



Australian Government

Australian Government response to:

The Review of the Australian Payments System

and

The Senate Select Committee on Australia as a
Technology and Financial Centre: Final report

and

The Parliamentary Joint Committee Corporations and
Financial Services report: Mobile Payment and Digital
Wallet Financial Services

December 2021

FOREWORD

We are in the midst of a digital revolution.

COVID has accelerated and changed the way Australians and businesses engage with digital technologies. Many new and innovative technologies are emerging throughout the economy, impacting every part of our lives. Nowhere is this digital disruption playing out faster than in the payments and crypto-asset sectors.

Despite this disruption, the regulatory framework governing the payments system has remained largely unchanged over the last 25 years. Given the pace of change and those leading it, if we do not reform the current framework it will be Silicon Valley that determines the future of our payments system.

Our regulatory architecture therefore needs to adapt, with greater strategic direction from the Government being required. The Government's comprehensive payments and crypto-asset reforms will firmly place Australia among a handful of leading countries in the world.

In relation to payments, by mid-2022 the Government will have:

- Set out a strategic longer-term plan for the payments system, developed with industry and reviewed annually.
- Settled the details of additional powers for the Treasurer to set payment system policy.
- Determined the changes necessary to modernise payments system legislation to accommodate new and emerging payment systems, including consideration of buy now, pay later (BNPL) and digital wallets.

In relation to crypto, by mid-2022 the Government will have:

- Completed consultation on the establishment of a licencing framework for Digital Currency Exchanges to provide greater confidence in the trading of crypto assets.
- Finalised consultation on a custody or depository regime for businesses that hold crypto assets on behalf of consumers so that investors have greater confidence in the safe keeping of these assets.
- Received advice from the Council of Financial Regulators, working with other relevant agencies, on the underlying causes and policy responses to the complex issue of de-banking.

Importantly, by end-2022 the Government will have:

- Settled the framework to replace the current one-size-fits-all payment licensing arrangements with a functionally based framework adopting graduated, risk-based regulatory requirements.
- Received a report from the Board of Taxation on an appropriate framework for the taxation of digital transactions and assets.

- Undertaken a mapping exercise of existing crypto currencies and tokens to better inform consumers and others of the risks and benefits that arise.
- Examined the potential of so-called Decentralised Autonomous Organisations (DAOs) and how they can be incorporated into Australia's legal and financial regulatory frameworks; and
- Received advice from the Treasury and the RBA on the feasibility of a retail Central Bank Digital Currency in Australia.

This is a substantial and complex body of work that will cement Australia's position as a global finance and technology hub, locking in our economic recovery and setting Australia up for next year and well beyond.

The Hon Josh Frydenberg MP
Treasurer

FINANCIAL SYSTEM INNOVATION

Building on our Digital Economy Strategy

The Government's Digital Economy Strategy is designed to enable Australia to be a world-leading digital economy and society by 2030. Supporting the ongoing digital transition of the Australian economy is a key part of the Government's economic recovery plan.

This strategy builds on the Government's record of supporting new innovations in the financial system.

Specifically, under our Digital Economy Strategy we have committed \$1.2 billion towards the implementation of e-invoicing, modernising our business registers and establishing and expanding the Consumer Data Right.

Together with the RBA, we have also supported the development of the New Payments Platform, which has enabled near real-time, 24/7, payments to be made across the economy.

We have also supported the roll out of 5G to now cover more than 75 per cent of the population.

These are the foundations of our digital economy.

Evolving technologies, consumer preferences and global developments

Notwithstanding these important developments, how consumers and businesses make and receive payments and interact with the financial system is changing.

Cheques have moved from 85% of non-cash payments in 1980 to around 0.2% today. The use of cash is also declining, falling from around two thirds of consumer payments a decade or so ago to less than a third now.

Almost half of Australians now make payments using their mobile phone and there are more than 5 million active buy-now pay-later customer accounts.

In addition, more than 800,000 Australians have transacted in digital assets in the last three years, with a 63% increase in 2021 compared with 2020.

These trends will only accelerate and the uses for these technologies will only expand.

Payment transactions have become more disintermediated, allowing fintechs and big techs alike to be part of the payments chain.

New technologies, including those based on new distributed ledger or blockchain technology and decentralised finance, have the potential to revolutionise financial markets.

At a micro level, these developments are bringing increased convenience every day for consumers and businesses. At a macro level they are providing the foundation for our future digital economy and transforming the way it works. These changes, however, are not without risks. The complexity of crypto-assets poses challenges for consumers, investors, policymakers and regulators.

Importantly, other countries are beginning to modernise their regulatory settings in recognition of the opportunities to drive investment and job creation.

Canada, Singapore and the United Kingdom have recently reformed their payments regulatory architecture to better support innovation and apply more balanced and functionally based regulation. Several jurisdictions have signalled various approaches to crypto regulation more broadly.

Governments are seeing opportunities with new technology. Several countries are investigating new forms of digital money such as Central Bank Digital Currencies (CBDCs), which have the potential to further enhance the efficiency of traditional payment systems.

It is therefore important that Australia's regulatory architecture remains competitive and continues to support innovation in this area.

Our regulatory architecture needs to be modernised

In light of these developments, there have been several reviews in recent years examining the appropriateness of the current regulatory framework, including the Farrell Payments System Review, the Senate Select Committee on Australia as a Technology and Financial Centre (Senate Report) and the Parliamentary Joint Committee Inquiry into Mobile Payments and Digital Wallets (PJC Inquiry).

These reviews highlight the need for our regulatory architecture to be modern and fit-for-purpose to continue to promote and support innovation and competition, while ensuring safety and stability.

They recommend greater Government leadership in setting the strategic direction of the system and to coordinate regulatory responses to increasingly complex policy challenges. It is also clear that businesses using and building these new and innovative technologies require greater regulatory certainty and a clearer long-term strategy from Government, otherwise they may look elsewhere to grow and create jobs.

The reviews found new technologies and services are testing our current regulatory definitions, perimeter and powers, and exposing regulatory gaps which could contribute to increased risks of consumer and business harm, possible future systemic instability and impeding private sector investment in innovative products and services.

Failure to modernise our regulatory framework will mean Australian businesses and consumers are increasingly engaging with unregulated parties and the rules governing our systems could be increasingly determined by foreign governments and large multinational companies.

Taking action to ensure our regulatory framework is fit-for-purpose

The Government is taking steps to ensure our regulatory framework is fit-for-purpose.

The Government will set the strategic direction of the future framework by developing a Payments System Strategic Plan to coordinate system-wide innovations, ensure regulators collaborate effectively and respond to future innovations in the sector. This multi-year strategy will be consulted on in early 2022, finalised by mid-2022 and assessed at least annually thereafter.

The Government will modernise the existing licensing framework for payments service providers by replacing the current approach with one that is function-based, graduates regulatory requirements based on risk and clearly outlines the activities and functions that will be regulated. This will provide regulatory certainty and ensure appropriate regulatory oversight of participants in our payments system. Consultation on this new framework will commence in the early 2022.

The Payment Systems (Regulation) Act 1998 will be updated to ensure the Reserve Bank of Australia (RBA) can accommodate the changing payments landscape within its mandate and a Ministerial designation power will be created to respond to emerging issues that are in the national interest or fall beyond the remit of any one regulator. Consultation on these legislative changes will occur in early 2022, and include consideration of digital wallet providers and buy-now-pay-later services.

The Government will also take steps to clarify the tax and regulatory obligations of crypto businesses. In early 2022 Treasury will consult on a licensing framework for Digital Currency Exchanges and an appropriate custody or depository regulatory regime and provide advice on these issues to Government by mid-2022.

On the complex issue of ‘de-banking’, whereby fintechs, crypto-businesses and other users of crypto-assets are denied access to banking services, frustrating innovation, the Government will task the Council of Financial Regulators (CFR), assisted by other relevant agencies, to provide advice on policy options to the Government by mid-2022.

To provide clarity to holders of crypto-assets, the Board of Taxation will review an appropriate policy framework for the taxation of digital transactions and assets, reporting to Government by the end of 2022. Treasury will also liaise with the Australian Taxation Office (ATO) on the potential for issuing more expansive guidance on the current tax treatment of crypto-assets in the meantime.

Looking forward, Treasury will commence consultation on other important issues, including an appropriate regulatory structure for innovative new corporate structures like Decentralised Autonomous Organisations (DAOs) and the viability of an Australian retail Central Bank Digital Currency. Public consultation on these issues will commence in the second half of 2022.

Together, these reforms will create a fit-for-purpose regulatory framework that provides appropriate protections to consumers and certainty to innovative businesses to invest. These reforms will cement Australia as a world class financial and technology centre, one that is able to adapt and respond to market developments.

RESPONSE TO THE RECOMMENDATIONS

REVIEW OF THE AUSTRALIAN PAYMENTS SYSTEM

Recommendation 1 - Consumers and businesses should be at the centre of policy design and implementation

The regulatory architecture should serve the consumers and businesses that rely on the payments ecosystem for their day-to-day activities. A principle of **Service** means considering these users of the payments ecosystem and taking their perspective at every step of policy development and implementation. It also means recognising the important distinctions between the needs of consumers and businesses.

To support outcomes for consumers and businesses, the regulatory architecture should support three other key principles:

- **Strategy** that prepares the ecosystem for future innovation and addresses challenges in a holistic manner
- **Safety** to protect the businesses and consumers that use the payments ecosystem, and
- **Simplicity** to ensure consumers and business can understand their rights and obligations, and to reduce regulatory barriers to entry for new firms offering new services to consumers and businesses.

Australian Government response

The Government **agrees** to this recommendation.

The regulatory architecture should serve the consumers and businesses that rely on the payments ecosystem for their day-to-day activities and be guided by the principles of strategy, safety and simplicity.

The Government notes the continued focus of the Payments System Board on best serving the interests of all end-users (consumers, businesses and government entities) of the payments system.

Recommendation 2 – Leadership of the payments ecosystem

Given the increased complexity of payments issues and the acceleration of financial innovation, enhanced leadership, vision and oversight is needed in the payments ecosystem. The government, through the Treasurer, is best placed to provide this.

Australian Government response

The Government **agrees** to this recommendation.

The Government, through the Treasurer, will take on an enhanced leadership role on payments issues to assist in achieving the Government's objectives for the sector.

To support the Treasurer, additional resources for Treasury (Recommendation 4) will be used to build its capability in payments and to strengthen coordination with industry and financial regulators. Treasury will work with industry and experts to bring together a strategic plan for Government endorsement (Recommendation 3).

The Treasurer's ability to take on an enhanced leadership role will also be supported through new Ministerial powers (Recommendation 7).

Recommendation 3 – A strategic plan for the payments ecosystem

The government should develop a strategic plan for the payments ecosystem in collaboration with regulators, industry, and representatives of consumers and businesses.

The plan should provide certainty on policy priorities and strategic directions for the payments ecosystem, while being adaptable to future challenges and opportunities.

Australian Government response

The Government **agrees** to this recommendation.

Treasury, in collaboration with regulators, industry, and consumer and business representatives will develop a strategic plan for the payments ecosystem. This plan will be a five year, forward looking strategy designed to provide greater certainty for industry, better inform new and current participants to make business and investment decisions and ensure the system and regulators are able to respond to future developments and innovations.

The plan will outline the Government's objectives and vision for the payment system and note key regulatory and policy issues for resolution.

Consultation on the strategic plan will start immediately, with the initial plan to be developed by mid-2022 and assessed annually thereafter.

Recommendation 4 – Enhance Treasury's payments policy function

The Treasury's payments policy function should be enhanced to support the Treasurer's enhanced leadership role, including in relation to the strategic plan for the payments ecosystem. Treasury should be strengthened with the necessary skills, capabilities and resources to perform this function effectively.

Australian Government response

The Government **agrees** to this recommendation.

The Government will provide funding for Treasury to build an enhanced payments function to support the Government taking on an enhanced leadership role.

Recommendation 5 – Establish a payments industry convenor

The Treasurer should appoint a payments industry convenor. Supported by Treasury, the payments industry convenor should collaborate with regulators and industry to develop the strategic plan, identify key issues, coordinate responses, and provide strategic advice to the Treasurer on payments-related matters.

The payments industry convenor should help the Treasury function in facilitating communication and coordination in relation to strategic priorities of the payments ecosystem.

Australian Government response

The Government **does not agree** to this recommendation.

The Government supports the objectives of this recommendation, and recognises the need to engage industry experts to ensure policy advice and decisions are well-informed and practical.

However, with an enhanced Treasury function with deeper payments expertise (Recommendation 4), the need for a convenor to collaborate on Treasury's behalf is

somewhat diminished. Instead, Treasury will engage industry experts on a flexible basis as required, to best support the Treasurer and the enhanced Treasury function to achieve the objectives detailed in the strategic plan.

Recommendation 6 – Expand definition of payment system in the PSRA

The RBA should be better positioned to regulate new and emerging payment systems that are part of the changing and growing payments ecosystem.

Expanding the definition of a payment system will broaden the RBA’s ability to designate new and emerging payment systems under the *Payment Systems (Regulation) Act 1998* (PSRA), where it is in the public interest as defined in the PSRA.

Australian Government response

The Government **agrees** to this recommendation.

The Government will modernise the relevant provisions and arrangements within the *Payment Systems (Regulation) Act 1998* (PSRA). The RBA’s regulatory powers are constrained by outdated definitions which mean it may no longer be able to adequately capture the full suite of systems and participants within the payments ecosystem.

This reform will ensure the RBA can continue to meet its mandate and allow it to respond appropriately to financial stability, efficiency or competition risks posed by new innovations in the payments ecosystem.

Treasury will commence consultation on this measure in early 2022, with advice to be provided to Government by mid-2022.

Recommendation 7 – Introduce a Ministerial designation power

The Treasurer should have the power to designate payment systems and participants of designated payment systems where it is in the national interest to do so. The designation power includes the power to direct regulators to develop regulatory rules and the power for the Treasurer to give binding directions to operators of, or participants in, payment systems.

Australian Government response

The Government **agrees** to this recommendation.

To ensure current and emerging regulatory gaps can be addressed, the Government will introduce a designation power, to be used by the Treasurer when it is in the national interest to do so. This power will ensure regulation is aligned with broader Government and payment system objectives including those outlined in the strategic plan.

The Treasurer will be responsible for designating payment systems as being subject to regulation by the RBA (or potentially other relevant regulators).

The power will include the ability to direct regulators to develop regulatory rules and give binding directions to operators of, or participants, in payments systems.

The Treasurer will delegate the power to designate payment systems (as defined per Recommendation 6) that is in the public interest to the RBA.

It is intended that the Government will only exercise use of this power in exceptional circumstances or for matters of national significance.

Treasury will commence consultation on this measure in early 2022, with advice to be provided to Government by mid-2022.

Recommendation 8 – Introduce a list of payment functions that require regulation

A defined list of payment functions that require regulation should be developed. This should be used consistently across all payments regulation. The list should be able to change to ensure it remains fit-for-purpose as technological advancements gather pace.

Australian Government response

The Government **agrees** to this recommendation.

The Government agrees that regulation should be functionally based, to ensure appropriate regulatory coverage of payments-related entities, and to provide regulatory clarity to industry.

The Government will consult with industry to determine the appropriate set of payment functions that underpin the licensing regime (Recommendation 9).

Treasury will commence consultation in early 2022, with advice to be provided to Government by mid-2022.

Recommendation 9 – Introduce a single, tiered payments licensing framework

A single, payments licensing framework in line with a defined list of payment functions should be introduced.

There should be separate authorisations for the provision of payments facilitation services and the provision of stored-value facilities, and two tiers of authorisations based on the scale of the activity performed by the payment service provider.

Applicants should be able to apply for this payments licence solely through ASIC, without the need to go through multiple regulators.

ASIC should coordinate on behalf of licence applicants with other relevant regulators. Ongoing obligations under different authorisations under the licence should remain with the regulators responsible for overseeing those obligations.

Australian Government response

The Government **agrees** to this recommendation.

The Government agrees to a new single, tiered payments licensing framework to improve regulatory certainty, and to ensure appropriate regulatory oversight.

The Government will consult on a tiered licensing framework based on a list of payment functions (from Recommendation 8) which would be implemented as part of the Australian Financial Services Licence (AFSL) Regime and administered by ASIC.

The Government will consult with industry, regulators and other stakeholders on the design of the licence and the associated obligations.

This recommendation encompasses and complements the conclusions of the Council of Financial Regulators' Regulation of Stored-value Facilities in Australia (Recommendations 1, 2, 3, 5, 6, 8, 9, 11).

Treasury will commence consultation on this measure in early 2022, with advice to be provided to Government by the end of 2022.

Recommendation 10 – Mandate the ePayments Code for payments licensees

The ePayments Code should be mandated for all holders of the payments licence. Accordingly, the ePayments Code should be brought into regulation.

Australian Government response

The Government **agrees** to this recommendation.

The Government supports common consumer protections. As such as a condition of the holding the licence (Recommendation 9) participants should comply with obligations under the ePayments Code. The Government will consult further to determine how the ePayments Code should be updated and brought into regulation. The Government will commence consultation on this measure in early 2022.

Recommendation 11 – The single payments licensing framework should facilitate transparent access to payment systems

The common access requirements for payment systems should form part of the payments licence to facilitate access for licensees to those systems.

The RBA should develop common access requirements in consultation with the operators of payment systems.

Australian Government response

The Government **agrees** to this recommendation.

The Government will consider how obligations that facilitate easier access would be incorporated into the tiered licensing framework (recommendation 9). This would include the RBA working with payment system providers to ensure the licence design facilitates transparent and easy access, encouraging competition and innovation in the sector.

These considerations will be included in the licensing framework consultation.

Recommendation 12 – Align industry standards

Compliance with technical standards set by authorised industry bodies should be mandatory for payments licence holders. These standards should be aligned with broader

payments policy objectives, with the RBA providing authorisation and oversight of industry standard-setting bodies.

Australian Government response

The Government **agrees** to this recommendation.

The Government agrees that compliance with technical standards set by authorised standard setting bodies should be mandatory for payments licence holders.

The RBA will be given the power to authorise industry standard setting bodies (including the Australian Payments Network) to ensure that the technical standards are consistent with broader strategic objectives of the payments system.

The Government remains supportive of industry self-regulation and recognises that industry self-regulatory bodies remain best placed to set the technical rules and standards for participants in the ecosystem given the pace of change in payments technology, market structures, and business models.

The Government will commence consultation on this measure in early 2022.

Recommendation 13 – Better align regulator approaches and regulatory requirements

The enhanced Treasury function should take steps to improve coordination between payments regulators, and the alignment of payments regulatory requirements, including with respect to AML/CTF issues.

Australian Government response

The Government **agrees** to this recommendation.

The Treasury will establish a regular payments forum with all of the relevant regulators to ensure coordination and alignment in approach and policy outcomes. This includes greater coordination between Treasury regulators and the Australian Transaction Reports and Analysis Centre (AUSTRAC), which plays an important role in financial sector regulation.

This payments forum will be established in early 2022.

Recommendation 14 – Educating consumers and businesses

Improved payments capability should be a goal of the refresh of the National Financial Capability Strategy.

Regulators should work with industry to coordinate the development of a business education programme in relation to payments, to ensure they understand their options and are empowered with choice.

Australian Government response

The Government **agrees** to this recommendation.

Improving consumers' and businesses' knowledge of payments is in line with the Australian Government's Digital Economy Strategy, further improving digital skills to support a modern economy.

The new National Financial Capability Strategy will aim to increase the capability of individuals to deal with a changing financial landscape, including evolving payment methods.

The Government also supports the regulators coordinating with industry bodies to provide educational material on the payments system targeted for small businesses. The Government welcomes that following its Review of Retail Payments Regulation, the RBA will improve transparency of payments costs for merchants, and will provide educational material to merchants on key concepts in card payments and acquiring services. These initiatives will seek to increase merchants' awareness and understanding of available pricing options.

Recommendation 15 – Leverage the position of government as a large customer of the payments ecosystem to support broader objectives

Governments should use the payment systems that best serve the needs of Australians.

The government should leverage its position as a large user of the payment ecosystem to support broader payments policy objectives.

Australian Government response

The Government **agrees** to this recommendation.

The Government recognises the importance of using the systems that provide payments to Australians as quickly and securely as possible.

As part of the strategic plan (Recommendation 3) the Government will consider how individual government departments engage with the payments system and explore the feasibility of transitioning key agencies to the New Payments Platform, including the use of PayID which can help reduce instances of scams, fraudulent and mistaken payments.

THE SENATE SELECT COMMITTEE ON AUSTRALIA AS A FINANCIAL AND TECHNOLOGY CENTRE FINAL REPORT

Recommendation 1

The Committee recommends that the Australian Government establish a market licensing regime for Digital Currency Exchanges, including capital adequacy, auditing and responsible person tests under the Treasury portfolio.

Australian Government response

The Government **agrees in principle** to this recommendation.

Treasury will consult on which functions of Digital Currency Exchanges are appropriate to be licensed by ASIC and what these obligations should entail. Treasury will commence consultation in early 2022 and provide advice to Government on policy options by mid-2022.

Recommendation 2

The Committee recommends that the Australian Government establish a custody or depository regime for digital assets with minimum standards under the Treasury portfolio.

Australian Government response

The Government **agrees in principle** to this recommendation.

Treasury will develop and consult on a possible custody or depository regime.

Treasury will commence consultation in early 2022 and provide advice to Government on policy options by mid-2022.

Recommendation 3

The Committee recommends that the Australian Government, through Treasury and with input from other relevant regulators and experts, conduct a token mapping exercise to determine the best way to characterise the various types of digital asset tokens in Australia.

Australian Government response

The Government **agrees in principle** to this recommendation.

Treasury, with the support of financial regulators and in consultation with industry, will conduct a token mapping exercise to identify relevant characteristics of digital assets. This process may be ongoing given technology trends and emerging approaches taken by overseas jurisdictions.

This process will commence in early 2022, with advice to be provided to Government by the end of 2022.

Recommendation 4

The Committee recommends that the Australian Government establish a new Decentralised Autonomous Organisation company structure.

Australian Government response

The Government **agrees in principle** to this recommendation.

Treasury will consult with industry on an appropriate regulatory structure for innovative new corporate structures like Decentralised Autonomous Organisations.

This process will commence in the second half of 2022, with advice to be provided to Government by the end of 2022.

Recommendation 5

The committee recommends that the Anti-Money Laundering and Counter Terrorism Financing regulations be clarified to ensure they are fit for purpose, do not undermine innovation and give consideration to the driver of the Financial Action Task Force 'travel rule'.

Australian Government response

The Government **notes** this recommendation.

Home Affairs and AUSTRAC will continue to proactively engage with industry and global partners to understand the challenges associated with implementing the FATF Standards, including the travel rule, and will ensure that any future legislative reforms are fit for purpose and meet the underlying objectives and drivers of the FATF Standards.

Recommendation 6

The Committee recommends that the Capital Gains Tax (CGT) regime be amended so that digital asset transactions only create a CGT event when they genuinely result in a clearly definable capital gain or loss.

Australian Government response

The Government **notes** this recommendation.

The Treasurer will task the Board of Taxation to commence a review into the appropriate policy framework for the taxation of digital transactions and assets.

In the interim, Treasury will liaise with the Australian Taxation Office on the potential for issuing more expansive guidance on the current tax treatment of crypto-assets.

The Board will provide its advice to the Treasurer by the end of 2022.

Recommendation 7

The committee recommends that the Australian Government amend relevant legislation so that businesses undertaking digital asset 'mining' and related activities in Australia receive a company tax discount of 10 per cent if they source their own renewable energy for these activities.

Australian Government response

The Government **does not agree** to this recommendation.

The Government's priority is on establishing a fit-for-purpose regulatory framework that encourages innovation, attracts investment, creates jobs and provides appropriate

protections and confidence for consumers to participate in new and innovative technologies.

Recommendation 8

The Committee recommends that the Treasury lead a policy review of the viability of a retail Central Bank Digital Currency in Australia.

Australian Government response

The Government **agrees in principle** to this recommendation.

The Treasury will, in partnership with the RBA, lead a review of the viability of a retail CBDC in Australia, including investigating the potential economic benefits, opportunities, and risks.

This process will commence in the second half of 2022 and advice will be provided to Government by the end of 2022.

Recommendation 9

The Committee recommends that the Australian Government, through the Council of Financial Regulators, enact the recommendation from the 2019 ACCC inquiry into the supply of foreign currency conversion services in Australia that a scheme to address the due diligence requirements of banks be put in place, and that this occur by June 2022.

Australian Government response

The Government **notes** this recommendation.

The Treasurer will request CFR work with relevant agencies to consider the underlying causes and possible policy responses to de-banking, including considering the 2019 ACCC proposal for a due diligence scheme, options for greater transparency for businesses who have been de-banked or other relevant proposals.

The Treasurer will issue a Terms of Reference that clarifies the scope of this work and request advice by mid-2022.

Recommendation 10

The Committee recommends that in order to increase certainty and transparency around de-banking, the Australian Government develop a clear process for businesses that have been de-banked. This should be anchored around the Australian Financial Complaints Authority which services licensed entities.

Australian Government response

The Government **notes** this recommendation.

The Treasurer will request CFR work with relevant agencies to consider the underlying causes and possible policy responses to de-banking, including considering the 2019 ACCC proposal for a due diligence scheme, options for greater transparency for businesses who have been de-banked or other relevant proposals.

The Treasurer will issue a Terms of Reference that clarifies the scope of this work and request advice by mid-2022.

Recommendation 11

The Committee recommends that, in accordance with the findings of Mr Scott Farrell's recent Payments system review, common access requirements for the New Payments Platform should be developed by the Reserve Bank of Australia, in order to reduce the reliance of payments businesses on the major banks for the provision of banking services.

Australian Government response

The Government **agrees** to this recommendation.

See response to Payments System Review Recommendation 11.

Recommendation 12

The Committee recommends that the Australian Government establish a Global Markets Incentive to replace the Offshore Banking Unit regime by the end of 2022

Australian Government response

The Government **notes** this recommendation.

Treasury will continue to consult with industry on alternative measures to support the OBU sector and ensure activity remains in Australia once the two-year grandfathering period ends. The Global Markets Incentive is one of several measures put forward by industry.

PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES REPORT: MOBILE PAYMENT AND DIGITAL WALLET FINANCIAL SERVICES

Recommendation 1

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

Australian Government response

The Government **agrees** to this recommendation.

Consistent with the response to Recommendation 4 of the Payments System Review, the Government will provide funding for Treasury to build an enhanced payments function to support the Government undertaking its enhanced leadership role.

Recommendation 2

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.

Australian Government response

The Government **agrees** to this recommendation.

Consistent with the response to Recommendation 9 of the Payments System Review, the Government will consult on a single, tiered licensing framework based on a list of payment functions which would be implemented as part of the Australian Financial Services License Regime and administered by ASIC.

The Government will consult with industry, regulators and other stakeholders on the design of the licence and the associated obligations.

The single, tiered licensing framework will encompass and complement the conclusions of the Council of Financial Regulators' Regulation of Stored-value Facilities in Australia (Recommendations 1, 2, 3, 5, 6, 8, 9, 11).

Recommendation 3

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

Australian Government response

The Government **notes** this recommendation.

The Government is supportive of the Australian Payments Network providing information on non-compliance amongst its members with relevant regulators.

The Government will consult on a proposed payments licensing regime, in doing so, it will consult on the requirement that it be mandatory to comply with the standards of relevant industry standard setting bodies (such as the Australian Payments Network) as a condition of the license.

Recommendation 4

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.

Australian Government response

The Government **notes** this recommendation.

In the 2020-21 Budget the Government commissioned a review into the regulatory architecture of Australia's Payments System. Included in the review was an assessment on the adequacy of the self-regulatory model. The Payments System Review found that, industry self-regulatory bodies remain best placed to set the technical rules and standards for participants in the ecosystem.

However, the Payments System Review notes there are shortcomings with the approach in ensuring appropriate representation on industry bodies, compliance with their standards and alignment of those standards with broader payment objectives.

The Government will consult on a proposed payments licensing regime (Recommendation 9 of the Payments System Review), and in doing so, it will consult on the requirement that it be mandatory to comply with the standards of relevant industry standard setting bodies

(such as the Australian Payments Network) as a condition of the license (Recommendation 12 of the Payments System Review). The Government will provide power to the RBA to influence the technical standards set by industry standard setting bodies (including the Australian Payments Network) to ensure that the technical standards are consistent with licensing obligations from regulators and broader strategic objectives of the payments system.

Recommendation 5

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.

Australian Government response

The Government **agrees in principle** to this recommendation.

The Government supports a level playing field for all participants in the payments ecosystem and that there should be appropriate, common consumer protections.

The Government will consult on a proposed payments licensing regime (Recommendation 9 of the Payments System Review), including how the ePayments Code should be updated and brought into regulation (Recommendation 10 of the Payments System Review). The Government will also consult further to determine how the ePayments Code should be updated and brought into regulation.

Recommendation 6

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.

Australian Government response

The Government **notes** this recommendation.

The Government notes the importance of ensuring the Buy Now Pay Later Code of Practice remains up-to-date.

Recommendation 7

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

Australian Government response

The Government **agrees in principle** to this recommendation.

The Government supports a level playing field for all participants in the payments ecosystem and that there should be appropriate, common consumer protections.

As per Recommendations 9 and 10 of the Payments System Review, the Government will consult on a proposed payments licensing regime, including how the ePayments Code should be updated and brought into regulation. The Government will also consult further to determine how the ePayments Code should be updated and brought into regulation.

Recommendation 8

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.

Australian Government response

The Government **agrees** to this recommendation.

Consistent with the response to Recommendation 6 of the Payments System Review, the Government will modernise the relevant provisions and arrangements within the PSRA. The Government will commence consultation on this measure in early 2022, with advice to be provided by mid-2022.

Recommendation 9

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.

Australian Government response

The Government **agrees** to this recommendation.

The Government notes that the recommendations in the Payments System Review will remove existing regulatory gaps in the payment ecosystem and allow for a proportionate and appropriate regulatory response to payment processing platforms.

Recommendation 10

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.

Australian Government response

The Government **notes** this recommendation.

The Government notes it is a matter for the ACCC, as the independent regulator responsible for enforcing the *Competition and Consumer Act 2010*.

Recommendation 11

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.

Australian Government response

The Government **notes** this recommendation.

The Government recognises the importance of Least Cost Routing (LCR) in all form factors to lower payment costs for small businesses.

Recommendation 12

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

Australian Government response

The Government **agrees** to this recommendation.

The Government notes that following its Review of Retail Payments Regulation, the RBA will improve transparency of payments costs for merchants, and will provide educational material to merchants on key concepts in card payments and acquiring services. These initiatives will aim to increase merchants' awareness and understanding of available pricing options.

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.

Australian Government response

The Government **notes** this recommendation.

The Government notes this is a matter for the committee.

Recommendation 14

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

Australian Government response

The Government **agrees** to this recommendation.

The Government agrees that ASIC should regularly update the Moneysmart website to ensure it appropriately captures changes in the payments sector.