

3 July 2015

By email: submissions@australianpaymentscouncil.com.au

Australian Payments Council
Level 6, 14 Martin Place
Sydney NSW 2000

Dear Sir/Madam,

Australian Payments Plan Consultation

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Payments Council (**APC**) consultation paper on the Australian Payments Plan.

We generally agree with the key current and long term trends in Australian payments identified in the consultation paper. We also support the principle that to maintain accessibility, industry will need to better assist users with complexity.

However, Consumer Action considers that fairness and equity should also be included as one of the guiding principles of the Australian Payments Plan. Our submission also discusses the need for consumers to be able to access and use their own data in payment systems, and recent developments in the delivery of government benefits.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Fairness and equity

In considering the desirable characteristics of a payments system, we urge the APC to include fairness and equity as guiding principles in the Australian Payments Plan. With a regulated network, such as Australia's payments system, it is important that such a network is paid for equitably. We recommend the APC explicitly consider how the burden of paying for such a network can be shared fairly between industry and consumers.

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While resilience, efficiency, accessibility and adaptability are all worthwhile characteristics, without principles of fairness and equity the costs of the payments system are still likely to be unfairly carried by low-income Australians. Up until now, the focus on efficiency has meant that the payments system has been able to develop in a way that has not always adequately considered the end-user, and we welcome a broader approach to the desirable characteristics of such a system.

In many respects, developments in the Australian payments system have benefited consumers by allowing faster, more convenient payments. However, in addition to inequality, the payments system also creates risks for consumers. We submit that insufficient attention has been paid to these risks in the consideration of the future of payments in the Australian Payments Plan.

Digital disruption

We agree that digital disruption is likely to be the dominant force for change in payments for the foreseeable future. Digital disruption will necessarily involve the creation and collection of increasing amounts of consumer data. We recommend that one of the guiding principles of the Australian Payments Plan should be providing consumers access to their own data held by payments service providers in standardised and machine readable format.

As we argued in our submission to the Financial System Inquiry (**FSI**) terms of reference¹, this can help consumers make product choices better aligned with their needs, sending better signals to suppliers. We submit that access to data, if standardised and accessible, could assist consumers choose between providers and contribute to more effective competition in the payments system. We draw your attention to the following comments on this issue in the FSI final report:

Increasing access to data could enhance consumer outcomes, better inform decision making, and facilitate greater efficiency and innovation in the financial system and the broader economy but could also involve privacy risks.²

We agree that while increased access for consumers to their own data will create consumer benefit, the growth in data collection by business (especially credit providers) involves privacy risks. It can also allow businesses to target products and marketing to consumers' detriment.

Target marketing of products to particular groups of consumers is not new. However, advances in information technology permit businesses to access consumers' personal information and use complex systems to predict an individual's behaviour. In consumer lending, this technology can be used to identify consumers who are likely to be profitable, tailor and price products that the most profitable customers are likely to accept, and develop strategies to reduce the likelihood that the most profitable customers will close their accounts.³

¹ Consumer Action Law Centre, 'Submission: Financial Systems Inquiry Terms of Reference', 31 March 2014, available at: <http://consumeraction.org.au/submission-financial-systems-inquiry-terms-of-reference/>

² Financial System Inquiry, 'Final Report', November 2014, page 181, available at: http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf

³ Paul Harrison, Charles Ti Gray and Consumer Action Law Centre (2012) *Profiling for Profit: A Report on Target Marketing and Profiling Practices in the Credit Industry*, Deakin University and Consumer Action Law Centre, pp 5-6.

It is important that the Australian Payments Plan include consideration of the safeguards required to ensure that consumers' data and privacy is appropriately protected, while providing appropriate access to consumers to their own data.

Complexity

We recognise that the payments system will continue to innovate and develop, and there is the potential for significant consumer benefit from this. It appears likely that payments and communications technologies will further converge, with consumers increasingly making payments using smart phones or similar technology. However, with innovation often comes more complexity. We agree with the consultation paper that industry should be looking to better assist users with complexity, so that users can make more informed decisions and choose payments to suit their needs.

Assisting users with complexity does not necessarily mean relying on disclosure to provide users with more information. However, it is worthwhile discussing general principles of what makes effective disclosure in consumer products.

Designing effective disclosure will start with a consideration of how consumers actually use disclosure and how they make decisions, rather than a focus on compliance and risk avoidance. It will be designed with an understanding of what kind of information will be useful to consumers, and when and how to present it for maximum effect.

We believe that effective disclosure will contribute to two broad objectives:

- improving comprehension by giving residents a better understanding of the payment product they are using, accepting that many consumers do not have the expertise to understand the complexity of the payments system; and
- allowing comparison between competing payment products, which helps the consumer to find the best deal for them and also improves competition between providers.

To achieve these objectives, we recommend that the Australian Payments Plan support consumer testing disclosure. Consumer testing disclosure will ensure that the disclosure does what it is intended to do: help consumers understand products and make informed decisions. This is especially important given the current movement towards permitting providers to use more innovative disclosure.⁴ We support this movement, but it will just produce new types of ineffective disclosure unless the innovative disclosure models are refined through consumer testing.

Assisting consumers with complexity must also move beyond disclosure. Analysis from behavioural economics suggests that significant advances in consumer welfare can be achieved from considering how choices are presented (choice architecture), framing as well as default

⁴ See for example: Australian Securities and Investments Commission, ' Consultation Paper 224 Facilitating electronic financial services disclosures', 14 November 2014, available at: <http://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-224-facilitating-electronic-financial-services-disclosures/>

options.⁵ For example, defaults could be placed in the system to nudge consumers to low-cost payment systems, but in a way that doesn't restrict choice. We would not be supportive of a payment system that left choice architecture and defaults entirely up to industry, who will likely preference their interests above consumers.⁶

Delivery of government benefits

There have been recent changes to the payments system through which government benefits are delivered, in that some direct entry payments have moved to a card-based system known as the BasicsCard. This is likely to be expanded through the proposed 'Healthy Welfare' card.⁷ While this could be considered a type of 'innovation', there are significant risks to recipients. In our view, arrangements such as the Healthy Welfare card not only limit consumer choice, but can encourage inappropriate merchant behaviour.

By limiting their ability to pay with cash or restricting their shopping choices to certain stores, those on the card may be put in situations in which they cannot shop at budget or discount stores, or at cheaper venues such as fresh produce markets. As an example, we understand that existing users of the BasicsCard are unable to shop at Aldi as that retailer does not have a separate register for alcohol sales. This is a problem for those on the BasicsCard system as Aldi is often the cheapest retailer and therefore their best option. Similarly, fresh produce markets often offer cheaper options than mainstream retailers, but often do not have EFTPOS facilities and only accept cash. A welfare recipient restricted to an EFTPOS card for his or her purchases would not have the option of shopping at these places.

Income management methods such as the proposed Healthy Welfare card and the current BasicsCard can also encourage inappropriate merchant behaviour, giving them the opportunity to profit from a consumer's desire for flexibility in how they spend their money. Past examples of this sort of behaviour have been found, where businesses would sell goods to a welfare recipient with a BasicsCard, then buy the goods back immediately for cash (for slightly less than had just been paid). Behaviour of this kind could result in reducing the financial resources and capabilities of already vulnerable low-income Australians.

Similar problems can arise with legal but exploitative businesses, such as those offering consumer leases on household goods. These leases are regulated by consumer credit laws, but are exempted from some of the consumer protections that apply to other forms of consumer credit (for example, disclosing the total cost of credit). Consumer leases can be an extremely expensive way to purchase a product, with the total payments over the term often being three to five times higher than the retail price of the goods, and being far more expensive than a high-interest credit card.⁸ Commonly the contracts also impose early termination charges should the consumer wish to return the lease goods.

⁵ Department of the Prime Minister and Cabinet, 'OBPR Research Paper - Influencing Consumer Behaviour: Improving Regulatory Design', 18 December 2012, available at: <http://ris.dpmc.gov.au/2012/12/18/obpr-research-paper-influencing-consumer-behaviour-improving-regulatory-design/>

⁶ For example, merchant routing of payment systems.

⁷ The Forrest Review, 'Chapter 2: The Healthy Welfare Card', 2014, available at: <https://indigenouslyjobsandtrainingreview.dpmc.gov.au/chapter-2-healthy-welfare-card>

⁸ Consumer Action Law Centre, 'The Hidden Cost of 'Rent to Own'', September 2013, available at: <http://consumeraction.org.au/blog/2013/09/13/report-the-hidden-cost-of-rent-to-own/>

Businesses of this kind have previously taken advantage of payment systems designed for beneficiary recipients, such as the Centrepay system. They have also been known to target indigenous communities. Despite being a form of consumer debt, these businesses construct contracts as leases so as to secure repayment through Centrepay. Other forms of consumer credit are not permitted to use the Centrepay system. We are concerned that businesses will establish themselves to take advantage of income received on the Healthy Welfare card, in a similar way to consumer lease providers' use of Centrepay. This could be done, for example, through establishing recurrent payment mechanisms or direct debits on these cards. Given that the Healthy Welfare card will signify a low-income and perhaps vulnerable consumer, the prospect of businesses targeting these vulnerabilities is significant.

We submit that the Australian Payments Plan should consider the ways in which government benefits are delivered, having regard to the potential impact on vulnerable consumers and the advances in technology required to implement such arrangements effectively.

Please contact Katherine Temple on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer