectors. The tech firm also warned that efforts to open access to NFC chips in its devices would 'negatively impact Australian consumers', and 'create severe unintended consequences' in terms of security and innovation.[67]

5.72 Apple provided the following details:

> Banks in Australia are able to initiate an NFC payment or read data via NFC directly from their iOS apps, and/or to leverage alternative technologies for making mobile payments. Globally there are a number of other mobile payments apps and wallets on the iOS platform.[68]

5.73 Apple describes its Apple Pay platform as 'open to all card issuers and payment schemes/networks', which is currently used by over 100 banks, card issuers, and FinTechs in Australia.[69]

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64 Australian Competition and Consumer Commission, *Submission 11*, p. 2. See also Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: Interim report no. 2: App Marketplaces*, March 2021, p. 342.

65 Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital, ACCC, *Committee Hansard*, 27 August 2021, p. 27.

66 Professor Grantley Taylor, *Committee Hansard*, 27 July 2021, p. 22.

67 Apple, *Submission 20*, p. 6.

68 Apple, *Submission 20*, p. 1.

69 Apple, *Submission 20*, p. 2.

5.74 Apple further claimed:

> Apple does not 'restrict' or 'limit' banks from making NFC payments with their mobile banking applications. Instead, Apple has developed a highly innovative and secure architecture for NFC that is open to players in the payments ecosystem, and has helped FinTech start-ups and domestic payment schemes to compete with more established rivals.
>
> In addition, Apple has enabled banks to initiate NFC payments directly from their iOS apps… by designing a unique and differentiated technical architecture that allows banks to directly initiate NFC payments from their apps without compromising the user experience for consumers who wish to switch between cards from different banks/card issuers.[70]

5.75 Apple's submission also claimed that 'third party apps can directly initiate contactless payments without having to pass sole control of the near field communication (NFC) architecture to a single bank app'.[71]

5.76 Apple also argued that it's approach to NFC access had not stifled competition, telling the committee:

> The argument that Apple's approach stifles innovation is contradicted by the fact that there are no examples of successful bank apps on Android despite having so-called 'direct' NFC access on Android. Some banks have actually withdrawn their NFC wallets on Android.[72]

5.77 Apple further argued:

> Apple does not agree with the suggestion that it should abandon its privacy focussed approach and copy a model from its competitors that is ultimately less secure and erodes privacy for Australian consumers. Not only would this go against the spirit of competition and innovation that Australia aims to foster, it would also deprive the market of an option that represents the Australian values of privacy and security.[73]

5.78 Google's submission detailed its alternative open access approach to third party payment platforms and NFC:

> Android provides open access to its Host Card Emulation (HCE) technology which supports the ability to create digital versions of cards across Android devices. This open access enables any third party (including developers, banks, hardware manufacturers, fintechs etc.) to develop mobile payment functionality. It is this open access that has led to a wide range of options for consumers in digital wallets on Android, thus enabling the likes of Samsung Pay and bank apps to co-exist alongside Google Pay.[74]

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70 Apple, *Submission 20*, p. 3.

71 Apple, *Submission 20*, pp. 5-6.

72 Apple, answer to written question on notice (QoN001), (received 23 July 2021).

73 Apple, answer to written question on notice (QoN001), (received 23 July 2021).

74 Google, *Submission 15*, p. 5.

5.79 Android also allows users to select their own default digital wallet or switch for one-time use.[75]

5.80 Ms Layfield pointed to other benefits of Google's open approach to payments, arguing that competition from other digital wallets enhanced the experience for customers, improved the online commerce experience for users, and drove greater online engagement from users. She summarised the advantages of greater competition:

> Our whole ecosystem is directly benefited when we see more online activity, so things that encourage users to go online to use their phones and to shop in an online environment indirectly helps our businesses.[76]

5.81 While Android's more open approach to NFC on its devices has generally not been subject to the same criticism as that taken by Apple, the RBA noted that 'some digital wallet providers may seek to commercialise customers' data,' as Google has in some countries.[77]

5.82 The Australian Financial Industry Association also cautioned that while Google and Samsung do not currently impose fees on card issuers, 'there are limited controls or competitive pressures in the market that would prevent these entities from charging [fees]'.[78]

5.83 Apple claimed the implementation of HCE on Android requires users to pair the functionality of an NFC chip to a single app, undermining consumer choice, reducing competition among digital wallets or banks and complicating the user experience.[79]

5.84 Dr Anthony Richards also noted,

> As we have seen in Europe, if you were to mandate that [banks] must have access [to the NFC chip outside of Apple Pay], you then have to say something about what fees might be permissible. So it's a tricky issue. If you impose an access regime—and the Reserve Bank has a power to impose an access regime relating to a payment system—we would then have to think about fees and conditions of access. So it's probably not the case that entities would suddenly get access to the NFC chip and necessarily get that for free.[80]

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75 Google, *Submission 15*, p. 5.

76 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 49.

77 Reserve Bank of Australia, *Submission 8*, p. 5.

78 Australian Financial Industry Association, *Submission 12*, p. 3.

79 Apple, answer to written question on notice (QoN001-01), (received 23 July 2021); and Apple, Submission 20.1.

80 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 5.

5.85 In its interim report on digital platforms, the ACCC noted:

> [By reserving NFC functionality] Apple is able to differentiate its own app (Apple Pay) to attract users and may limit the potential competitive constraint of existing and potential rivals due to these product differences.[81]

5.86 Mr Marcus Bezzi from the ACCC nevertheless told the committee, 'we've not concluded an investigation in which we've expressed a view one way or the other in relation to the NFC issue'.[82]

5.87 Mr Leuner similarly told the committee:

> We think access to the NFC certainly has the potential to be a serious competition issue with the real risk that potentially competitors to Apple through developing their own NFC technology are foreclosed from being able to do that.

5.88 That said, Mr Leuner conceded the ACCC has 'never done a deep dive into the NFC issue specifically'. The closest the Commission has come to looking at the issue was during its recent inquiry into app or 'electronic' marketplaces. The government's direction, however, excluded the ACCC inquiry from considering payments platforms.[83]

5.89 The Treasurer's Direction to the ACCC provided the following definition of an electronic marketplace:

> A service (including a website, internet portal, gateway, store or marketplace) that:
>
> (a) facilitates the supply of goods or services between suppliers and consumers; and
> (b) is delivered by means of electronic communication; and
> (c) is not solely a carriage service (within the meaning of the (Telecommunications Act 1997) or solely consisting of one or more of the following:
>
> (i) providing access to a payment system;
> (ii) processing payments.[84]

5.90 Mr Leuner suggested that the ACCC could 'get behind the veil of confidentiality' of commercial arrangements related to payment platforms if it was provided with an inquiry power.[85]

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81 Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: Interim report no. 2: App Marketplaces*, March 2021, p. 59.

82 Mr Marcus Bezzi, Executive General Manager, Specialist Advice and Services, Australian Competition and Consumer Commission, *Committee Hansard*, 27 July 2021, p. 15.

83 Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital, Australian Competition and Consumer Commission, *Committee Hansard*, 27 July 2021, p. 24.

84 Department of the Treasury, *Competition and Consumer (Price Inquiry—Digital Platforms) Direction 2020*, 10 February 2020, section 4, p. 2.

5.91 When Treasury officials were asked whether the department had looked at the issue, Mr David Pearl, Assistant Secretary, told the committee, 'my responsibilities go to competition policy settings and liaising with the ACCC, so we haven't looked specifically at that issue'.[86]

5.92 Mr Pearl further explained:

> It goes to the separation between our role as advisers to government on policy and the ACCC's, RBA's and other regulators' roles. What we would do is liaise with the ACCC on terms of reference for any inquiries they may wish to undertake. They have investigative and other powers which they use. So we would be reliant on the ACCC as the regulator or on other regulators in the payments ecosystem.[87]

5.93 Treasury Assistant Secretary, Ms Nghi Luu, added that the 'access issue is the responsibility of the ACCC and the Reserve Bank'. She noted that regulatory overlay exists within the payments space, suggesting it is 'a reflection of the way that technology has advanced'.[88]

5.94 The ACCC launched a formal investigation in late 2021 into whether Apple's mobile device architecture (that limits direct payments initiated from the operating system from cards unless they are stored in its own digital wallet) breaches competition laws.[89]

5.95 FinTech Australia's submission encouraged testing and support for Bluetooth Low Energy (BLE) as an alternative to NFC in Australia, describing the technology as bypassing 'the need to force hardware manufacturers to open access to their secure components', namely NFC.[90]

5.96 The committee was told of other technological developments that could overcome the need for regulating third-party access to the NFC antenna. For example, CPA Australia submitted that blockchain (a digital ledger that securely records transaction data) and cryptocurrencies (a digital currency that operates independently of a central bank) were likely to play significant roles in the future of the payments system.[91]

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85 Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital, Australian Competition and Consumer Commission, *Committee Hansard*, 27 July 2021, p. 27.

86 Mr David Pearl, Assistant Secretary, Department of the Treasury, *Committee Hansard*, 27 July 2021, p. 36.

87 Mr David Pearl, Assistant Secretary, Department of the Treasury, *Committee Hansard*, 27 July 2021, p. 36.

88 Ms Nghi Luu, Assistant Secretary, Markets Group, Department of the Treasury, *Committee Hansard*, 27 July 2021, p. 36.

89 James Eyers, 'ACCC investigating Apple Pay restrictions on banks', *Australian Financial Review*, 13 September 2021.

90 FinTech Australia, *Submission 21*, p. 5.

91 CPA Australia, *Submission 19, p. 9.*

5.97 BNPL provider, Afterpay, has publicly called for an Australian dollar stablecoin (cryptocurrencies backed by a reserve asset or fiat currency) that would reduce transaction costs by bypassing intermediary banks.[92]

5.98 EY also told the committee that an Australian central bank digital currency (a digital currency issued by the central bank) could significantly accelerate cross-border transactions.[93]

Committee view

5.99 The committee notes the imbalance in bargaining power between payment platform providers and other participants in the payments ecosystem. Nevertheless, the observation that the market power of digital wallet platforms, such as Apple Pay and Google Pay, is causing banks to be price-takers may not automatically trigger the need for regulation. Such situations are common in modern capitalist economies like Australia and within the payments system, specifically. For example, major banks have significant market power leading to other participants in the payments system being price takers for interchange fees and credit card interest rates. Card networks and some BNPL providers also have market power that causes other participants to be price-takers. Therefore, the case for regulating the market power of digital wallet platforms would need to establish why that is different or is creating more problems than other situations of market power in the payments system, and the economy more generally. In sum, the committee considers the existence of a strong market position by one or more companies may not necessarily require regulatory attention.

5.100 The committee also wishes to see the minimum regulation required to ensure an appropriate balance between promoting competition and growth, while ensuring consumer benefits, protections, and stability.

5.101 The committee also notes comparisons drawn during the inquiry between competition issues in the mobile payments space and the issues which the News Media Bargaining Code seeks to address. At this stage, the committee is not convinced that the reduction in interchange fees that may result from adopting a similar model for the payments system is comparable to the public good served by the media bargaining code in promoting Australians' access to news and information.

5.102 The committee is of the view that mobile payment processing platforms, like Apple Pay and Google Pay, are part of the payments ecosystem. The committee is therefore broadly supportive of a national interest trigger that would grant the Treasurer additional powers to direct and designate firms as

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92 James Eyers, 'Afterpay calls for $A 'stablecoin' policy to cut payment costs', *Australian Financial Review*, 8 September 2021.

93 EY, *Submission 3*, p. 11.

participants in the payments system, thereby bringing them into the regulatory fold, as recommended in the Farrell Review. However, the committee did not receive much evidence on the regulations to which payment platform providers are currently subjected, such as privacy law, telecommunications law, and consumer law, and what specific regulatory gaps exist today or may emerge in the future. The committee therefore recommends Treasury consult with relevant agencies to provide more detailed policy advice on the merits of regulating payment platform providers, and the best ways to do so.

5.103 In the committee's view, Apple and Google's app stores—and perhaps some online sales platforms as well—have used their market dominance to impose unbalanced terms and conditions on the businesses and developers that rely on them and work through them. Yet, the committee is mindful that regulators should seek to strike an appropriate balance between promoting competition and fostering innovation in app stores, while allowing these platforms to be profitable and differentiate themselves from one another. As such, the committee is not convinced that regulatory intervention is currently required in the case of Apple's App Store or Google's Play Store. Rather, the committee welcomes the ACCC's ongoing inquiry into app marketplaces and looks forward to the Commission's recommendations on these issues.

5.104 With respect to third party access to the NFC chip, the committee considers further scrutiny by the ACCC of Apple's approach is merited. As such, the committee welcomes the ACCC's recent announcement on this front and endorses the nuanced approach the Commission has taken on these issues over recent years.

5.105 The ACCC inquiry should draw on lessons from other jurisdictions—in particular Germany and the EU. Yet, while the committee heard no evidence to suggest security on Google Pay's use of HCE was insecure, the committee notes Apple's alternative hardware-based approach to payment security may be an important distinguishing feature for consumers in the future. The committee also notes Apple's claims that Australians may have purchased Apple products knowing and accepting the restrictions and features that are inherent to this platform. The committee is therefore of the view that these choices should be respected—as far as it is practical to do so—rather than undermined through possible regulatory overreach.

5.106 Further, the committee notes that granting access to the NFC antenna on Apple devices through regulation or legislation introduces questions of what fees are appropriate for Apple to charge to those who use its platform. These questions do not yet appear to have been resolved in other jurisdictions in such a way as to effectively foster competition or innovation. Moreover, in the committee's view, having two different models (Apple's hardware approach to security and the software-based solution adopted by Google) adds to the resilience of the overall payments system and is thus worth preserving, if feasible. Finally, the committee is of the mind that Apple's control over the NFC antenna provides it with a product that is distinct from its closest rivals and may therefore be considered a positive example of innovation and competition in the payments space.

5.107 For these reasons, the committee does not recommend Apple be forced to grant direct operating-system-level third-party access to its NFC antenna at this time. The ACCC's attention to these matters is nevertheless warranted to monitor Apple's practices and policies to ensure its behaviour and decisions do not unduly disadvantage Australian businesses, stifle innovation, or harm consumer interests.

5.108 The committee notes that Apple—despite its centrality to many of the issues addressed throughout this inquiry—declined to participate in any public hearings. In the committee's view, this reluctance served neither Apple's interests nor those of Australian consumers who have purchased Apple products and are entitled to hear directly from the technology firm on these matters. The committee nevertheless notes Apple's constructive engagement with this inquiry through its public submission, supplementary submission, and answers provided to questions on notice.

5.109 The committee notes with disappointment the Government direction that limited the ACCC from looking into competition issues related to the conduct of payment platform providers. The committee encourages the government to support the ACCC to pay greater attention to the issues identified in this chapter and investigate emerging issues quickly to ensure device manufacturers and payment platform providers do not unduly restrict innovation and competition or harm consumer interests.

5.110 Finally, the committee is mindful of the rapid technological changes impacting the payments ecosystem. These changes will likely bypass the need for legislative or regulatory action in some areas, while introducing new areas of concern related to competition in the payments space. Regulators will therefore need to remain nimble and responsive, while legislators should focus on solutions that are as technologically neutral as possible.

Recommendation 9

5.111 The committee recommends Treasury consult with relevant agencies to provide policy advice on the merits of regulating payment platform providers as participants in the payments ecosystem, including:

- **setting out the laws to which these providers are already subject;**
- **detailing the specific regulatory gaps that exist today or may emerge in the future; and**
- **providing advice on the best ways of including payment platform providers within existing payment system regulation.**

5.112 The committee intended to recommend the ACCC conduct an investigation into restrictions on the use of near-field communication chips on mobile devices. The committee instead welcomes the Commission's recent announcement of an investigation into this issue and looks forward to the findings. While the committee has not been provided with details of this investigation, it would welcome further attention to the following:

- the consumer harms or benefits that may result from Apple's current restrictions on third party access to the NFC chip;
- the issues related to competition and innovation that result from Apple's current restrictions;
- whether similar practices related to Apple's strong market position are tolerated in other sectors and industries, or whether this is unique to the payments space; and
- the limitations and opportunities that exist for developers to route payments within their applications through payment platforms other than Apple Pay.

Recommendation 10

5.113 The committee recommends the Australian Competition and Consumer Commission investigation into Apple's restrictions on direct third party access to the chips that enable mobile payments on its devices consider:

- **consumer harms and benefits;**
- **the impact on competition and innovation;**
- **the extent to which similar practices exist in other sectors and industries; and**
- **whether developers have practical and viable alternatives to using Apple Pay to process mobile payments.**

Chapter 6
Other issues

6.1 This chapter looks at other issues raised by witnesses and submitters to this inquiry, including:

- Platform provider fees charged to merchants and the transparency of fees associated with making a mobile payment;
- least-cost routing (LCR);
- Merchant surcharging
- cybersecurity and sovereign risk, including the control of strategic national assets and counter-terrorism financing and anti-money laundering (CTF/AML);
- consumer protections, including privacy and data protection, and issues related to the buy-now-pay-later (BNPL) sector; and
- cross-border payments and remittances.

Platform provider fees for mobile transactions

6.2 Payment platform providers, Apple and Google, receive two main types of revenue associated with processing mobile transactions: processing mobile point-of-sale (POS) transactions and processing in-app payments. This section looks at competition issues related to both of these types of payments and discusses concerns around the transparency of these fees.

Fees for mobile POS transactions

6.3 Interchange fees (the fee charged to merchants for processing a transaction) have traditionally been charged to merchants by acquirers. This revenue is typically shared between acquirers, card issuers, and scheme providers (see Chapter 2). However, some mobile transactions introduce another actor vying for a share of these interchange fees. Mobile payment platform providers, like Apple, take a proportion of the interchange fee in exchange for providing the technological architecture through which mobile payments are initiated on a mobile device.

6.4 Mobile payments initiated at a POS in Australia generally do not incur direct additional fees for merchants or consumers relative to physical card payments.[1] Other participants within the payments system may nevertheless face additional costs associated with making or receiving a mobile payment, which may ultimately be passed on to merchants and consumers. CMS Payments Intelligence (CMSPI) consequently highlighted that merchants

[1] Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor and Dr Baban Eulaiwi, *Submission 1*, p. 2.

accepting digital wallets 'may incur fees that are significantly higher than they would face for traditional card payments'.[2]

6.5 Fees and charges associated with mobile payments typically mirror those of regular contactless credit or debit card transaction at a POS. As contactless mobile payments are generally routed through the international card schemes as opposed to the (generally cheaper) EFTPOS network, merchants may be paying higher fees for accepting mobile payments than they would be for payments made using a physical debit card. As Dr Anthony Richards from the Reserve Bank of Australia (RBA) acknowledged, while merchants do not face direct costs from accepting mobile transactions, 'there could be some difference in the interchange fees applying to different sorts of transactions'.[3]

6.6 Apple told the committee its mobile devices now support transactions processed through EFTPOS.[4]

6.7 Apple imposes fees on card issuers for processing mobile transactions through Apple Pay. Issuers, acquirers, and card schemes must therefore share the interchange fee with the mobile payment platform provider (in this case, Apple). As James Eyers from the Australian Financial Review summarised:

> Apple charges banks a few cents for every $100 of transactions, meaning the banks are giving up some of their heavily regulated interchange fee revenue from issuing cards to Apple, which operates outside payment regulation.[5]

6.8 As Apple and other mobile payment platforms typically do not have direct commercial relationships with merchants, merchants do not face additional direct costs.[6]

6.9 Apple also told the committee, 'all card issuers pay the same fees and are subject to the same terms and conditions in their territory'.[7]

6.10 In contrast, payments made through Google Pay do not require interchange fees to be shared.

6.11 Google stated in its submission:

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2 CMS Payment Intelligence, *Submission 18*, [p. 1-2].

3 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 3.

4 Apple, *Submission 20*, p. 2.

5 James Eyers, 'ACCC investigating Apple Pay restrictions on banks', *Australian Financial Review*, 13 September 2021; see also James Eyers, 'Apple slams CBA's 'misleading and false' Apple Pay critique', *Australian Financial Review*, 27 August 2021.

6 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 3.

7 Apple, *Submission 20*, p. 5.

> When a payment transaction is facilitated between a consumer and merchant in Australia using Google Pay, Google Pay does not charge the merchant a fee. In addition, we do not charge acquiring banks or payment service providers (PSPs) for processing a Google Pay transaction.[8]

6.12 Google also told the committee it 'does not charge users for the use of Google Pay in Australia, whether to shop online or contactlessly pay at stores.' Google further claimed that 'there are no commercial relationships in Australia directly related to the use of Google Pay'.[9]

6.13 Dr Richards nevertheless cautioned that while some mobile payment platforms currently do not charge a fee or only demand a small proportion of the interchange fee paid by merchants to acquirers, banks may be concerned that these fees could grow as the platforms become more entrenched.[10]

6.14 Mr Chay Fisher also told the committee that while Google does not presently charge fees for transactions made over Google Pay, 'their terms and conditions may allow them to use information from transactions potentially for other purposes'.[11]

6.15 Apple rejected criticisms of the business model underpinning Apple Pay, submitting:

> Comparisons to Android [Google's mobile operating system], which chose to not introduce fees associated with its payment infrastructure, are baseless due to Android's wider business model of monetising the data obtained from monitoring their customers' transactions and behaviour. Apple's business is manufacturing hardware, software and services, not monetising our customers. Banks that prioritise and advocate for a fee-free model are condoning the tracking and monetising of their customers' data.[12]

6.16 Evidence suggests Australian banks may be incurring fees from mobile payment platform providers in excess of those paid in other jurisdictions. Financial services news outlet, Banking Day, claimed, 'Australian banks are incurring significantly higher fees for offering Apple Pay to debit cardholders than their counterparts in the US.' The trade publication claimed Australian banks pay Apple between 0.04 per cent and 0.06 per cent of the value of transactions made through Apple Pay. In contrast, Apple Pay transactions in the US are reported to incur a flat fee of half a cent—around a third of the fee

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8 Google, *Submission 15*, p.5.

9 Google, *Submission 15*, p.6.

10 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 7; see also Australian Finance Industry Association, *Submission 12*, p. 3.

11 Mr Chay Fisher, Senior Manager, Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 3.

12 Apple, *Submission 20.1*, p. 5.

paid by Australian card issuers.[13] The committee understands the US rate is for over-the-counter transactions only and does not cover in-app or card-not-present transactions (such as online or over-the-phone purchases), which often incur higher fees).

6.17 Comparing Apple's share of interchange fees in Australia to other jurisdictions, Duong and colleagues submitted:

> Apple's cut comes from the banks' interchange fees since Apple does not allow banks to recoup the costs from customers. The average interchange fees levied by banks on retailers for handling card transactions in Australia is lower compared to international standards, especially in the debit card payments, but they are still higher than the credit card interchange fees in Europe.[14]

6.18 Dr Duong and colleagues attributed the higher fees imposed on card issuers by Apple in Australia to 'the market power of Apple and the high demand of Australian Consumers for the Apple Pay service' (see also Chapter 5).[15]

6.19 Commonwealth Bank of Australia (CBA) CEO, Mr Matt Comyn, also noted, 'Apple makes no contribution to the infrastructure investments that are made at an overall payments level'—which he estimated at around $2 billion over the past five or six years—and has 'no liability in and around fraud'.[16]

6.20 Apple responded to Mr Comyn's criticism, pointing to a range of significant savings enjoyed by banks using Apple Pay resulting from 'near-zero fraud' on Apple Pay, as well as savings from managing fewer physical cards and the growth of more efficient digital channels for customer engagement.[17]

6.21 Apple further claimed:

> In addition to the significant innovation and investment Apple has made into eftpos… it's important to understand that Australian banks benefit significantly from Apple's innovations and investments, including iOS and the App Store which banks have used to dramatically accelerate digitisation of retail banking, while innovations such as Touch ID and Face ID have brought world class security to how consumers authenticate when signing into their banking services.[18]

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13 George Lekakis, 'Revealed: The fees Aussie banks pay for Apple Pay,' *Banking Day*, 22 May 2019, https://www.bankingday.com/article/revealed--the-fees-aussie-banks-pay-for-apple-pay (accessed 22 June 2021).

14 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor and Dr Baban Eulaiwi, *Submission 1*, p. 3.

15 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor and Dr Baban Eulaiwi, *Submission 1*, p. 3.

16 Mr Matt Comyn, CEO, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 4.

17 Apple, *Submission 20.1*, p. 5.

18 Apple, *Submission 20.1*, p. 5.

Fees for in-app purchases

6.22 As discussed in the previous chapter, app marketplace providers (or app store operators) often require developers that sell goods and services through apps distributed on these platforms to use an in-app payment (IAP) system run by the app store operator. Developers report paying up to 30 per cent commission for each transaction or in-app purchase. The committee understands that physical services and subscription-based purchases usually incur a lower commission.

6.23 In its submission, dating service developer, Match Group, described these fees as 'substantially higher' than third-party alternatives or in-house solutions, thereby impacting the returns app developers receive, reducing incentives to invest and innovate, and likely increasing costs to consumers.[19]

6.24 Match Group alleged that fees for in-app purchases were driven up by 'excessive commissions' charged by app store operators.[20]

6.25 Apple defended its App Store revenue model to the committee, arguing 84 per cent of apps distributed through the App Store did not earn Apple any income. The 16 per cent of App developers that chose to sell digital content and services through their apps pay Apple a commission on 'each transaction as compensation for tools, technology and distribution'.[21]

6.26 Apple also argued that the commission charged to developers on their sale of digital content and services through the App Store is not a payment processing fee, but rather covers the business the platform drives to developers, as well as the tools, services, intellectual property, and support Apple offers to create apps. Apple further argued the economic viability of the App Store is predicated on the company's ability to mandate a commission from developers.[22]

6.27 Apple nevertheless announced plans in August 2021 in response to a class-action filed by US-based app developers to allow developers to tell users about alternative ways to purchase digital content and services, thereby enabling developers to bypass Apple's commission.[23]

6.28 Google also defended its Play Store business model, telling the committee:

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19 Match Group, *Submission 13*, p. 3.

20 Match Group, *Submission 13*, p. 3.

21 Apple, answer to written question on notice (QoN001), (received 23 July 2021).

22 Apple, answer to written question on notice (QoN001), (received 23 July 2021).

23 Jon Brodkin, 'Apple will finally let devs tell users about non-App Store purchase options', *Ars Technica*, 27 August 2021, arstechnica.com/tech-policy/2021/08/apple-will-finally-let-devs-tell-users-about-non-app-store-purchase-options/ (accessed 30 August 2021).

> We have a service fee structure that enables us to develop, innovate and maintain Google Play. Developers on Google Play are subject to a service fee only where the developer generates revenue on digital transactions with this applying to less than 3% of app developers. For those subject to the fee, we charge a 15% service fee on the first USD $1 million generated each year on Google Play with a 30% fee imposed on revenue above USD $1 million.[24]

6.29 Google outlined the costs that fees charged to developers using the Google Play Store contributed to, including the development and operation of the app marketplace, the development of tools and services, app development and developer support, app hosting and distribution, app discovery, compliance on behalf of developers, and payments for developers that choose to charge customers.[25]

6.30 Google further argued, 'it is not appropriate to compare Google Play with payment processors. Google Play provides developers with much more than that and such a comparison ignores the breadth and nature of our business'.[26]

6.31 On this issue, the ACCC Digital Platform Services Inquiry report noted:

> Multiple app developers have raised concerns with the ACCC in relation to the commission rates charged by Apple and Google on payments made for digital goods through apps (in-app payments) and the associated terms.
>
> The ACCC considers that the lack of competitive constraint in the distribution of mobile apps is likely to affect the terms on which Apple and Google make access to their respective app marketplaces available to app developers, including the commission rates and terms that prevent certain app developers from using alternative in-app payment systems and promoting alternative off-app payment systems.
>
> The ACCC considers that the commission rates are highly likely to be inflated by the market power that Apple and Google are able to exercise in their dealings with app developers.[27]

6.32 The ACCC nevertheless noted it is unclear how significant this mark-up is in practice for two main reasons. First, commissions paid by app developers are not primarily cost-based but are instead reflective of their access to, and integration into, the broader mobile ecosystem. This makes it difficult to identify fair and appropriate pricing and fees. Second, given the market

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24 Google, answer to written question on notice (QoN 04) (received 17 August 2021).

25 Google, answer to written question on notice (QoN 04) (received 17 August 2021).

26 Google, answer to written question on notice (QoN 04) (received 17 August 2021).

27 Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: App Marketplaces*, p. 9.

dominance of Apple and Google, there are few benchmarks with which the commissions charged by each app store operator can be compared.[28]

Transparency of fees

6.33 Evidence before the committee repeatedly raised the issue of a lack of transparency in fees related to mobile payments. For example, CBA submitted that 'there is very little transparency to gauge the gap between the cost and the price of the service or the extent to which payment providers pass these fees onto their customers'.[29]

6.34 Commercial agreements may prevent banks from disclosing the exact share of the interchange fee taken by mobile payments platforms.[30] Some banks are reported to have negotiated bulk discounts on these fees, yet these agreements are understood to be subject to confidentiality agreements.[31]

6.35 In its submission, the RBA acknowledged the 'lack of transparency in relation to the fees and other arrangements associated with digital wallets' and detailed a number of steps it was taking to address this issue. These included a requirement that card schemes provide the RBA with their fee schedules and scheme rules in an attempt to identify competition issues and reduce anti-competitive behaviour.[32]

6.36 While the RBA can request information on the payments system, Dr Richards acknowledged that because mobile payment platforms are not currently regulated as participants in the payment systems, the Reserve Bank cannot directly request from Apple or Google information such as the portion of transaction fees they receive for use of their technology platforms. Some of this information, Dr Richards suggested, could nevertheless be gathered indirectly from banks and card issuers.[33]

6.37 Treasury Assistant Secretary, Ms Nghi Luu, acknowledged the RBA had raised with the department the Bank's lack of powers to directly gather information related to fee structures within the payments system. She suggested the issue may fall within the remit of the Farrell review (see Chapter 4), which at the

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28 Australian Competition and Consumer Commission, *Digital Platform Services Inquiry: Interim report no. 2: App Marketplaces*, March 2021, p. 10.

29 Commonwealth Bank of Australia, *Submission 10*, p. 8.

30 Clancy Yeates, 'Digital wallets such as Apple Pay lack transparency: RBA', *The Sydney Morning Herald*, 14 June 2021.

31 George Lekakis, 'Revealed: The fees Aussie banks pay for Apple Pay,' *Banking Day*, 22 May 2019, www.bankingday.com/article/revealed--the-fees-aussie-banks-pay-for-apple-pay (accessed 22 June 2021)

32 Reserve Bank of Australia, *Submission 8*, p. 6.

33 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, pp. 3-4 and 6-7.

time of the hearing had yet to be released by the Treasurer. Ms Luu declined to provide the committee with further details.[34]

6.38 Google Director of Government Affairs and Public Policy for Australia and New Zealand, Ms Lucinda Longcroft, refuted the alleged lack of transparency in relation to the Google Play store, telling the committee:

> Our fee data is transparent. In fact, 90 per cent of app developers on Google pay no fee… Only three per cent of apps charge for digital content for which we charge a fee; the fee structure is based on a revenue model and is entirely transparent. Of the 2,500-odd developers in Australia that make their apps available for a charge on the Google Play store, 99 per cent are charged a 15 per cent fee structure; less than one per cent are charged a 30 per cent fee structure, and that is comparable to or less than all other competitors in a vigorously competitive marketplace.[35]

6.39 Apple defended its confidentiality terms with partners (Apple's use of the term 'partners' presumably refers to both app developers and Authorised Deposit-taking Institutions), submitting the following:

> We consider our commercial terms and contracts with our partners to be confidential, a standard in nearly every industry. Confidentiality protects both parties and further promotes market competition so that our competitors are not privy to the details of our intellectual property, including how we operate with our partners.[36]

6.40 Mr Marcus Bezzi, the ACCC's Executive General Manager for Specialist Advice and Services, told the committee:

> There's no rule of law that requires fees charged by one business to another business to be made transparent or made public. In fact, the usual position is that they're not publicised… there can be circumstances where promoting transparency can promote competition but, as I say, there's no general rule requiring it that I'm aware of'.[37]

Committee view on platform provider fees

6.41 The committee acknowledges the concerns raised by submitters around the perceived lack of transparency with the fees charged by payment platform providers. The committee nevertheless agrees with Mr Bezzi's observation that

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34 Ms Nghi Luu, Assistant Secretary, Markets Group, Department of the Treasury, *Committee Hansard*, 27 July 2021, p. 39 and p. 44. Ms Luu clarified that the Farrell Review was provided to government on 1 June. See *Committee Hansard*, 27 July 2021, p. 41. The Farrell Review did not make any specific recommendations related to the RBA's powers to gather information on transaction fees, see Treasury, *Payments system review: From system to ecosystem*, June 2021.

35 Ms Lucinda Longcroft, Director, Government Affairs and Public Policy, Australia and New Zealand, Google, *Committee Hansard*, 26 July 2021, p. 55.

36 Apple, *Submission 20.1*, p. 5.

37 Mr Marcus Bezzi, Executive General Manager, Specialist Advice and Services, ACCC, *Committee Hansard*, 27 July 2021, p. 29.

no laws require platform providers to disclose their fees to competitors or to the public. However, the committee also understands the ACCC's inquiry powers would allow it to request this information directly from payment platform providers, should it be considered necessary.

Least-cost routing

6.42 As detailed in Chapter 2, interchange fees have fallen in recent years, with transactions processed over EFTPOS generally incurring lower fees relative to the international card schemes. Several submitters attributed the reduction in costs to competition between eftpos and international card schemes, driven in part by the ability of merchants to route transactions made with a physical card at a POS over whichever network incurs the lowest fees; 'least-cost routing' (LCR) or 'merchant-choice routing'.[38]

6.43 LCR became available as an opt-in service to merchants in Australia from 2019. As of March 2020, around 5 per cent of merchant terminals supported LCR.[39]

6.44 LCR in Australia has been credited with driving down interchange fees. As the RBA has noted:

> Least-cost routing can help merchants reduce their payment costs and can also increase competitive pressure between the debit schemes, providing greater incentives for them to lower their fees.[40]

6.45 However, the dual network functionality that underpins LCR is not available in Australia for transactions initiated by a mobile device. Mobile tap-and-go payments are instead routed through the default network assigned to each virtual card. CMS Payments Intelligence consequently warned that gains in the reduction of interchange fees 'could be lost if contactless digital wallets are allowed to grow with default routing as the norm'.[41]

6.46 As CMS Payments Intelligence explained:

> When a consumer makes a payment with Apple Pay in Australia, it is often routed by default down Visa or Mastercard's network even where an alternative network is available. To instead use the domestic Eftpos scheme, which is often the cost-efficient option for merchants, the consumer must follow a number of steps within the app to make Eftpos their default network. Customers only have an incentive to do so if there is

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38 See for example CMS Payments Intelligence, *Submission 18*, p. 2.

39 Emma Koehn, 'Visa warns Reserve Bank over tap-and-go regulation', *The Sydney Morning Herald*, 4 March 2020.

40 Kateryna Occhiutto, 'The cost of card payments for merchants,' in *Bulletin*, Reserve Bank of Australia, March 2020, p. 26.

41 CMS Payments Intelligence, *Submission 18*, p. 2.

> an explicit cost associated with using the network that is more expensive for the merchant.[42]

6.47 The Australian Retailers Association described the challenge that mobile payments present to LCR:

> Multi-network debit cards are limited from operating in the same way when uploaded to a digital wallet such as ApplePay, GooglePay, or Samsung Pay, due to technological limitations and settings which prevent the operation of these competitive forces.
>
> Currently, even if mobile wallets allow users to upload two versions of the same debit card (supporting both schemes on a multi-network debit card), users are required to choose a default card for transactions. Regardless of whether the consumer passively uses the default card or actively selects the alternative debit card in the mobile wallet, whichever card is presented by the wallet will be the scheme by which it is processed. This completely overrides the ability of retailers to apply least-cost routing to the point of sale on these transactions and potentially increases the cost of transactions.[43]

6.48 Apple noted in its submission that it 'does not restrict in any way least-cost routing by merchants'. Apple further stated:

> The Apple Pay platform presents a payment credential to the terminal at point of sale; it has no involvement in nor does it restrict the routing of the transaction by a merchant. As such, there are no "technological limitations" or "settings" imposed by Apple Pay which prevent the operation of least-cost routing by a merchant.[44]

6.49 Apple told the committee:

> If it is a regulatory requirement that merchants choose the debit network used to process a transaction, rather than the customer, then Apple will work with issuers and the payment networks on a solution to transition to a model that supports the presentment of two network credentials to the terminal.[45]

6.50 In its submission to this inquiry, Restaurant and Catering Australia emphasised the impact on its members of mobile payments:

> Given the dramatic drop in the use of cash across our member businesses… the role of LCR becomes increasingly important. Merchant fees often operate with little or no transparency and are difficult to understand. In many instances they are part of a broader service package that is linked to other key measures such as sales volumes, making it

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[42] CMS Payments Intelligence, *Submission 18*, p. 1.

[43] Australian Retailers Association, *Submission 5*, pp. 1-2.

[44] Apple, *Submission 20*, p. 8.

[45] Apple, answer to written question on notice (QoN001-04), p. 2 (received 23 July 2021).

> difficult for small business owner [sic] to understand, budget for and calculate.[46]

6.51 eftpos and Beem It similarly noted:

> The design of mobile solutions is such that the default priority of token [sic] is given to the International Credit Scheme, requiring either the customer to actively change the token order or the merchant to make terminal specific changes to search for a different token (which is not the norm in Australia).[47]

6.52 eftpos pointed to the following impact:

> Not only do merchants have no choice when a mobile device is presented for payment, often the consumer also has no choice or is unaware whether they have a choice and how to exercise it.[48]

6.53 eftpos told the committee that the lack of support for LCR for mobile payments was 'detrimental to small business', costing Australian merchants close to $600 million each year.[49]

6.54 eftpos CEO, Mr Stephen Benton, cited RBA data purportedly showing that up to 40 per cent of the transaction cost of a mobile payment could be saved through LCR.[50]

6.55 Industry Analyst Mr Lance Blockley estimated that small merchants could save $30 to $40 per month through LCR. Larger merchants could make larger savings from LCR or could use LCR as leverage to negotiate lower fees with international schemes, he suggested.[51]

6.56 Council of Small Business Organisations Australia (COSBOA) CEO, Ms Alexi Boyd, told the committee that many small business owners 'are not able to unpack the complexity of the [interchange] fees that are offered to them by banks'.[52]

6.57 EY (formerly Ernst & Young) noted in relation to the pandemic, 'consumer empathy increased for the cost borne by merchants and vendors to accept

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[46] Restaurant & Catering Australia, *Submission 6*, p. 2.

[47] eftpos and Beam It, *Submission 14*, p. 5.

[48] eftpos and Beam It, *Submission 14*, p. 5.

[49] eftpos, answer to question taken on notice on 26 July 2021 (QoN 01), (received 12 August 2021).

[50] Mr Stephen Benton, CEO, eftpos Payments Australia, *Committee Hansard*, p. 27.

[51] Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 12.

[52] Ms Alexi Boyd, CEO, Council of Small Business Organisations Australia, *Committee Hansard*, 3 September 2021, p. 2.

payments, that in turn initiated a re-focus on least-cost routing to help reduce the overall cost to merchants'.[53]

6.58 Ms Boyd, told the committee, 'merchant fees continue to be one of the top three issues for industry segments with high volumes of debit transactions'. Ms Boyd also advocated 'a clear pathway and time frame for mandating LCR on all payment methods, including online and mobile,' arguing:

> The ongoing pandemic induced crisis is pushing many previously successful small businesses into the brink of permanent closure. Creating a level playing field where the least-cost debit fee is the default would create an environment which is both equitable for the small business owner and would encourage competition between payment providers.[54]

6.59 Ms Boyd and Mr Benton both drew the committee's attention to examples from other jurisdictions in which LCR for mobile payments had been fully implemented, such as the dual-token approach used in Europe.[55]

6.60 Mr Benton told the committee some authorised deposit-taking institutions (ADIs, financial institutions permitted by the Australian Prudential Regulation Authority, APRA, to accept deposits from the public) have begun moving away from providing customers with dual network cards towards single network cards, potentially reducing payments competition, innovation, and increasing fees for merchants and ultimately consumers.[56]

6.61 Scheme card providers have argued elsewhere against mandating LCR, cautioning that merchant routing removes consumer choice and may reduce certain fraud protections offered by credit cards.[57]

6.62 The Reserve Bank governor, Philip Lowe, described the position of the Payment System Board (the body tasked with setting the RBA's payments system policy) with respect to LCR and mobile payments as follows:

> The Board also expects that in the point-of-sale or 'device present' environment all acquirers should provide merchants with the ability to implement least-cost routing for contactless transactions, possibly on an 'opt-out' basis.[58]

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53 EY, *Submission 3*, p. 7.

54 Ms Alexi Boyd, CEO, Council of Small Business Organisations Australia, *Committee Hansard*, p. 1

55 Ms Alexi Boyd, CEO, Council of Small Business Organisations Australia, *Committee Hansard*, p. 1; Mr Stephen Benton, CEO, eftpos Payments Australia, *Committee Hansard*, p. 26.

56 Mr Stephen Benton, CEO, eftpos Payments Australia, *Committee Hansard*, 26 July 2021, p. 26.

57 Emma Koehn, 'Visa warns Reserve Bank over tap-and-go regulation', *The Sydney Morning Herald*, 4 March 2020.

58 Philip Lowe, 'Innovation and Regulation in the Australian Payments System', Address to the Australian Payments Network, Reserve Bank of Australia, 7 December 2020.

6.63 Dr Lowe nevertheless noted that 'it is not yet clear how least-cost routing should operate and what expectations on its provision might be appropriate'.[59]

6.64 The Reserve Bank also told the committee that not all debit transactions can be routed, including transactions initiated by a mobile device, online transactions, and transactions made by inserting a physical card into a POS terminal for which the consumer must select routing.[60]

6.65 Beyond the technical aspects, the RBA noted that aggregate fees for Visa and Mastercard include transactions involving international cards that usually incur higher fees than domestic cards, leading to somewhat inflated average fees. Fees for transactions using Visa and Mastercard debit do remain higher on average than those made through eftpos. Yet, these averages do not account for the difference in the composition of transactions processed across each network for two key reasons.

6.66 First, eftpos only recently began processing online transactions and does not process transactions using foreign-issued cards—both of which tend to be more expensive than domestic POS transactions.

6.67 Second, average transaction prices for debit schemes do not account for merchants that use payment plans (around a quarter of Australian merchants), through which both credit and debit transactions may be bundled into a monthly fee. These factors may mean that the difference in average costs between card schemes may 'overstate the cost difference for similar in-person transactions on domestic-issued cards', according to the Reserve Bank.[61]

Committee view on least-cost routing

6.68 The committee acknowledges the strongly held views on least-cost routing and that small businesses are likely to benefit from the ability to choose how they route mobile transactions.

6.69 However, the committee is not convinced of the scale of the purported benefits of least-cost routing advanced by some witnesses to this inquiry. For example, the case for adopting least-cost routing laid out by several submitters to this inquiry may not reflect all the available evidence. In this regard, the committee notes evidence from the Reserve Bank that factoring in international fee components and payment plans may mean the difference in average costs between like for like card schemes may be less than currently estimated.

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59 Philip Lowe, 'Innovation and Regulation in the Australian Payments System', Address to the Australian Payments Network, Reserve Bank of Australia, 7 December 2020.

60 Reserve Bank of Australia, answer to question taken on notice on 26 July 2021 (QoN 03), p. 2 (received 13 August 2021).

61 Reserve Bank of Australia, answer to question taken on notice on 26 July 2021 (QoN 03), p.2 (received 13 August 2021).

6.70 The committee is also concerned that some implementations of LCR for mobile payments would in effect remove routing choice from customers. Some consumers may consequently face additional costs or inconvenience associated with managing their finances if they are unable to control the route through which their payments are processed. In this respect, the committee is disappointed no consumer groups made submissions to the inquiry on consumer perspectives around payment routing or merchant fees, among other issues.

6.71 The committee considers that, prior to any move to implement LCR, it would be prudent to assess the merits of retaining the current ability of customers to route transactions over their preferred network, if they so choose.

6.72 For these reasons, the committee considers an in-depth examination of the merits of different regulatory and technological approaches to enabling least-cost routing on mobile transactions is warranted.

Recommendation 11

6.73 The committee recommends the Treasurer direct the Australian Competition and Consumer Commission to conduct an in-depth examination of the merits of different regulatory and technological approaches to enabling least-cost routing on mobile transactions, including the merits of consumers retaining the ability to route transactions over their preferred network if they choose to do so.

Merchant surcharging

6.74 Merchants are permitted to pass on to consumers the cost of accepting a transaction made with a physical card at a POS terminal. This is known as 'merchant surcharging'.

6.75 CPA Australia pointed to the benefits of merchant surcharging for small businesses, claiming it promotes competition within the payments system, keeps downward pressure on payment costs, assists merchants to maintain profitability, and puts downward pressure on the total price of goods and services where merchants build surcharging costs into their pricing.[62]

6.76 In contrast to regular card payments, however, most BNPL providers impose rules that prevent merchants from passing on interchange fees to consumers, prompting some concerns from regulators and industry related to the competitive neutrality of payments regulation.[63]

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62 CPA Australia, *Submission 19*, [p. 4].

63 Chay Fisher, Cara Holland, and Tim West, 'Developments in the Buy Now, Pay Later Market,' in *Bulletin*, Reserve Bank of Australia, March 2021, p. 66 and p. 69.

6.77 Some merchants are reported to face fees from BNPL providers of up to six per cent or more of the value of a transaction.[64]

6.78 Some BNPL providers also reportedly require merchants to pay additional fees on top of the interchange fee that can amount to multiple times the regulated interchange rate.[65]

6.79 The costs of accepting BNPL payments were also highlighted in several submissions. Unlike mobile payment platform providers like Apple and Google, BNPL services do have direct relationships with merchants that may require merchants to pay additional fees for accepting BNPL transactions. CPA Australia described costs associated with BNPL transactions as 'significantly higher' than other electronic payment methods, and noted that most BNPL providers did not disclose their merchant fees, resulting in a lack of transparency.[66]

6.80 Co-founder of BNPL provider, Zip Co, Mr Peter Gray told the committee that merchant service fees for its product, Zip Pay, amounted to between 1.5 to 5 per cent of the transaction cost.[67] However, he argued that BNPL providers typically offer additional services to merchants, such as referral traffic, integrated online transactions, or fraud guarantees.[68]

6.81 The Australian Securities and Investments Commission (ASIC) warned that despite agreements to the contrary, some merchants use deceptive techniques to pass on 'hidden' surcharges to customers. ASIC described such practices as amounting to misleading or deceiving consumers, and therefore illegal under Australian Consumer Law and the ASIC Act.[69]

6.82 As part of its ongoing Review of Retail Payments Regulation, the RBA is considering policy issues related to BNPL no-surcharge rules.[70] The longstanding view of the RBA with respect to surcharging is as follows:

64 CPA Australia, *Submission 19*, p.4

65 CMS Payments Intelligence, *Submission 18*, p. 2; and CPA Australia, *Submission 19*.

66 CPA Australia, *Submission 19*, pp. 4-5.

67 Mr Peter Gray, Co-founder, Zip Co, *Committee Hansard*, 26 July 2021, p. 33.

68 Mr Peter Gray, Co-founder, Zip Co, *Committee Hansard*, 26 July 2021, p. 35. Mr Gray has argued elsewhere that the fees born by merchants for offering Zip's payment products 'should not be subject to the same sort of scrutiny or legislative construct as traditional merchant fees' due to their differentiation in terms of value-added services. See Fintech Select Committee, *Committee Hansard*, 19 February 2020, p. 32.

69 Australian Securities and Investments Commission, *Buy now pay later: An Industry update: Report 672*, November 2020, p. 19; see also section 18, Australian Consumer Law.

70 Chay Fisher, Cara Holland, and Tim West, 'Developments in the Buy Now, Pay Later Market,' in *Bulletin*, Reserve Bank of Australia, March 2021, pp. 65-66.

> The right of merchants to apply a surcharge promotes payments system competition and keeps downward pressure on payment costs for businesses. If a business chooses to apply a surcharge to recover the cost of accepting more expensive payment methods, it may encourage customers to make the payment using a cheaper option. In addition, the possibility that a consumer may choose to use a lower-cost payment method when presented with a surcharge helps put competitive pressure on payment schemes to lower their pricing policies, indirectly lowering merchants' payments costs. The possibility of surcharging may also help merchants to negotiate lower prices directly with their payments service provider. By helping keep merchants' costs down, the right to apply a surcharge means that businesses can offer a lower total price for goods and services to all of their customer.[71]

6.83 The RBA nevertheless acknowledged that under certain conditions, no-surcharging rules can facilitate innovation by helping emerging service providers to compete with incumbents.[72]

6.84 The Reserve Bank governor, Dr Phillip Lowe, summarised the current position of the Payment System Board with respect to BNPL surcharging as follows:

> BNPL operators in Australia have not yet reached the point where it is clear that the costs arising from the no-surcharge rule outweigh the potential benefits in terms of innovation… The Board expects that over time a public policy case is likely to emerge for the removal of the no-surcharge rules in at least some BNPL arrangements.[73]

Committee view on merchant surcharging

6.85 The committee acknowledges the arguments for giving greater freedoms to pass on fees to consumers for all payment types to promote competition, innovation, and put downward pressure on payment processing costs. Nevertheless, the committee is reluctant to recommend regulation to this effect, noting no-surcharging rules can protect new entrants and allow new products to become commercially viable. In the interim, the committee prefers industry take steps to become more transparent and remove no-surcharging rules as soon as it is viable to do so. That said, the committee recognises merchant surcharging may become a matter for public policy if industry fails to take appropriate steps in a reasonable timeframe.

Recommendation 12

6.86 The committee recommends payment systems make their fee structures more transparent to consumers, merchants, and regulators.

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71 CMS Payments Intelligence, *Submission 18*, [p. 1-2].

72 Chay Fisher, Cara Holland, and Tim West, 'Developments in the Buy Now, Pay Later Market,' in *Bulletin*, Reserve Bank of Australia, March 2021, pp. 66-67.

73 Philip Lowe, 'Innovation and Regulation in the Australian Payments System', Address to the Australian Payments Network, Reserve Bank of Australia, 7 December 2020.

Security and risk

6.87 Mobile transactions may be secured through device authentication (such as a pin or biometric sensor), payment tokenisation (a digitised credit card number), machine learning, and fraud detection platforms. Digital wallets are also generally encrypted and usually require some form of authentication by the user for a transaction to be made—usually a passcode, password, or a biometric identifier like a fingerprint or facial recognition. As such, mobile payments and digital wallets offer enhanced security features relative to their physical counterparts and are generally considered less prone to abuse than cash or card. For example, Apple submitted 'Australian banks and the payments industry have consistently confirmed that incidences of fraud are near zero on Apple Pay'.[74]

6.88 CBA similarly confirmed:

> [Internal fraud data] shows volumes are <0.01 per cent of total spend by CBA customers across all third party digital wallets enabled by the bank. That is, the occurrence of fraud is extremely low.[75]

6.89 Despite their enhanced security features, mobile payments and digital wallets may present several unique risks. These relate particularly to:

- cybersecurity;
- the control of strategic national assets; and
- counter-terrorism financing and anti-money laundering (CTF/AML).

6.90 Evidence suggests an increasing share of the devices and platforms used to make mobile payments are subject to foreign ownership and foreign control. For example, CPA Australia submitted that seven of the world's largest ten companies by market capitalisation are digital platforms, of which five are based in the United States and two in China.[76]

6.91 eftpos CEO, Mr Stephen Benton, cautioned:

> We don't have the ability to control foreign governments and how they control the companies within those countries. So, therefore, it would really be at the risk of them choosing how that data can be used and how those servers are provided rather than purely being Australian controlled.[77]

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74 Apple, *Submission 20.1*, p. 1.

75 Commonwealth Bank of Australia, answer to question taken on notice on 27 July 2021, *Fraud stats* (received 21 September 2021), p. 2.

76 CPA Australia, *Submission 19*, p. 7.

77 Mr Stephen Benton, CEO, eftpos Payments Australia, *Committee Hansard*, 26 July 2021, p. 25.

6.92 Mr Naffah told the committee that Apple's market dominance may pose a 'significant systemic risk' to Australia given that the company is not subject to APRA regulation.[78]

6.93 Treasurer the Hon Josh Frydenberg MP pointed to similar concerns, stating:

> Ultimately, if we do nothing to reform the current framework, it will be Silicon Valley alone that determines the future of our payments system, a critical piece of our economic infrastructure.[79]

6.94 The committee was also told of possible risks related to the storage of Australian consumer data and transaction information.

6.95 Mr Peter Gray told the committee that Zip Co did not share data with external parties other than the transaction amount. He further stated that the company's data was stored in local jurisdictions and not overseas.[80]

6.96 Google stated that most data related to payments made through Google Pay is stored within the United States, while other data held by the company is distributed on servers around the world.[81]

6.97 Google further clarified:

> Our collection and storage of data comes with the highest levels of security to protect this information with full encryption in place. We have designed and custom-built our servers and data centres, never selling or distributing them externally and we have an industry-leading security team available globally making our facilities one of the safest places for data to be stored.[82]

6.98 In seeking to allay the committee's concerns about the impacts on data privacy if there was a takeover or divestiture of Google's payments business, Ms Layfield expressed confidence that legal protections would protect customer data.[83]

6.99 Dr Richards noted, 'the Bank hasn't felt a need to regulate to try to bring infrastructure onshore'.[84]

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78 Mr Albert Naffah, General Manager, Payments and the Data Economy, Commonwealth Bank of Australia, *Committee Hansard*, 27 July 2021, p. 4.

79 James Frost, 'Treasurer to pull Apple, Google into line', *Australian Financial Review*, 30 August 2021.

80 Mr Peter Gray, Co-founder, Zip Co, *Committee Hansard*, 26 July 2021, p. 38.

81 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, pp. 52-53. The location of Google's data centres is available here: www.google.com.au/about/datacenters/locations/ (accessed 30 August 2021).

82 Google, answer to question taken on notice on 26 July 2021 (QoN 03), (received 16 August 2021).

83 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 53.

84 Dr Anthony Richards, Head of Payments Policy Department, Reserve Bank of Australia, *Committee Hansard*, 26 July 2021, p. 7.

6.100 Witnesses also discussed the possibility of risks related to the use of transaction data. As discussed in Chapter 5, the different security solutions adopted by Apple and Google for their respective payment platforms are generally considered highly secure. Apple devices offer a hardware-based solution in which payment credentials are stored on a dedicated 'secure element' chip. Android devices use a software approach called Host Card Emulation (HCE), in which payment credentials are stored in the cloud.

6.101 Mr Blockley told the committee:

> Apple claims that they hold no data, they hold no card information, because of the architecture of their system. So the card token sits inside the secure element of the handset and the transactions are just passed through their system without ever being stored anywhere… That's not necessarily the case in the Android system, although I personally have seen no evidence of Google Pay actually using data. But clearly transaction data is very powerful.[85]

6.102 Google similarly claimed, 'we do not believe there is any form of security compromise in the host card emulation situation' (Google's alternative technological solution to Apple's that enables secure mobile payments), 'our payments apps are immensely secure'.[86]

6.103 CBA told the committee:

> CBA has not identified any material difference in the fraud experience between the closed operating environment of Apple devices and the open access operating system of Android devices.[87]

6.104 Apple nevertheless described the HCE approach as 'a less secure implementation'.[88]

6.105 Mr Blockley told the committee that 'for many years some of Australians' payment data has been held overseas'. He also cautioned that 'foreign governments can interfere with payment systems by edict'.[89]

6.106 Mobile payments and digital wallets may also be particularly vulnerable to AML/CTF risks. AUSTRAC in 2017 estimated the overall ML/TF risks associated with SVFs to be 'medium,' determining that SVFs nevertheless carried 'high' levels of vulnerabilities related specifically to the ease of moving funds outside traditional banking channels, as well as other factors. The level

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85 Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 14.

86 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 50.

87 CBA, answer to question taken on notice on 27 July 2021, *Fraud Stats* (received 21 September 2021).

88 Apple, answer to written question on notice (WQoN 001), (received 23 July 2021).

89 Mr Lance Blockley, Managing Director, The Initiatives Group, *Committee Hansard*, 26 July 2021, p. 15.

of risk posed by SVFs was also found to vary considerably based on the features of each product.[90]

6.107 The Australian Banking Association advocated addressing 'gaps in the detection and prevention of financial crime,' noting that doing so may 'become difficult to achieve where a single entity does not have visibility of the entire transaction path'—as is the case for mobile payments.[91]

6.108 EY submitted that regulator support is necessary to ensure Australia maintains a robust security framework and standards for the payments industry.[92]

Committee view on security and risk

6.109 In the committee's view, evidence did not point to a significant problem with security and risk. On the contrary, some of the developments in mobile payments and digital wallets have enhanced security and reduced risks faced by both consumers and industry, such as fraud mitigation measures and biometric security.

6.110 Moreover, the committee notes the two different models used by mobile payment platform providers, Apple and Google, alternatively rely on a hardware solution and a cloud-based solution. These differences add to diversity within the payments system and may make the overall system more robust.

6.111 Nevertheless, noting the rapid changes in this space, the committee welcomes ongoing attention to these issues.

Consumer protections

6.112 This section outlines two key areas in which evidence before this committee suggested mobile payments and digital wallets may impact consumer protections, including data privacy and the BNPL sector.

Data privacy

6.113 CPA Australia pointed out that payment platforms have 'possibly unparalleled access to data'—much of which may be highly sensitive—and emphasised the need to ensure consumers are protected from the potential for 'invasive tracking' by apps and data exploitation by large digital platforms, including digital wallets.[93]

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90 AUSTRAC, *Stored Value Cards: Money Laundering and Terrorism Financing Risk Assessment*, April 2017.

91 Australian Banking Association, *Submission 16*, p. 3.

92 EY, *Submission 3*, p.11.

93 CPA Australia, *Submission 19*, p. 7.

6.114 CPA Australia also noted the OECD has previously highlighted the need for consumers to be provided with better protections from tracking.[94]

6.115 The Australian Banking Association raised similar concerns similar around data privacy and customer profiling associated with mobile payments and digital wallets.[95]

6.116 And as the RBA noted, 'some digital wallet providers may seek to commercialise customers' data'.[96]

6.117 The Australian Finance Industry Association (AFIA) raised concerns that some developers and service providers are required to share data with mobile device manufacturers, 'raising concerns about consumer data privacy and security'.[97]

6.118 Google claimed that 'Google Pay will protect the privacy and security of the personal information of our users and offer them transparency, choice and control over their data'. Google told the committee this is ensured by never selling personal information to third parties and never sharing transaction histories with other Google services.[98]

6.119 Ms Layfield also told the committee, 'Google does not monetise data from Google Pay in Australia'. She conceded there were 'non-transaction data aspects', but insisted, 'we do not monetise transaction data or payments data from within the app in Australia'.[99]

6.120 Ms Layfield detailed the specifics of how Google uses Google Pay transaction data:

> If you were to make a payments transaction and you were to buy a pair of shoes, that transaction data that might give us that information does not leave the Google Pay environment. We don't use transaction data for ads, for example. Our ads monetisation, which is… our primary monetisation route, does not receive that data from Google Pay.[100]

6.121 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Baban Eulaiwi questioned Ms Layfield's assertion, pointing to Google Pay's terms of service, in which users reportedly 'permit Google to share your personal

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94 CPA Australia, *Submission 19*, p. 7.

95 Australian Banking Association, *Submission 16*.

96 Reserve Bank of Australia, *Submission 8*, p. 5.

97 Australian Finance Industry Association, *Submission 12*, p. 3.

98 Google, *Submission 15*, p. 8.

99 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 49.

100 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 50.

information with merchants, payment processors, and other third parties'. They told the committee:

> It is widely believed that Google make use of the users' data for research purposes and for marketing other Google services to users. In the case of Google Pay, the marketing information presented to users is currently in the form of relevant offers that are reportedly based on sensitive transaction data, such as merchants and location.[101]

6.122 Dr Duong and colleagues further claimed:

> It is widely viewed that Google currently does not monetise its Google Pay because it aims to increase the market share. However, it is expected that the business model of Google Pay, like Google Maps, could change in the future should opportunities arise.[102]

6.123 Ms Layfield gave evidence that Google has no access to data on non-Google-run app stores.[103]

6.124 Ms Lucinda Longcroft provided details on how the company uses data from app-based transactions on the Google Play store:

> In compliance with our privacy policy, that data is used for limited purposes. It is used, for example, for improving the delivery and execution of our Play service account management, as well as for personalising experience of the user on Google Play and on our other services—for example, to improve your search results or recommendations. We do not sell personal data to any third party.[104]

6.125 Apple claimed in its submission that it does not manage or access customer accounts, nor does it have access to card or payment details for mobile transactions made on its devices.[105]

6.126 Mr Gavan Ord told the committee, 'it's not just the Apples and the Googles that are collecting this data. Many businesses have access to a whole range of data on their consumers, and that has to be protected'.[106]

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101 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Baban Eulaiwi, answer to question taken on notice (QoN 01), 27 July 2021 (received 5 August 2021).

102 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor, and Dr Baban Eulaiwi, answer to question taken on notice (QoN 01), 27 July 2021 (received 5 August 2021).

103 Ms Diana Layfield, Vice-President, Product Management and Partnerships, Google, *Committee Hansard*, 26 July 2021, p. 52.

104 Ms Lucinda Longcroft, Director, Government Affairs and Public Policy, Australia and New Zealand, Google, *Committee Hansard*, 26 July 2021, p. 51.

105 Apple, *Submission 20*, pp. 3-4.

106 Mr Gavan Ord, Manager, Business and Investment Policy, CPA Australia, *Committee Hansard*, 27 July 2021, p. 15.

Committee view on data privacy

6.127 While the committee heard high-level concerns about large payment platforms, the committee did not receive evidence of significant specific data privacy issues related to mobile payments and digital wallets. The committee nevertheless has concerns that such issues could arise in the future. Moreover, the committee notes the heavily qualified language used by Google throughout its evidence and is not convinced about its claims regarding the commercial use of data related to purchases and customers using its payment platform. The committee therefore considers that questions remain related to consumer privacy and the commercialisation of data related to Google Pay transactions. The committee understands the Privacy Act 1988 prescribes how agencies and organisations with an annual turnover of more than $3 million handle personal information, including those operating in the payments system. The committee also notes payment processing platforms may be brought under existing regulations in the future, including the ePayments Code currently under review by ASIC. The committee therefore encourages ASIC to ensure attention is paid to the privacy aspects of the Code to help industry better interpret the national privacy principles.

Buy Now Pay Later

6.128 Evidence before the committee pointed to significant risks to consumers related to the BNPL sector. Digital wallets and mobile payments have reduced the friction that may otherwise be associated with deferred payment models for goods and services, potentially exacerbating the scale and impact of risky behaviour. Several submitters pointed to the BNPL sector as having increased indebtedness among some consumers.[107]

6.129 As with mobile payment platforms, the BNPL sector has largely fallen outside the scope of regulators in Australia.

6.130 Journalist Jack Derwin claimed:

> Despite the reality of what buy now, pay later companies are doing — that is, issuing-point of-sale loans — none are being policed by the same laws other lenders face. In fact, some appear to be actively fighting attempts by regulators and the government to lay down the law.[108]

6.131 EY described the BNPL industry as one in which ‘innovation moved faster than regulation, resulting in a self-regulated ecosystem’.[109]

6.132 Payments consultant Brad Kelly warned:

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[107] See for example CPA Australia, *Submission 19*; and EY, *Submission 3*.

[108] Jack Derwin, ‘Buy now, pay later companies are completely unregulated and it's leaving Australians vulnerable, Splitit CEO Brad Paterson argues’, *Business Insider Australia*, 21 February 2020.

[109] EY, *Submission 3*, p. 11.

> The BNPL market is saturated and two things are happening. One, a higher level of risk appetite is entering the market — that is regulatory risk and customer risk, where the customers [sic] profile is becoming riskier… The other is that at the bigger end of town, Afterpay and Zip are going on spending sprees buying up as many other BNPL companies as they can because they don't have a road to profitability and they are instead just growing revenue.[110]

6.133 BNPL providers have nevertheless taken steps to self-regulate. Some of the biggest providers agreed to a binding 'world-first' Code of Practice earlier this year under AFIA.[111]

6.134 Mr Gray told the committee Zip Co conducts credit checks, unlike some BNPL providers, and freezes the ability of customers to make additional payments when repayments are overdue. He claimed Zip Co had around 1000 customers deemed to be facing financial hardship out of around 2.5 million customers in Australia.[112]

6.135 Mr Gray stated before the committee that Zip Co's financial viability was not reliant on customer late fees.[113]

Committee view on Buy Now Pay Later

6.136 The committee notes the open and collaborative approach to this inquiry adopted by Zip Co and the steps taken by BNPL providers to self-regulate, including the industry-first Code of Practice which came into effect in March 2021. Nevertheless, the committee is concerned that the BNPL industry—like the broader payments system—is changing rapidly, with new entrants and new products being regularly launched in Australia.

6.137 Moreover, the committee believes industry self-regulation is likely to be most effective for more mature industries characterised by an abundance of well-established players. This is not the case with the Buy Now Pay Later sector.

6.138 For these reasons, the committee believes a parliamentary inquiry into this space is warranted early in the next parliament, starting not later than 18 months after the Code of Practice came into effect, to investigate issues related to consumer protections, the impact of BNPL services on other sectors, and fees and transparency related to the provision of BNPL products, among other issues.

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110 Quoted in Jack Derwin, 'Australia's buy now, pay later sector will soon face a day of reckoning', *Business Insider*, 7 June 2021.

111 Australian Finance Industry Association, 'Buy Now Pay Later Code of Practice', 1 March 2021.

112 Mr Peter Gray, Co-founder, Zip Co, *Committee Hansard*, 26 July 2021, p. 33.

113 Mr Peter Gray, Co-founder, Zip Co, *Committee Hansard*, 26 July 2021, p. 34.

Recommendation 13

6.139 The committee recommends the committee consider an inquiry into the Buy Now Pay Later industry 18 months after the industry Code of Practice came into effect.

Financial inclusion and accessibility

6.140 While mobile payments and digital wallets have seen rapid uptake among Australians over recent years, some individuals and groups have either chosen not to—or have been unable to—adopt these new technologies. Some submitters raised concerns that these developments could disadvantage the minority of Australians that do not own a smartphone and therefore cannot leverage the benefits of digital wallets and mobile payments. AFIA submitted this may disproportionately include those living in rural and regional Australia, as well as culturally and linguistically diverse communities.[114]

6.141 In its 2019 strategic agenda, the strategic coordination body for the payments industry, the Australian Payments Council (APC), noted:

> The Australian payments system touches everybody, everyday. Australians need access to appropriate payment options as a core component of their daily lives. As such, the accessibility of the payments system is a core characteristic of its effectiveness.[115]

6.142 In its strategic plan, the APC announced plans to develop guiding principles for its members regarding financial inclusion.[116]

6.143 Uptake of mobile payments and digital wallets among individuals who are less financially literate may also present concerns—particularly related to indebtedness from BNPL and other lightly regulated credit products. AFIA pointed to steps taken to address these gaps through industry self-regulation that sought to enhance financial literacy and reduce risky behaviour among consumers.[117] AFIA CEO, Ms Diane Tate, also recommended a more equitable rollout of the national broadband and 5G networks, as well as ensuring venues provide mobile charging stations to ensure customer devices function when needed.[118]

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[114] Australian Finance Industry Association, *Submission 12*, p. 4.

[115] Australian Payments Council, 'Payments in a Global, Digital World, The Australian Payments Council Strategic Agenda', June 2019, p. 12, australianpaymentscouncil.com.au/wp-content/uploads/2019/06/APC_Strategic_Agenda_June_2019.pdf (accessed 20 September 2021).

[116] Australian Payments Council, 'Payments in a Global, Digital World, The Australian Payments Council Strategic Agenda', June 2019, p. 12, australianpaymentscouncil.com.au/wp-content/uploads/2019/06/APC_Strategic_Agenda_June_2019.pdf (accessed 20 September 2021).

[117] Australian Finance Industry Association, *Submission 12*, p. 4.

[118] Ms Diane Tate, CEO, Australian Finance Industry Association, *Committee Hansard*, 26 July 2021, p. 43.

Committee view on financial inclusion

6.144 The committee considers developments in the payments space should not come at the cost of access and inclusion for a minority of Australians who are unable to fully participate. The committee notes industry's own efforts as well as ASIC's strong history of promoting digital and financial literacy, such as the ASIC-run Moneysmart website.[119] The committee would welcome ongoing attention to this space, noting the sector is transforming rapidly and such initiatives may require regular and ongoing attention.

Recommendation 14

6.145 The committee recommends the Australian Securities and Investments Commission regularly update its Moneysmart website to ensure it appropriately captures changes in the payments sector.

Cross-border payments and remittances

6.146 Digital wallets offer new avenues for reducing the friction faced by consumers making cross-border payments and transfers. However, regulations in Australia have reportedly stifled innovation and services in this space.

6.147 Australian Fintech, mHITs, which offers international mobile remittance services, submitted that it has faced 'ongoing discrimination and anti-competitive behaviour by Australian banks', allegedly on the basis of risk compliance and AML concerns.[120]

6.148 mHITs further claimed the broader remittance sector in Australia has been severely impacted by 'bank de-risking policies', leading to repeated de-banking of remittance companies and 'the collapse of the Australian remittance industry sending a significant proportion of financial intelligence information and transaction monitoring and reporting underground'.[121]

6.149 Similar concerns were raised by fintech 'unicorn' (a fintech valued at over a billion US dollars) Nium, which provides cross-border remittance and other payments services. Singapore-based Nium claimed to have been regularly de-banked in Australia over AML concerns, with few avenues to negotiate or appeal the decision by banks.[122]

6.150 EY pointed to Singapore and Thailand, which have linked their fast payment networks to enable cross-border transfers via a digital wallet. EY further

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[119] https://moneysmart.gov.au/ (accessed 8 October 2021).

[120] mHITs, *Submission 4*, p. 1.

[121] mHITs, *Submission 4*, p. 2.

[122] James Eyers, '"De-banking" of fintechs is rife, Senate committee told', *Australian Financial Review*, 8 September 2021.

submitted, 'Australian regulatory bodies need to consider how and what roll [sic] digital wallets play in overseas payments'.[123]

6.151 The ACCC investigated in 2019 the de-banking of fintechs. Mr Marcus Bezzi told the Senate Select Committee on Australia as a Technology and Financial Centre, '[the Commission] formed the view there weren't matters that needed to be progressed from a competition enforcement perspective'.[124]

Committee view on cross-border payments

6.152 The committee notes the constant threat of de-banking faced by the remittance sector and the likely impact on Australian consumers looking to transfer their money overseas. While the committee has no wish to influence which companies or sectors banks choose to work with, it would welcome ongoing scrutiny by the ACCC and any other relevant regulators to ensure Australian consumers and businesses are not disadvantaged by a lack of regulatory clarity.

Mr Andrew Wallace MP
Chair

123 EY, *Submission 3*, p. 10.

124 Mr Marcus Bezzi, Executive General Manager, Specialist Advice and Services, Australian Competition and Consumer Commission, Senate Select Committee on Australia as a Technology and Financial Centre, *Committee Hansard*, 8 September 2021, p. 36.

Dissenting Comments by Labor Members

1.1 There are four areas where we do not agree with the Committee's findings and recommendations and issue these dissenting comments in relation to those aspects.

1.2 Overall, aside from these areas, the report is robust and the recommendations are supported.

Liberal Government's poor track record

1.3 We do not share the unfounded optimism of Government members that urgently needed action on payments policy and regulation is finally nigh. Indeed they write at 4.73 "*with the release of the Farrell Review, the committee is cautiously optimistic that much-needed reforms are progressing*".

1.4 Unfortunately, while we all may hope for action, there is no basis whatsoever for optimism that the Government will finally act just because they have received yet another review.

1.5 The Government is now in its 9th year of office. During this time the payments landscape has transformed rapidly, seeing new technology and numerous new entrants into the ecosystem and market. Australia has experienced the rise of behemoths GooglePay and ApplePay, pioneered new forms of credit such as Buy Now Pay Later (BNPL), and seen more consumers experiment with new payment technologies including stored value facilities.

1.6 **The Government has received multiple reports over 8 years with increasingly urgent recommendations for change, yet has implemented few to none of the necessary reforms.**

1.7 For example, regulation regarding stored value facilities was recommended in the 2014 Financial System Murray Inquiry; the 2018 Productivity Commission Report into competition and financial services; by the Council of Financial Regulators in 2020; and now the 2021 Farrell Review.

1.8 Scott Farrell of course has completed two previous inquiries for the Government, the first of which has been responded to, however the Government has failed to respond to his second report received in October 2020 and released in December 2020.

1.9 Eight years of inaction, including no response whatsoever to the previous Farrell Report, is hardly the basis for confidence that something will now happen in response to this third Farrell Report.

Avoiding politicisation of payments regulation

1.10 Recommendation 1 calls for Treasury to exhibit "leadership" in "the payments space". We are not convinced that payments policy and regulation should be led by Treasury under this Treasurer.

1.11 We agree that the Treasury needs to enhance its capability and capacity to engage in payments policy and regulatory debates. Under the current Treasurer, however, we risk a very different approach to that exhibited by the Reserve Bank of Australia (RBA).

1.12 Policy decisions under the current Treasurer have been characterised by inexplicable delays, capriciousness and accommodation of vested interests close to the Liberal Party.

1.13 The Treasurer has failed again and again to put the interests of consumers first, and ensure that policy is fit for purpose. For example, during the COVID-19 pandemic, he has recklessly used his powers as Treasurer to attack access to justice for individuals through class actions. Placing payments regulation in the hands of the current Treasurer risks the extension of this capricious approach.

1.14 In our view, significant regulatory changes are required now to respond to rapid changes of recent years and set up the system for the future. These may well need to be devised with or outside the RBA. However, there may be benefit in allowing payments policy to be led by an independent regulator or body outside the direct control of the Treasurer and hence impervious to vested interests, lobbyists, rent seeking behaviour and politicisation.

Access to Apple's NFC Chip

1.15 Third party access to Apple's NFC Chip is a controversial issue which has vexed Parliaments and regulators worldwide. The report summarises well the issues and arguments which do not need to be repeated here. Government members conclude "*the committee does not recommend Apple be forced to grant direct operating-system-level third-party access to its NFC antenna at this time*", going on to note the Australian Competition and Consumer Commission's (ACCC) examination of this issue.

1.16 We consider however that the onus needs to be reversed. The default position should be a presumption of open access of critical hardware on reasonable commercial terms and this should include Apple.

1.17 Parliament is no stranger to these regulatory issues. Sectors such as railways, telecommunications and ports have long had regulatory architecture and access regimes to promote competition and innovation, and prevent unfair or uncompetitive use of market power or dominance. A reasonable analogy is the telecommunications network infrastructure where network infrastructure cables that send the signals are subject to open access regulation.

1.18 **The presumption of Parliament and the regulators should be in favour of open access regimes on reasonable commercial terms to maximise competition and innovation, and it should then be up to Apple or any other handset manufacturer to argue why they should be an exception.**

1.19 This does not mean that no controls can be placed on access to protect security and privacy. There may be genuine security reasons why access should be controlled, but those circumstances should be considered on a case-by-case basis, with input from Australia's cyber security community.

1.20 It is acknowledged that new payments technology, such as QR codes soon to be seen in Australian shops, may mitigate or reduce the competitive concerns raised by Apple's refusal to allow access to its NFC. These may well be arguments that Apple can make to the ACCC.

1.21 **We consider however that Parliament should clearly favour a presumption of competition and open access regimes, and that this would be the correct starting point for the work of agencies including the ACCC.**

BNPL and consumer regulation

1.22 Recommendation 13 regarding BNPL is vague and unnecessarily obtuse.

1.23 Industry self-regulation via the BNPL Industry Code of Practice has been a reasonable approach to date as the sector developed and matured.

1.24 Industry self-regulation is unlikely to be appropriate forever, and there is a prima facie and growing case for fit-for-purpose regulation of the BNPL sector to entrench consumer protections, ensure credit providers are placed on a fair regulatory playing field, and promote competition and a reduction in fees.

1.25 This should be the subject of a focussed inquiry in the next term of Parliament and it would have been preferable for the Committee to say so directly.

Mr Julian Hill MP | **Senator Louise Pratt** | **Senator Deborah O'Neill**

Mr Steve Georganas MP
Deputy Chair

Dissenting Comments by Senator Bragg

1.1 On 25 March 2021, the Parliamentary Joint Committee on Corporations and Financial Services opened an inquiry into mobile payment and digital wallet financial services. The inquiry, as stated in the Terms of Reference, has examined imbalances of bargaining power, implications for competition and consumer protection, and the adequacy of the existing regulatory framework, among other issues.

1.2 The recommendations of the report ought to be directed towards solving policy problems, rather than addressing hypothetical issues.

1.3 To that end, recommendations 6, 7, and 13 impose an undue burden on the Buy-Now Pay-Later (BNPL) sector and innovation in the Australian economy. When considered in light of the current regulatory environment for these participants, these recommendations are not directed towards resolving issues identified in the terms of reference. I respectfully dissent from recommendations 6, 7, and 13.

The Regulatory Environment

1.4 The existing regulatory environment in Australia has been regularly reviewed and recently reformed. The report identified seven actors[1] administering a regulatory framework which largely consists of seven regulatory instruments.[2] As noted in the Final Report at 4.6:

> The multi-regulator model has led to perceptions of complexity and regulatory overlaps, as well as possible gaps in the regulatory framework.[3]

1.5 Submitters described the environment as 'inconsistent and complex'[4], 'overly burdensome'[5], and 'very confusing'[6]. EY described the environment as 'one of the most highly regulated financial services ecosystems in the world'[7].

1.6 These issues are compounded for new market participants and have thus been a major obstacle for the BNPL sector. I do not agree with proposals which would increase the regulatory burden for the BNPL sector without clarifying

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1 *Final Report*, p. 27-28.

2 *Final Report*, p. 29-30.

3 *Final Report*, p. 31.

4 *Final Report*.

5 *Final Report*.

6 *Final Report*.

7 EY, *Submission 3*, p. 9.

and rationalising existing settings. The case has not been made in this report or elsewhere.

1.7 Given the significant obstacles already faced by this sector, such an impost would be inappropriate. Moreover, this does not account for completed and ongoing reviews into this sector, such as the Review of Retail Payments conducted by the Reserve Bank of Australia and the Senate Inquiry into Financial Technology and Regulatory Technology.

1.8 The level of scrutiny applied to this sector may create a 'regulatory chill' factor which could have an adverse impact on competition in payments and financial services, in addition to constraining investment and jobs.

Overview of the BNPL Sector

1.9 The BNPL market is experiencing rapid growth in Australia providing an agile, low-cost alternative to traditional banking services. The value of BNPL transactions increased by 55% in 2019-20 and increased threefold over the previous two financial years.[8] For many younger people, BNPL has created a new set of options as an alternative to major banking groups.

1.10 For a country like Australia, this type of innovation in FinTech is terribly important due to the concentrated banking market. More choice, lower prices and more agency has been the result of BNPL.

1.11 The BNPL market remains relatively small. It makes up only around 1.7% of the broader payments sector.[9] In 2020, the largest market participant, Afterpay, engaged 48,000 Australian merchants and 3 million customers.[10] This included 38,000 small and medium-sized businesses.[11]

The Recommendations

Recommendation 6. The committee recommends the Australian Finance Industry Association continues to monitor the effectiveness of the Buy Now Pay Later (BNPL) Code of Practice and ensure the Code is updated as and when necessary.

1.12 I agree that the Australian Finance Industry Association should continue to monitor the effectiveness of the BNPL Code of Practice. But that is not something that needs to be mandated by federal Parliament.

1.13 The committee process exists to resolve issues of public policy by aiding the legislative process. As a voluntary code governing the relationships between

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8 Chay Fisher, Cara Holland and Tim West 'Developments in the Buy Now, Pay Later Market' in *Bulletin*, Reserve Bank of Australia, March 2021/

9 Ms Diane Tate, CEO, AFIA, *Committee Hansard*, 26 July 2021, p. 46.

10 Accenture, *Afterpay Economic Impact: Australia 2020*, 2021, p. 5.

11 Accenture, *Afterpay Economic Impact: Australia 2020*, 2021, p. 5.

market participants, the committee should not be directing enforcement in a way which extends the remit of Parliaments' core legislative functions.

Recommendation 7. The committee recommends that Australian Securities and Investments Commission be given the power to make the ePayments Code mandatory for all industry participants.

1.14 The ePayments Code is an ASIC-managed but voluntary code which has been adopted by Banks, Credit Unions, Building Societies and a small number of non-bank financial institutions.

1.15 Voluntary codes fill an important regulatory function. Regulatory innovation is possible where participants may opt-out if the code is unduly burdensome or inconsistent with their business practices. Regulators can be responsive to innovation and change. Given this, mandating the code may be inconsistent with the content of the code. This could be especially injurious to the BNPL sector.

1.16 Moreover, mandating the Code by fiat would effectively confer lawmaking functions upon ASIC. The case for this has not been conveyed. I cannot support it.

Recommendation 13. The committee recommends the committee consider an inquiry into the Buy Now Pay Later industry 18 months after the Industry Code of Practice came into effect.

1.17 The evidence received by this committee does not support a further review of the BNPL sector. The BNPL sector has been scrutinised by numerous government agencies and Parliamentary committees since its emergence.

1.18 The report at 6.130 noted that the 'BNPL sector has largely fallen outside the scope of regulators in Australia'. I respectfully disagree. The BNPL sector has been subjected to a significant level of scrutiny. The report itself notes that the environment where the BNPL sector operates is 'one of the most highly regulated' in the world.[12] Risks to justify a higher regulatory burden have not been made out to a sufficient standard. This could destroy innovation and jobs in Australia.

1.19 Moreover, the BNPL Code of Practice is a voluntary code established by the Australian Finance Industry Association. It was formulated by, and will be implemented by, market participants in response to market issues. Reviewing this code is thus outside the core legislative remit of this committee.

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[12] EY, *Submission 3*, p. 9.

1.20 If consumer issues emerge, then a review can be conducted. But the Parliament should not be flagging future reviews without a demonstrable problem to solve. That would only undermine Australian dynamism.

Senator Andrew Bragg

Appendix 1
Submissions and additional information

Submissions

1 Dr Lien Duong, Dr Duc-Son Pham, Professor Grantley Taylor and Dr Baban Eulaiwi
2 Dr Harjinder Singh, and Associate Professor Nigar Sultana
3 EY
4 mHITs limited
5 Australian Retailers Association (ARA)
6 Restaurant and Catering Industry Association
7 Australian Payments Network
8 Reserve Bank of Australia
9 Australian Securities and Investments Commission (ASIC)
10 Commonwealth Bank of Australia (CBA)
11 Australian Competition & Consumer Commission (ACCC)
12 Australian Finance Industry Association (AFIA)
13 Match Group
14 eftpos & Beem It
15 Google
16 Australian Banking Association
17 Epic Games, Inc
18 CMSPI
19 CPA Australia
20 Apple
- 20.1 Supplementary to submission 20

21 FinTech Australia
22 Customer Owned Banking Association
23 Brody Frank

Answers to Questions on Notice

1 Apple: NFC Chip Access - Answer WQoN 001 conveyed on 8 July 2021 from Mr Wallace (received 23 July 2021)
2 Apple: Bluetooth POS Payments - Answer WQoN 001 conveyed on 8 July 2021 from Mr Wallace (received 23 July 2021)
3 Apple: App Store self-preferencing protections - Answer WQoN 001 conveyed on 8 July 2021 from Mr Wallace (received 23 July 2021)
4 Apple: Least Cost Routing - Answer WQoN 001 conveyed on 8 July 2021 from Mr Wallace (received 23 July 2021)
5 Apple: Merchant surcharging - Answer WQoN 001 conveyed on 8 July 2021 from Mr Wallace (received 23 July 2021)

6 Apple: In-app purchase commissions - Answer WQoN 001 conveyed on 8 July 2021 from Mr Wallace (received 23 July 2021)

7 Curtin University: Answer to question 01: Google's claim on data usage - taken on notice during public hearing on 27 July from Mr Hill (received 5 August 2021)

8 Curtin University: Answer to question 02: Other regulation models - taken on notice during public hearing on 27 July from Mr Hill (received 5 August 2021)

9 Zip: Answer to question 01: Share of regulated and unregulated lending - taken on notice during public hearing on 26 July 2021 from Senator O'Neill (received 5 August 2021)

10 Zip: Answer to question 02: Regulatory frameworks for security of personal information on major platforms - taken on notice during public hearing on 26 July 2021 from Senator O'Neill (received 5 August 2021)

11 CPA: Answer to question 01: German regulation of competition and consumer protection in 'big tech' - taken on notice during public hearing on 27 July 2021 from Senator O'Neill (received 11 August 2021)

12 CPA: Answer to question 02: European regulation of competition and consumer protection in 'big tech' - taken on notice during public hearing on 27 July 2021 from Senator O'Neill (received 11 August 2021)

13 eftpos: Answer to question 01: Least cost routing - taken on notice during public hearing on 26 July 2021 from Mr Hill (received 12 August 2021)

14 RBA: Answer to question 01: Other jurisdictions NFC regulation - taken on notice during public hearing on 26 July 2021 from Mr Wallace (received 13 August 2021)

15 RBA: Answer to question 02: What developments would indicate regulatory intervention is required - taken on notice during public hearing on 26 July 2021 from Senator Scarr (received 13 August 2021)

16 RBA: Answer to question 03: Potential savings from least-cost routing of dual-network debit card transactions - taken on notice during public hearing on 26 July 2021 from Mr Hill (received 13 August 2021)

17 RBA: Answer to question 04: Countries where Australia's financial data is held - taken on notice during public hearing on 26 July 2021 from Senator O'Neill (received 13 August 2021)

18 Google: Answer to question 01: Use of data by Google - taken on notice during public hearing on 26 July 2021 from Mr Hill (received 17 August 2021)

19 Google: Answer to question 02: Impacts on Fintech - taken on notice during public hearing on 26 July 2021 from Mr Georganas (received 17 August 2021)

20 Google: Answer to question 03: Location of data centres - taken on notice during public hearing on 26 July 2021 from Mr Wallace (received 17 August 2021)

21 Google: Answer to question 04: App developers on Google Play - taken on notice during public hearing on 26 July 2021 from Senator O'Neill (received 17 August 2021)

22 Treasury: Answer to question 01: Apple NFC access - taken on notice during public hearing on 27 July 2021 from Senator O'Neill (received 23 August 2021)

23 Treasury: Answer to question 02: Council of Financial Regulators recommendations - taken on notice during public hearing on 27 July 2021 from Mr Hill (received 23 August 2021)

24 Commonwealth Bank of Australia: Assessing BNPL - Answer to WQoN 002_01 conveyed on 18 August 2021 from Senator O'Neill (received 21 September 2021)

25 Commonwealth Bank of Australia: Treatment of BNPL accounts- Answer to WQoN 002_02_03 conveyed on 18 August 2021 from Senator O'Neill (received 21 September 2021)

26 Commonwealth Bank of Australia: BNPL liability - Answer to WQoN 002_04 conveyed on 18 August 2021 from Senator O'Neill (received 21 September 2021)

27 Commonwealth Bank of Australia: Promoting BNPL - Answer to WQoN 002_05 conveyed on 18 August 2021 from Senator O'Neill (received 21 September 2021)

28 Commonwealth Bank of Australia: Fraud Stats - taken on notice during public hearing on 27 July 2021 from Mr Hill (received 21 September 2021)

29 Commonwealth Bank of Australia: Future scenario - taken on notice during public hearing on 27 July 2021 from SEN O'Neill (received 21 September 2021)

30 Commonwealth Bank of Australia: Market statistics - taken on notice during public hearing on 27 July 2021 from Mr Wallace (received 21 September 2021)

31 Commonwealth Bank of Australia: Media Bargaining Code - taken on notice during public hearing on 27 July 2021 from SEN Scarr (received 21 September 2021)

Tabled Documents

1 eftpos - Mr Stephen Benton - Opening Statement - tabled in public hearing on 26 July, 2021 [submission 14A]

2 Beem It - Mr Mark Britt - Opening Statement -tabled in public hearing on 26 July, 2021 [submission 14B]

3 Zip Co - Mr Peter Gray - Opening Statement - tabled in public hearing on 26 July, 2021 [submission 22]

4 Google - Ms Diana Layfield - Opening Statement - tabled in public hearing on 26 July, 2021 [submission 15A]

Appendix 2
Public hearings

Monday, 26 July 2021
Committee Room 2S3
Parliament House
Canberra

Reserve Bank of Australia
- Mr Chay Fisher, Senior Manager, Payments Policy Department
- Dr Anthony Richards, Head of Payments Policy Department

Mr Lance Blockley, Private capacity

Australian Payments Network
- Mr Andy White, CEO

eftpos & Beem It
- Mr Mark Britt, CEO
- Mr Stephen Benton, CEO

Zip Co
- Mr Peter Gray, Co-founder Global Chief Operations Officer

Australian Finance Industry Association
- Ms Diane Tate, CEO

Google
- Ms Diana Layfield, Vice President, Product Management and Partnerships
- Ms Lucinda Longcraft, Director, Government Affairs and Public Policy, AU & NZ

Tuesday, 27 July 2021
Committee Room 2S3
Parliament House
Canberra

Commonwealth Bank of Australia
- Mr Matt Comyn, CEO
- Mr Albert Naffah, General Manager, Payments and the Data Economy

CPA Australia
- Mr Gavan Ord, Manager, Business and Investment Policy
- Dr Jana Schmitz, Technical Adviser, Assurance and Emerging Technologies

- Mr Jonathan Ng, Policy Adviser

Academics panel
- Dr Lien Duong, Senior Lecturer
- Dr Duc-Son Pham, Senior Lecturer
- Professor Grantley Taylor
- Dr Baban Eulaiwi, Lecturer
- Dr Harjinder Singh
- Associate Professor Nigar Sultana

Australian Competition & Consumer Commission (ACCC)
- Mr Marcus Bezzi, Executive General Manager Specialist Advise and Services
- Mr Tom Leuner, Executive General Manager, Exemptions and Digital

FinTech Australia
- Ms Rebecca Schot-Guppy, CEO
- Ms Simone Joyce, Chair [CEO, Paypa Plane]

Australian Prudential Regulation Authority
- Ms Renee Roberts, Executive Director, Policy and Advice
- Ms Melisande Waterford, General Manager, Regulatory Affairs and Licensing

Australian Securities and Investments Commission
- Mr Richard McMahon, Senior Manager, Credit and Banking
- Ms Joanna Bird, Executive Director, Financial Services and Wealth

The Treasury
- Mr David Pearl, Assistant Secretary
- Ms Nghi Luu, Assistant Secretary, Markets Group

Friday, 3 September 2021
Main Committee Room
Parliament House
Canberra

Council of Small Business Organisations Australia (COSBOA)
- Ms Alexi Boyd, CEO