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To Whom it May Concern:

## Review of Retail Payments Regulation

Thank you for the opportunity to provide feedback on the *Review of Retail Payments Regulation Consultation Paper*.

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

The Commission's role includes:

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

Consumers' use of electronic payments is growing. During COVID-19, consumers' use of debit cards increased by 17 per cent, while cash withdrawals decreased by 10 per cent in 2020.<sup>1</sup> This trend has increased small businesses' sensitivity to costs associated with non-cash payments.

The Commission observes that, in some circumstances, the volume of transactions processed by larger businesses mean they are generally better positioned to access or negotiate more favourable pricing regimes. Given 95 per cent of NSW retailers are small businesses,<sup>2</sup> it is important that market fundamentals are supportive of competitive pricing for small businesses. This includes ensuring competitive tension remains between debit schemes and that despite their number of transactions, small businesses benefit from this competitiveness.

### *Support for some current proposals*

The Commission supports proposed policy changes, which aim to reduce anti-competitive behaviours and promote the take-up of least-cost routing (LCR). Specifically, we welcome the Reserve Bank of Australia (RBA)'s proposal to:

- set an explicit expectation for the major banks to continue issuing dual-network debit cards (DNDCs) with two card schemes provisioned in all form factors

<sup>1</sup> Australian Banking Association (ABA) (2021). *COVID-19 Accelerates Debit Card Use, Cash Decline*. <https://www.ausbanking.org.au/covid-19-accelerates-debit-card-use-cash-decline>

<sup>2</sup> Australian Bureau of Statistics (ABS) (2021). *Counts of Australian Businesses, including Entries and Exits*. <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release#data-download>

- amend interchange standards to impose a lower cent-based interchange rate cap for single-network debit cards (SNDCs) to weaken the incentive for issuers to opt for SNDCs
- explicitly prohibit schemes from engaging in ‘tying conduct’ by linking strategic interchange rates to the value or volume of debit card transactions.

While these measures are welcome, the Commission would encourage consideration of additional measures to address the expected evolution of the market, which has the potential to be contrary to the longer-term interests of small businesses.

#### *Encouraging implementation of least-cost routing*

The Commission supports additional measures to encourage LCR. We note that the current proposal is for the RBA to state an explicit expectation that acquirers and payment facilitators (acquirers) will offer and promote LCR functionality in a device-present environment rather than setting a formal regulation.

The Commission recently surveyed NSW small businesses to assess their awareness of and uptake of LCR. Only 22 per cent of respondents indicated they have LCR in place, while 51 per cent had never heard of the term (see Appendix A, Q23b). These results suggest there are both a need and opportunity to encourage further uptake and awareness of LCR.

To this end, the Commission would welcome the identification of uptake targets as part of any explicit expectation that all acquirers and payment facilitators will offer and promote LCR functionality. This would support future assessments as to whether policy objectives are being met. The Commission encourages further consideration of practicable regulatory interventions that could encourage uptake of LCR, including those referred in Option 3,<sup>3</sup> particularly if uptake targets are not met.

The Commission also believes the RBA should consider formally intervening in the online payment environment. The current proposal of setting out principles for the industry to follow may result in little take-up of LCR in this rapidly growing area. Practices may become entrenched, making it harder and more costly to promote LCR at a later stage.

#### *Investigate stronger requirements for the provision of dual-network debit cards*

The Commission notes the concerns of small business stakeholders in relation to excluding small and mid-sized issuers from the RBA’s proposed explicit expectation to provide DNDCs. The Commission agrees that excluding small and mid-sized issuers has the potential to weaken any signal that broad-based DNDC issuance is expected.

The Commission accepts that smaller issuers may face unique challenges and would welcome further analysis around the costs and benefits of smaller issuers offering DNDCs rather than relying on issuer-reported estimates. More targeted exemptions based on issuer-specific factors could be considered if benefits do not outweigh costs for individual issuers.

#### *Empowering merchants through a Consumer Data Right and a service guarantee*

The Commission notes that \$111.3 million in funding was committed in the Commonwealth Budget to accelerate the Consumer Data Right (CDR) rollout across the economy.

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<sup>3</sup> Reserve Bank of Australia (RBA) (2021), *Review of retail payments regulation*, page 16.  
<https://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/consultation-paper-202105/pdf/review-of-retail-payments-regulation-consultation-paper-202105.pdf>

The Commission endorsed extending the CDR to merchants in its submission to Commonwealth Treasury's *Payment Systems Review* in February 2021.<sup>4</sup> The Commission welcomes the RBA's engagement with Treasury and the Australian Competition and Consumer Commission to explore extending the CDR to acquiring services provided to small businesses.

An extended CDR would allow small businesses to compare the costs and benefits of various service providers more easily. Preliminary results of the Commission's recent small business survey revealed that 42 per cent of respondents had not reviewed whether their payment terminal provider was the best and/or cheapest one for their business (see Appendix A, Q23c). Only 19 per cent had compared options in the last 12 months. Providing retailers with data about their own payment use, including volume of transactions by payment type, total fees charged and the average cost per transaction, would empower small businesses to more easily compare between acquirers.

To further empower merchants, the Commission's submission to Treasury's *Payment Systems Review* recommended the establishment of a service guarantee.<sup>3</sup> Small businesses have expressed concerns about the impact of system outages on their business. The Commission has proposed the establishment of a service guarantee as a means of providing a set of clear expectations and requirements regarding reliability and service standards while ensuring transparent and fair compensation processes in the event these standards are not met. Noting the increased reliance of small businesses on these payment systems, the Commission maintains that further consideration of this proposal is a priority.

If you require further information, please contact Megan Bennett, on either [megan.bennett@smallbusiness.nsw.gov.au](mailto:megan.bennett@smallbusiness.nsw.gov.au) or (02) 9372 8767.

Yours sincerely

Chris Lamont  
**Commissioner**  
**NSW Small Business Commission**  
8 July 2021





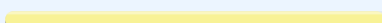
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<sup>4</sup> NSW Small Business Commissioner (2021). *Submission to Payment Systems Review*.  
[https://www.smallbusiness.nsw.gov.au/sites/default/files/2021-02/NSWSBC%20Submission%20to%20Payment%20Systems%20Review\\_CommonwealthTreasury\\_Feb2021.pdf](https://www.smallbusiness.nsw.gov.au/sites/default/files/2021-02/NSWSBC%20Submission%20to%20Payment%20Systems%20Review_CommonwealthTreasury_Feb2021.pdf)

Preliminary results from NSW Small Business Commission/NSW Department of Customer Services survey of small businesses commencing 30 June 2021.



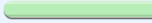

These respondents are those who previously indicated they accept payments from customers via a credit card/EFTPOS terminal?

**Q23b. Is your Credit Card/EFTPOS payment terminal(s) set up to use Least Cost Routing (where a Tap & Go payment automatically chooses the payment method with the lowest fees for your business)?**

		Response percent	Response total
Yes, our bank/terminal provider provided it automatically		22.11%	109
Yes, but we had to request it		4.46%	22
No, our bank/terminal provider doesn't offer that option/our credit card/EFTPOS terminal can't accept Tap & Go		12.78%	63
We have heard of Least Cost Routing, but we are not sure whether we have it or can get it		9.33%	46
We have not heard of Least Cost Routing before		51.32%	253

[Export Graph](#) Statistics based on 493 respondents;

**Q23c. When, if at all, did you last review whether your payment terminal provider was the best and/or cheapest one for your business?**

		Response percent	Response total
Never, we just use what our bank/terminal provider gave us		41.75%	205
We compared options when we set up the business, but have not checked since		18.53%	91
We have compared options in the last couple of years		20.98%	103
We have compared options within the last 12 months		18.74%	92

[Export Graph](#) Statistics based on 491 respondents;