

repayments to higher interest debts first,⁶⁰ prevent lenders from charging over-limit fees unless consumers specifically agree that their account can go over the limit, ban unsolicited credit extension offers unless pre-agreed to by the consumer and give consumers more say over their credit limits. The legislation would also introduce a requirement for lenders to provide a Key Facts Sheet for credit card contracts that provides a clear summary of the standard terms applicable, including minimum repayments required to be made, annual percentage rates and fees.

14.58 The Consumer Credit Legal Centre have criticised the bill for only applying to new rather than existing cards.⁶¹

Committee view

14.59 The Committee regards the reforms put forward by the Government as reasonable. It would not support bans on fees but measures to ensure customers are better informed about the implications of making only the minimum repayment are welcome.

Other aspects of the payments system

14.60 Some submitters drew attention to the payments system:

...the real areas in which competition is low and super-profits earned by the banks are in payment systems, including credit card transaction processing. These areas, in which fees are by international standards very high, are the principal reason that the underlying profits of the Big Four banks represent almost 3% of Australia's GDP.⁶²

14.61 A former Reserve Bank officer is very critical of what he terms:

...the failure to deal with the institutionalized cartel arrangements and related price fixing for credit card, debit card and BPay transactions.⁶³

60 The Government gave the following example: 'the Johnson family may have a credit card balance of \$5,000, consisting of a \$2,500 balance transfer from a previous lender on which they are now paying interest at a special rate of 1.9% per annum, and another \$2,500 which they have spent using a credit card from their new lender on which they are paying interest at 19.9% per annum. If the Johnson family were able to make a \$2,000 payment towards their credit card balance, most lenders would seek to use this to pay off \$2,000 of the debt which is only costing 1.9% per annum. The Government will legislate to ensure that the lender must instead use the \$2,000 to pay down some of the debt on which interest is owed at the much higher rate of 19.9%, saving the Johnson family around \$360 a year.' Australian Government, *Competitive and Sustainable Banking System*, December 2010, p 13.

61 Ms Karen Cox, Co-ordinator, Consumer Credit Legal Centre, *Sydney Morning Herald*, 6 April 2011, p 6.

62 Professor Ross Buckley, *Submission 32*, p 3.

63 Mr Peter Mair, *Submission 2*, p 7.

14.62 Other submitters also saw the payments system as key to competition:

The biggest single regulatory mechanism used to hindering competition within the banking sector is the control by the four major banks of the payments system.⁶⁴

14.63 The Reserve Bank acknowledges the challenge that:

...the incumbents in a payment system will have a natural tendency to keep new entrants out and often might use risk as a justification for that.⁶⁵

14.64 Direct access to the payments system is denied to most non-banks:

...non-bank providers are effectively locked out of the electronic funds transmission system, and are unable to settle electronically, and have to deal with their competition being the banks when providing data for settlements.⁶⁶

APCA owns the BSB number range and will only release new numbers to Authorised Deposit-taking Institutions (ADIs). Accounts4Life has a business model that requires a BSB, yet does not constitute “banking business” and therefore does not need an ADI licence...the Big 4 can squash any attempt to allow a new entrant to operate independently and increase competition.⁶⁷

14.65 Tyro Payments, a specialist banking institution supervised by APRA which provides EFTPOS and some other payment services but does not take deposits or make loans, comments:

Due to its network nature, the payment industry requires a strong set of standards and rules to protect the integrity and stability of the system. However, the standards and rules must also enable innovation and competition.⁶⁸

14.66 Tyro submits that it is the only non-bank acquirer to have applied for a specialised banking licence since the concept was introduced. Tyro is a tier one member of the Australian clearing and settlement system. It identifies a number of areas where it faced barriers to entry.⁶⁹

14.67 A new entrant wanting to process credit card transactions is unlikely to have a rating from an agency and Visa and Mastercard then demand the entrant has

64 Mr Mervin Reed, *Submission 5*, p 9.

65 Mr Darren Flood, Deputy Head, Payments Policy Department, Reserve Bank of Australia, *Proof Committee Hansard*, 4 March 2011, p 36.

66 Mr Mervin Reed, *Submission 5*, p 2.

67 Accounts4Life, *Submission 128*, p 2.

68 Tyro Payments. *Submission 36*, p 2.

69 The following paragraphs draw on Tyro Payments, *Submission 36*.

additional capital. Tyro argues that they should be satisfied if the entrant is licensed by the Reserve Bank and supervised by APRA.

14.68 New entrants to the EFTPOS debit card network are required to connect to all members bilaterally which Tyro does not regard as commercially viable.

14.69 Tyro noted that the two major supermarket chains 'benefit from interchange fees that can be up to one half of what merchants in general are charged'.⁷⁰

14.70 The domestic debit card (EFTPOS) system is governed by EFTPOS Payments Australia Limited (EPAL) which Tyro claims is dominated by card issuers and the major retailers. This leads to concerns that interchange fees charged to smaller retailers will be pushed up. The system is also lagging behind overseas schemes in its technical capacity, lacking features such as 'tap and go'.

14.71 Tyro has long aspired to gain access to the private health fund claiming market but this is dominated by a major bank.

14.72 The Electronic Funds Transfer Code of Conduct is a voluntary code that provides protection for consumers who use electronic means for making payments, including ATMs, EFTPOS, credit cards, online payments, internet banking and eBay. The code provides key consumer protections in the case of fraud and on unauthorised transactions.

14.73 Tyro is concerned about EFTPOS interchange fees:

...we are focused on acquiring only so we do not have the conflict of interest that the major banks have to maximise their interchange revenue at the expense of the merchants. Thus, it does not come as a surprise that we are the only ADI that questions the looming reversal and increase of the EFTPOS interchange fee that threatens the small and medium enterprise community with an additional burden of up to \$¼ billion.⁷¹

14.74 Tyro also called for real-time settlements to make payments systems more efficient and less risky:

...the industry should move to real-time settlement; it is unnecessary risk. When we aspired to membership of BECS, some of the banks refused to accept us, claiming we were a risk to the system given our modest balance sheet. So we would argue: why don't you use intelligent processes and information technology so that you can mitigate and eliminate the risk?⁷²

70 Tyro Payments. *Submission 36*, p 9.

71 Mr Jost Stollmann, Chief Executive Officer, Tyro Payments, *Committee Hansard*, 21 January 2011, p 34.

72 Mr Jost Stollmann, Tyro Payments, *Committee Hansard*, 21 January 2011, p 36.

14.75 A new entrant specialising in some aspect of the payments system may struggle against the major banks who cross-subsidise activities through bundling:

...when a major bank settles its merchants a day earlier than our merchants, it means that it bundles the acquiring function with the transaction account. There is a bank that offers same-day settlement to its merchants if they have the transaction account and the acquiring relationship with them. They can do this because they do not go through your systems—the batch systems.⁷³

14.76 Banks try to ensure merchants have all their banking relationships with the one bank, rather than just providing loans or just providing payment services:

We certainly have customers who only utilise merchant facilities within our base. But, obviously, a key objective of ours is to deepen the relationships that we have with our customers and therefore provide broader services.⁷⁴

14.77 A concern raised by small business as an example of banks colluding to maintain a poor service, concerns the payments system:

...the behaviour by the major banks not to provide daily settlement of EFTPOS transactions by way of credits to merchants' accounts. It appears to be a concrete example of anticompetitive behaviour. The banks choose only to settle EFTPOS transactions on five days each week in a seven day commercial market. This unreasonably denies merchants access to their money.⁷⁵

14.78 A specific shortcoming raised was the delay between when funds are debited from a customer's account and when the proceeds of the transaction are credited to the retailer's account. This generally takes a day, and for smaller retailers can take several days. This appears to be a result of the banks not agreeing to undertake the expense of installing better technology and agreeing protocols for its use:

It is an historical thing and it needs further development to do that and there is the question of what is the cost of doing that and what is the best way of doing that... a problem that is common in this area, that what you often need to do to get the network to provide better functionality is to have everybody who is part of that network to move towards the same goal and often times you need a degree of coordination...⁷⁶

14.79 There is an understandable suspicion that the bank is gaining from the delay, perhaps being able to earn interest on the short-term money market for the period the payment is in transit.

73 Mr Jost Stollmann, Tyro Payments, *Committee Hansard*, 21 January 2011, p 45.

74 Mr David Foster, Chief Executive, Suncorp Bank, *Committee Hansard*, 9 February 2011, 9 February 2011, p 8.

75 Council of Small Business of Australia, *Submission 90*, p 5.

76 Dr Christopher Kent, Head, Payments Policy Department, Reserve Bank of Australia, *Proof Committee Hansard*, 4 March 2011, p 40.

14.80 The Reserve Bank assured the Committee that this is not the case:

The funds are moved from one customer's account to another customer's account through this system and there might be some delay between when a payment instruction is sent and when that money is finally available at the other end for the receiving customer to take those funds out of their account if they so choose, but there is a point in time which is part of the arrangement where the exchange is deemed to have occurred and that is the point at which interest is calculated if any is being paid.⁷⁷

Committee view

14.81 The Committee is concerned about claims that the payments system operates like a closed shop and would like to see more new entrants to it and greater competition in the provision of payments, clearing and settlement services. It believes this would accelerate the adoption of world class technology and real time settlement systems, to the benefit of bank customers.

Recommendation 33

14.82 The Committee recommends that the Government direct the Australian Competition and Consumer Commission to conduct an examination of barriers to competition in the Australian payments system and publicly report by the end of 2011 on any legislative or other reforms that would enhance competition and efficiency in the provision of payment, clearing and settlement systems.

77 Dr Christopher Kent, RBA, *Proof Committee Hansard*, 4 March 2011, p 39.