Australian
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To whom it may concern,

SUBMISSION FROM RETAILERS FOR THE BLACK ECONOMY TASKFORCE

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Introduction

The Australian Retailers Association (**ARA**) is the retail industry's peak representative body representing Australia's $310 billion sector, which employs more than 1.2 million people. The ARA works to ensure retail success by informing, protecting, advocating, educating and saving money for its 7,500 independent and national retail members, which represent in excess of 50,000 shop fronts throughout Australia.

The ARA is by far Australia's largest retail organisation with coverage from the country's very largest retailers to small and medium retail businesses.

Overview

Businesses partaking in the black economy unfairly penalise businesses who do undertake legitimate business practices. The existence of the black economy serves to undermine the integrity of the retail sector, the clear majority of retailers operate in a highly regulated environment where their models rely on exacting knowledge of turnover, cashflow, stock control, Employment Law requirements and payments. For these reasons, legitimate retailers are at the cutting edge of new technologies and cash replacement within businesses.

There is a keen desire to remove cash and use alternative payment systems, which has the effect of addressing illicit and illegal behaviour in the economy. The real issues around increasing these moves away from cash exist around payment costs, and addressing excessive regulation which either deflects from change or encourages illegal behaviour. Any further moves to address excessive and costly regulation or to increase electronic payments also need to address illicit cash alternatives.

Some of the strongest leaders in the move to cashless fully automated payment and control systems within the retail sector have been small business. There are multiple cases of retailers who see automation, non-handling reduction in costs, removal of cash theft and stock control, along with prefill employment and tax keeping as being a massive advantage to them at a competitive level. It is noteworthy that these businesses also adopt low cost electronic payment methods or apply surcharges on high cost payment systems.

Illicit cash alternatives

The ARA's members have seen a dramatic increase in illicit trade crime affecting their businesses; it is no longer cash being targeted, but alternatives such as jewellery, electronics, electronic payments, tobacco and alcohol. If Government wishes to see a reduction in the black economy, an increase in revenue and a more even playing field, policing measures at the ATO, ABF and other regulators will need to be increased in line with these alternatives.

As outlined above, illicit cash alternatives have flourished due to a low risk/high reward environment. This has been created through the raising of taxes which has not been matched by an equally robust enforcement strategy.

The situation has been exacerbated by former tax collection agencies, like Customs, now being primarily focussed on border security matters. Organised crime elements have rapidly exploited this vulnerability and the relative agencies are no longer equipped or designed to meet this new challenge. This policing gap is particularly true with respect to highly-taxed items such as tobacco and alcohol but has also manifested itself in widespread non-compliance with Trademark and Copyright legislation. Legitimate Australian retailers are therefore not operating on a level playing field.

The BETF has flagged a desire to create an institutional legacy to counter some of the current problems. The ARA recommends that consideration be given to establishing a "Her Majesty's Revenue and Customs" type agency under the Treasury portfolio which could merge the Customs and Excise Acts and have responsibility for all Commonwealth revenue and intellectual property matters.

The drivers for this new agency include:

- Amalgamating the resources and expertise for "tax collection" in one agency,
- The steady decline in enforcement focus on Customs and Excise duty collection in the wake of greater border security concerns,
- The HMRC template being widely considered as world's best practice,
- The creation of the Home Affairs portfolio which may further dilute the focus on illicit trade; and
- The cessation of the tobacco manufacturing industry in Australia.

Employment law and pay level misconceptions

ARA members expressly have said, the black economy creates an unfair playing field which penalises businesses operating within the correct legal and regulatory boundaries. The prevalence of the black economy is stronger in particular sectors, however does exist in the retail sector, undermining the integrity of the sector and destabilising the legitimately operating businesses within it.

We are aware that due to regulatory restrictions around minimum engagement and other issues, staff will sometimes demand cash or cash alternatives to work those times, and that there are businesses who will also be tempted to make those offers despite it being false economy. There is no benefit for a retail system to see these practices continue where wages are paid off-the-books, as it impacts not only on brand perception but also turnover. There have been some very public instances of this occurring and we are pleased to see the retail sector react in a proactive way to stop more of these underpayments occurring. Many systems now operate in a virtually cashless environment which reduces the impact of a wide range of financial issues,from theft and increased insurance costs, and allows all employee payments to be run by head office.

There is also a falsehood perpetrated by some interest groups that there is an unfair Workplace Agreement advantage to big business over small business in the penalty rates structure.

Sub-issue A – Public Holiday penalty rates

The ARA submits that the assertion that employees of large employers receive lower penalty rates on public holidays under their enterprise agreement than those set by the *General Retail Industry Award 2010* (**GRIA**). Table A (below) compares the public holiday penalty rates paid by Woolworths and Coles (under the agreements which currently apply to those businesses) to employees working on public holidays to the penalty rates under the GRIA.

Table A

	GRIA	Coles Agreement	Woolworths Agreement
Permanent penalty	125%	150%	150%
Casual penalty and loading	150%	150%	150%

It follows from this that employees of Coles and Woolworths are paid a penalty rate for public holiday work which is equal to or greater than the penalty rate paid to employees under the GRIA. It should also be noted that this does not take into account the higher base rates of pay applicable under the Coles and Woolworths enterprise agreements, which we consider in further detail below.

Sub-issue B – Weekend penalty rates

The ARA accepts that in some circumstances employees working at Woolworths and Coles receive penalty rates on weekends which are lower than the rates applicable to employees under the GRIA. These are set out in Table B (below):

Table B

	GRIA	Coles Agreement	Woolworths Agreement
Permanent Saturday	25%	0%	0%
Casual Saturday	35%	20%	20%
Permanent Sunday*	50%	50%	50%
Casual Sunday*	75%	70%	70%

*Penalty rate to apply once transition to reduced penalty rates is completed.

There are two key points that need to be made in relation to this. The first is that the enterprise bargaining system has always supported outcomes such as this, where award entitlements are varied to meet the operational needs of individual businesses, and where those award entitlement variations are offset by other benefits. The second is that the reduced weekend penalties are offset by other benefits for employees including, most importantly, significantly higher base rates of pay on ordinary wages.

With a shift towards weekend shopping, retail employers of all sizes identified the need to control labour costs during these expanded trading hours in order to provide adequate customer service. Prohibitive weekend penalty rates were "bought out" through higher base rates of pay. This ensured retail employers of all sizes could operate with sufficient staffing levels on Saturdays and Sundays to drive sales and subsequent productivity gains.

Table C (below) sets out the most recent publicly available rates of pay for a permanent shop assistant under a range of enterprise agreements of large retail employers and the GRIA rate which applied at that time.

Table C

Agreement	Date from	Base rate (weekly)	GRIA rate at date	Difference
Coles	1 December 2013	$773.80	$683.20	$90.60
Woolworths	1 January 2015	$800.65	$703.90	$96.75
Bunnings	1 July 2015	$797.56	$721.50	$78.06
IKEA	September 2016	$890.34	$738.70	$151.64
Costco	1 February 2017	$874.00 - $950.00	$738.70	$135.28- $211.30

As can be seen from Table C, these retail employers are paying base rates of pay that are substantially higher than the GRIA, effectively "buying out" penalty rates. A cursory review of industrial history demonstrates this has been common practice in enterprise bargaining for decades. The certified agreement which covered employees working in Woolworths supermarkets in New South Wales and the Australian Capital Territory in 1995 adopted the same approach of elevated base rates and reduced penalty rates. This was lawful then and it is lawful now. It is also a legitimate means of achieving one of the central aims of bargaining – productivity gains.

Payment technologies and costs

As an overall goal, not only is a move to a cashless economy inevitable, but also highly desirable if key access to alternatives are set correctly.

One of the suggestions made by the Inquiry has been to look at a low-cost electronic payment alternatives specific to the Australian market. The ARA would argue we already have an alternative low cost electronic payments system, owned by a major Australian institution in eftpos, which delivers low merchant fees. Because of the lack of investment in contactless payments and routing in the past,we have seen exponential growth in the practice of credit routing and a collapse in the low-cost alternative. Eftpos is currently addressing the contactless issue.

Dual Network Cards enable consumer account selection and access to differentiated payment products such as cash out at Point of Sale (POS), as well as routing choice for merchants. Maintaining consumer and merchant choice across all payment channels and environments is critical as we move to new form factors such as mobile.

The ARA runs the **Australian Merchant Payments Forum (AMPF**) on behalf of Australia's retail merchants to advocate competitive, innovative and consumer friendly payment options for the retail sector.

Contactless transactions on Dual Network Cards currently take this choice away from consumers and merchants because POS terminals only read the first contactless application on the chip, and automatically route the transaction according to this priority, which may be at a higher cost. This is effectively a technology lockout that removes choice for consumers and merchants and makes it more difficult to manage the costs associated with different payment products and networks.

Lockout is also a risk for mobile. Mobile payments will significantly impact the ability of merchants to choose the payment network that best suits their needs. In a mobile world, only one scheme application will be observable to the consumer or merchant/acquirer for any given transaction, eliminating any existing network choice that they may have.

Without open competition in consumer payments and a viable domestic payment network which is freely able to compete on a level playing field with its contactless and mobile products, interchange rates, merchant fees and consumer costs may rise.

In addition to contactless, current examples where technology lockout may occur include tokenisation (Mobile, In-App, Online), closed loop payments (Transit) and Primary Account Reference (PAR) values.

Consumer research also indicates that consumers expect to see eftpos as an available choice in mobile payments which does not currently occur.

The ARA is aware since the rollout of the contact solution there is no ability for a consumer at the point of sale to determine how that transaction will be routed.

Currently if a dual network card is presented and used as a contactless transaction the system will route via the scheme rails, and does not allow the customer the choice of routing of the transaction.

An ARA member with a annual turnover of approximately $600 Million has forwarded to the RBA information showing that the extra costs involved were in excess of a $400,000 increase in charges compared to pre-contactless introduction. The ARA and our members are concerned that as we move toward Third Party mobile wallets, the choice of routing will be taken away, increasing the costs to merchants. The example we refer to is by no means the largest merchant that the ARA has spoken to regarding the increase in costs, the ARA is of the view that these costs will be even more substantial to other merchant members.

How can choice be maintained on mobile?

The ARA believes that unless Dual Network Card provisioning is made simple to understand, unbiased and easy for the consumer to execute, the only networks represented within consumer wallets will be the more expensive networks.

Our preference is for the provisioning of eftpos tokens to occur at the same time as the provisioning of any other payment network token. In addition, either separate card art bearing the eftpos brand should be displayed within the mobile wallet, or card art with the equivalence of eftpos branding displayed alongside other payment network branding.

International experience

Creating rules or regulations to promote choice and avoid technology lockout is not unprecedented and already exists in jurisdictions such as Canada, Denmark, the European Union and France. An additionally relevant jurisdiction is Malaysia, where the regulator is actively ensuring choice of the lowest cost debit network. Finaly, regulators in the USA have recently taken action against technology lockout activity that confuses consumers at the point of sale.

Contractual constraints and undertakings

One international payment system has a rule that prohibits Issuers from generating a token from a competitive payment network on cards having a BIN allocated by that international payment system. In addition to thiscontractual restraints that either prohibit or impose additional costs to Issuers if they elect to tokenise a competing payment network on those cards also exist. These provisions apply even if another payment system is currently available on physical cards currently issued under those BINs in a market.

These payment network rules and contract obligations prevent or delay Issuer implementation of competing payment networks within mobile wallet and deliberately remove the existing choice available to consumers today, as well as adding the significant costs of the provisioning of payment services to consumers and merchants.

Visa and MasterCard have also announced a co-operation agreement to allow each other's tokens to be provisioned and shared for online, in-app and in-store payments. This recent agreement indicates that there is little commercial justification for a prohibition on tokens from competing domestic networks.

The ARA does not believe the current undertakings are effective, as they are not public documents and the entities providing these undertakings are not publicly accountable for compliance. Having no regulation or ineffective undertakings will have a far greater impact on the long term competitive environment for retail payments in Australia.

Any extension to the current undertakings before regulations come into effect should cover the following:

- no prohibition/restriction/fettering of issuers provisioning all payment networks available on a card within a Mobile Wallet;

- co-residency of available payment functionality on cards in mobile wallets and devices;
- parity of representation of card images for all available networks (including brand) in mobile wallets; and
- consumer control of default settings and choice of payment network within the mobile wallet.

The ARA does not consider that the compliance costs would exponentially increase from compliance with the undertakings if standards were introduced.

Reducing payment costs for merchants and consumers

The ARA agrees on the following guiding principles for the future regulation.

Surcharging

- Principle-based surcharging, where there is no surcharging allowed for low cost systems (eftpos and scheme debit) assuming that the RBA will require acquiring banks to separate debit and credit and not allow blending of these rates by the acquiring banks. Businesses are permitted to apply a surcharge which reflects the cost of acceptance for credit.
- To ensure that there is no cross subsidisation, blended surcharging should not be permitted.

Level Playing Field

- Any regulation must apply equally to all payments systems, including American Express, Diners, Union Pay, JCB, PayPal, Apple Pay, Google etc.;
- A threshold set at no greater than 1.5% of retail payment transactions market share before regulation is applied;
- Regulation to capture new forms of payment systems under this model as they emerge;
- It is important for both the RBA and Government be able to quickly act on new technology and game changers in the payments sector with an appropriate mechanism setup to allow for such a process.

Mobile payment development

This is an important time in the development of Mobile Wallets and mobile payments. There is now an opportunity for rapid innovation and for new players, platforms and services to emerge in a quickly developing market.

However, in order to realise these benefits, it is important that consumers and merchants have a choice between Mobile Wallets and mobile payment services - whichever mobile device or platform they have chosen.

A new service is unlikely to be successful unless it is available on all the major mobile platforms. With Apple's iOS or Google's Android installed on almost every smartphone sold today, a service only available on one of those platforms will struggle to succeed. Indeed, most apps or services are developed for both platforms, since both provide similar levels of access to similar kinds of mobile hardware. For example, Google Maps has been successful on both iOS and Android because it can access the GPS functionality of both platforms. This is not the case when it comes to accessing the **Near Field Communication (NFC)** chip on Apple's iOS.

Modern mobile payment apps and services rely heavily on NFC technology, as NFC has already been installed by most retailers as part of the rollout of contactless card payments such as PayWave and PayPass. There are other technologies available, such as Bluetooth beacons and barcode scanners, but these require additional equipment to be purchased and installed and are unfamiliar to customers and retail merchants.

We believe that NFC technology will be essential for mobile wallet and mobile payment services for some time to come. It will take years for any alternative standard to be agreed and to become as ubiquitous and familiar as NFC.

In our view, for as long as Apple Pay remains the only app that can use the iPhone's NFC functionality, the potential for innovation in mobile wallets and mobile payments will be limited. A number of overseas banks and merchants have attempted to develop mobile wallets and payment services using alternative technologies, but none have been successful thus far.

The issue of reasonable and cost-reflective surcharging is familiar in Australia and has recently been addressed by the RBA and the ACCC in relation to fees charged by merchants. While we anticipate that issuers would prefer not to charge their customers for use of a mobile wallet (and some may well choose this option), preventing them from doing so may lead to unreasonably high costs and unfair and inefficient cross-subsidies.

We would like to see all customers have a choice of mobile wallets and payment services using the mobile phone they already have and the bank debit and credit cards and loyalty cards they already use.

These benefits are likely to include:

- more innovation and investment in mobile payment and mobile wallet apps and services;
- more competition and choice for customers, issuers, merchants and others in the apps and platforms they can participate in;
- more customer confidence in mobile wallets and payments as customers are able to choose the suppliers they trust;
- greater participation in mobile wallets and mobile payments by merchants, public transport operators, governments and service providers – all leading to greater customer convenience arising from the ability to have all payment, transport, loyalty, membership, access and identification cards securely stored on a mobile device;
- more inclusive and relevant industry standards, particularly in relation to security; and
- fairer and more transparent costs.

We understand that the issue of Apple's exclusive access to the iPhone's NFC chip has been raised as a concern for individual card issuers and consumer groups overseas but that Apple has not changed its position. This continues to be concern to retailers who could use their applications in conjunction with Apple Pay to cut down on black economy transactions, incorporate rewards systems, stocking, delivery and a whole range of yet-to-be-determined benefits.

Kind regards,

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