

Thursday, 24 June 2021

TO: SENATE SELECT COMMITTEE ON AUSTRALIA AS A TECHNOLOGY AND FINANCIAL CENTRE

Dear Senators

RESPONSE TO ISSUES PAPER 3 – FINANCIAL INCLUSION ISSUES

We would like to offer comments on the topics of **debanking**, **neobanking** and **regulation** from the perspective of **financial inclusion**.

As a member of **Fintech Australia**, we have also contributed collaboratively to their submission.

Who are we?

Financial Inclusion By Design is a Sydney-based consultancy with a regtech focus. We provide information and advice to financial services businesses - including fintechs - about the fairness & inclusivity of their products and services.

We also work with financial counsellors, consumer groups and charities to raise awareness of financial inclusion issues. We are proactive and positive. We advocate for solutions.

Increasingly, our advice is being sought by financial services businesses in order to be compliant with new ASIC regulations such as **RG271 Internal Dispute Resolution** and **RG 274 Product Design and Distribution Obligations**.

Our core mission is to advocate for the design of fair & inclusive financial services and products enabled by technology.

What is financial inclusion?

In the context of a developed nation like Australia, financial inclusion is measured by the availability, ease and equality of opportunities for consumers and small to medium-sized businesses (SMBs) to access appropriate, affordable and timely financial products and services such as payments, savings, wealth (including retirement investments), loans and insurance.

Financial inclusion will be achieved when all Australian consumers and SMBs can access:

1. The right product or service
2. At the right time
3. For the right price
4. In the right way, and
5. With the right support.

Debanking (also known as unbanking)

Debanking is a form of financial exclusion, hence our interest.

Access to a transactional bank account is a minimum requirement for financial inclusion as without a bank account a business is “unbanked.”

For businesses in Australia, this means a business bank account, which will typically require approaching one of the Big 4 banks because the dominance of the Big 4 banks is disproportionate in the business banking segment.

An online search of popular comparison website Finder.com.au on Monday 21 June 2021 for both “business banking” and “small business bank accounts” did not return one single option outside of the Big 4 banks. A similar search on Mozo.com.au returned only one non-major bank option, namely Heritage Bank. (Please note that we do not consider St George to be a non-major bank given it is wholly owned by Westpac.)

Typically, a business bank account cannot be opened online, nor with electronic signatures. This creates a barrier to financial inclusion given the restrictions on movement created by the Covid-19 pandemic and the scarcity of branches outside metropolitan locations.

We are aware of a Melbourne-based entrepreneur who was turned down by the first three banks she approached to open a basic business bank account. A fourth bank spent over 1-hour of time with her to ask her questions about her business model. As a result of her answers to those questions, that bank was able to achieve comfort as to its risk, and she was able to open an account.

And herein lies a key insight for the Committee.

The top down risk governance approach of the banks may be convenient for them but, at the same time, it will deliver “unintended consequences” to the community. The Government needs to help the banks to help themselves! The ability of the banks to understand and govern their own risk should not be taken as a given; it should be scrutinised.

Moreover, banks should be required to provide a transparent reason for debanking a customer.

This is a basic requirement of fair and reasonable conduct. Hiding behind risk governance language – or even worse simply citing “commercial reasons” – is unacceptable and reputationally destructive for the banks, Australia’s banking system and broader economy.

Any cited reason for debanking should be required to display specific knowledge of that customer and to articulate why that customer’s business model presents a risk to the bank’s compliance or commercial model. Transparency is a minimum requirement for fairness and reasonableness. The problem with anything less than this is that it leaves the banks open to suspicions of commercial convenience and abuse of market power.

We would like to see an accountability framework, such as an Australian Banking Association Code of Conduct and an external complaints mechanism (e.g. AFCA or an Ombudsman), to ensure that debanking is not the result of a generic and anonymous risk management exercise

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because that is categorically unfair and unreasonable given the enormous negative economic, business, social and personal impacts that such a decision unleashes.

There was a presentation on the topic of debanking at Fintech Australia's recent Intersekt Festival in Melbourne in May 2021 by Mr Tim Dickinson, the Co-CEO of Assembly Payments, a well-established Australian and international payments business that has processed over A\$11 billion in total payments volumes and counts large banks as its shareholders.

"We had our banking services ripped out from underneath us," said Mr Dickinson in this presentation. Additionally, during his talk, he cited some 100 examples of debanking that he was personally aware of.

The fact that the most commonly targeted fintechs for debanking are in the cryptocurrency, payments and neo-lending areas has raised the question whether this behaviour by the banks is anti-competitive.

We believe debanking is driven by:

1. Outdated reliance on Standard Industrial Classification (SIC) Codes to understand the nature of a business and therefore its risk; SIC Codes are not fit for purpose in the era of the digital economy.
2. Reduced risk appetite driven by disproportionately fearful, biased and reactive responses in risk governance at Big 4 banks due to successful actions brought by AUSTRAC.
3. Inadequate investment in compliance technology such as regtech solutions that can surface and analyse billions of data points in real time to reduce the entire end-to-end risk of non-compliance. Ironically, Australia leads the way in regtech, for example, ASX-listed companies Identitii Limited and Kyckr Limited are just two examples.

A business with a substantial degree of power in a market (which a Big 4 bank clearly has in the small business payments and lending markets) is not allowed to engage in conduct that has the *purpose, effect or likely effect* of substantially lessening competition in a market.

Refusal to supply a service can constitute a misuse of market power which is illegal under s.46 of the *Competition and Consumer Act (2010)*.

Given the reasons we have enumerated above, we do not believe there is a *purposeful* misuse of market power by the Big 4 banks with respect to debanking of fintechs. However, it is entirely possible that the impact of debanking may be anti-competitive, depending on how the ACCC would define the relevant market.

Under the *Competition and Consumer Act (2010)*, the ACCC can be directed by the Government to undertake in-depth inquiries into certain matters.

Inquiries involve extensive investigation and analysis, including public consultation. The ACCC publishes its findings in a formal report to help inform consumers, encourage public debate and inform policy consideration.

We would like to see the problem of debanking referred to the ACCC for an in-depth inquiry.

Neobanking (also known as digital banking)

Neobanking is favourable to financial inclusion, hence our interest.

More than any other kind of business, banks depend on trust, and trust is multi-faceted.

There is trust that money and data are safe on the one hand, and trust that the customer's best interests will be served with appropriate products and pricing on the other hand. The Big 4 banks do well with the former, but not so well with the latter. Even with a bank account, many SMBs in Australia are under-banked in terms of their ability to access services such as payments, loans and insurance.

From a financial inclusion perspective, it is exciting to see the number of fintechs aimed at providing services to SMBs whether as RADI or ADI licensed banks, financial product and/or payments providers, for example, Airwallex, Avenue, Archa, Parpera, Thrive, Wise and Zeller.

Judo Bank (named after a sport that emphasises skill over size) is lending to SMBs and offers personal term deposits but has not yet offered transactional accounts for businesses.

We support the RADI regime, however, we note that potential neobanks that wish to take advantage of it face significant hurdles in terms of financial investment. We believe that access to capital is the key to success of neobanks in Australia.

Regulation: Access to the Payments Rails, Broadening the ASIC Sandbox and Doing Better than Europe's PSD2 such that the Consumer Data Right continues to lead the world

On 19 May 2021, it was reported in *The Australian Financial Review* by journalist James Evers that some members of Fintech Australia believe debanking is deliberately designed to cut off access to the payments rails (controlled by the banks) in order to frustrate fintechs which compete with the banks.

Whilst we do not believe there is any such deliberate intent, the allegation raises a bigger issue in the context of current regulation and Australia's potential position as a centre of financial and technology excellence.

From the perspective of financial inclusion, it is not acceptable that payments in Australia must start and end with a bank. This is effectively a hand-break on the success of innovation, for example, digital wallets offering cryptocurrency (including stablecoins) and open banking payments, both of which are favourable innovations that will promote financial inclusion.

We would like to see ASIC's sandbox broadened to include Payment Initiation Services (PIS) under the Consumer Data Right and we note that the EU's PSD2 rules specifically mandated banks to provide sandbox equivalents called "testing facilities" which require banks to open their APIs and provide dummy data to fintechs to test *before* launching open banking related services to live customers. We recommend the ability for fintechs to be able to test bank APIs *prior* to receiving Accredited Data Recipient status, not afterwards. At present, the operational reliability of the banks' APIs and the quality of their data are not mandatorily discoverable in advance. This is holding back fintech innovation and that is unfavourable to financial inclusion.

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Whilst there are innovations contemplated by the New Payments Platform (NPP), and their personnel are well-engaged and visible in the fintech ecosystem, the NPP is not currently set up to deliver financially inclusive results comparable to the regime available in the EU under PSD2.

The NPP is not easily accessible to start-ups due to the high costs for entry and the associated regulatory governance.

PSD2 mandates an overlay layer – called an “instructing layer” – that sits above the payment rails. European PIS providers are not required to become direct participants in the interbank payments system.

We would like to see the introduction of write access in open banking under the Consumer Data Right by legislating for payment initiation as a matter of priority, with providers participating in an instructing layer, rather than as direct participants.

In fact, there is the opportunity for Australia to improve on the PSD2 design and continue to lead the world by offering both read and write access, to deliver the best possible and most financially inclusive experiences and outcomes for consumers and businesses.

For example, CDR can improve on PSD2 in the areas of:

1. Refunds
2. Variable recurring payments
3. Status confirmations and messaging, and
4. Embedded data and metadata.

We urge the Government to prioritise its response to Scott Farrell’s “Future Directions for the Consumer Data Right” report which was publicly released on 23 December 2020.

Thank you for the opportunity to write to you.

We would be pleased to provide verbal evidence to you in Sydney.

We are genuinely passionate about promoting financial inclusion in Australia enabled by technology, including fintech and regtech solutions.

Yours faithfully

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Financial Inclusion By Design is proud to be a Member of Fintech Australia



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