



14 July 2023

Director
Payments System and Strategy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Taylor

Reforms to the Payment Systems (Regulation) Act 1998

The Australian Banking Association (ABA) welcomes the opportunity to provide feedback to the consultation paper, Reforms to the *Payment Systems (Regulation) Act 1998* (PSRA).

Australia's payments system has evolved at a rate faster than the regulatory system that governs it. It is therefore critical for the Reserve Bank of Australia (RBA) to have clear, up to date and fit-for-purpose regulatory powers to perform its role as the primary payment systems regulator. Importantly, this includes the ability to monitor and regulate new technologies and participants.

ABA agrees with the case for reform, including to broaden the RBA's responsibility in relation to a broader range of participants of payment systems and to introduce certain powers for the Minister, including a Ministerial designation power. ABA further agrees for the RBA to have a broader range of regulatory powers under the PSRA.

As the nation continues to embrace the digital era, Australia must act swiftly to ensure that the payments system remains secure, resilient, and conducive to economic growth.

A summary of ABA's views is as follows. Responses to consultation questions are in the Appendix.

Proposed definitions of payment system and participant

- ABA supports the proposed approaches to expanding the definitions of 'payment system' and 'participant'. ABA supports the proposal that a 'participant' includes an entity that 'provides services for the purposes of enabling or facilitating a transfer of value using a payment system', as this proposal would apply to entities that perform a gateway function to permit or limit access to certain payments services and technology. ABA also considers the proposed definition of 'participant' would apply to an overseas participant where the entity, its technology or asset is offshore, and supports this proposed approach.
- ABA notes the proposed approach to defining 'payment system' and 'participant' means the two terms may increasingly overlap. This may raise a question about the implications of this overlap, particularly if there is a dispute relating to an entity that plays both roles.
- ABA also seeks clarification any entity that may be required to hold a payments licence under related regulatory reform would be a 'participant' under the PSRA, but not all 'participants' may be required to hold a payments licence.

RBA regulatory remit and role of Treasurer

- ABA supports the proposed approaches to applying the public interest and national interest tests, and for the national interest test in particular to remain broad (consistent



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with other Commonwealth legislation). ABA welcomes the opportunity to work with Treasury to consider the application of these tests, for example, the impact on the cost, efficiency and safety of payments for consumers.

- ABA asks Treasury to consider how these tests may apply where projected market developments are considered to be likely to give rise to a regulatory concern, and the concern may be most effectively mitigated with early intervention.
- ABA asks Treasury to consider how matters affecting consumer trust and the safety or integrity of the payments system may be addressed in a timely way. For example, the use of payment systems to move proceeds of scams and fraud is likely to be a matter affecting the safety and integrity of the payments system. It would be appropriate and desirable to clarify the RBA's remit to address these issues by taking appropriate action, including influencing industry-driven solutions, setting expectations or taking formal regulatory action. This question may also be relevant to the proposed payments licensing reforms and the payments regulatory architecture overall.
- ABA asks Treasury to continue to consider, and provide clarity to industry about, the interplay between the role of the Treasurer, and the RBA and the Payment Systems Board. As a matter of principle, ABA considers it can be desirable for the Treasurer to have the powers and functions as proposed in this paper. Examples where exercise of the proposed power may be beneficial include giving effect to the Government's payments strategic plan and the prioritisation of regulatory initiatives, and allocation of regulatory responsibility for issues that cross multiple regulators' remits. ABA also highlights the need for industry to have certainty in Government and regulator decision-making, and particularly in payments, the need to consider alignment with international standards.

Data collection

- ABA supports the proposal for the RBA to collect and publish data. ABA notes that a legislative requirement to report data and a legislative power to publish data would override commercial confidentiality agreements. It may be desirable for legislation to put beyond doubt that the RBA can collect and publish data even if the data is subject to non-disclosure agreements, not required to be reported under the laws of any other jurisdiction, and/or where the participant opposes the data collection and publication.
- ABA asks Treasury to clarify when the RBA may publish data about a participant and their arrangements with clients or other participants. For example, it may be in the public interest for RBA to publish data about one participant's commercial terms and/or fees that restrict access by other participants to the first participant's services, especially where the first participant's services have a gateway function or are 'must have' services. However, it may not be in the public interest for the RBA to publish data about a participants' terms and fees with corporate or business clients.

ABA would appreciate the opportunity to discuss these responses. Please contact Rhonda Luo at rhonda.luo@ausbanking.org.au or 0430 724 852 with any queries.

Yours sincerely

Chris Taylor
Chief of Policy



Appendix: responses to consultation questions

1) Does the proposed approach to updating the definition of ‘payment system’ appropriately capture arrangements that are involved in facilitating or enabling payments?

Yes, the definition of payment system appears to apply to relevant arrangements. ABA considers this proposed definition is appropriate within the PSRA regime, the nature of the RBA’s powers and the proposed powers for the Treasurer.

2) Does the proposed approach to updating the definition of ‘participant’ appropriately capture the full range of entities that currently and may in future play a role in the payments system?

ABA believes the approach to defining ‘participant’ appropriately captures the relevant entities.

ABA considers it is appropriate for the term ‘participant’ to apply to entities, their technology and assets that may perform a gateway function to permit or limit access to payments services or a payment system, and to an overseas participant where the entity, its technology or asset is offshore.

3) Should other considerations be taken into account in updating the definitions?

ABA notes the proposed approach to defining ‘payment system’ and ‘participant’ means the two terms may increasingly overlap. This may raise a question about the implications of this overlap, particularly if there is a dispute relating to an entity that plays both roles.

4) Is the proposed ‘national interest’ test appropriate for achieving the policy outlined in this paper?

ABA supports the proposed national interest test, and for the national interest test to remain broad, consistent with other Commonwealth legislation.

ABA asks Treasury to consider how this test may apply where projected market developments are considered to be likely to give rise to a regulatory concern, and the concern may be most effectively mitigated with early intervention

5) Is the proposed approach to delineating the Treasurer’s national interest powers clear and effective?

Yes, subject to question about prospective assessment of whether a matter is in the national interest.

6) Are there views or considerations on whether the Government should include a list of relevant considerations for the Treasurer to have regard to in the legislation, explanatory materials, or a separate policy document?

ABA would welcome a policy paper setting out these considerations, noting the strong public policy reasons for maintaining breadth and flexibility in the Treasurer’s powers.

7) Are there other considerations that have not been listed that should generally be considered in relation to ‘national interest’?

None at present, however emphasising payments innovation also brings new threats and risks emerging. Consider how the national interest test may be reviewed and updated.

8) Is the scope of the proposed Ministerial designation power effective and appropriate?

Yes, question about prospective assessment of whether a matter is in the national interest.

ABA seeks clarification that the Minister’s proposed power ability to allocate responsibilities to regulators and to direct portfolio regulators to implement a policy position are intended to (among other things) give effect to a designation decision.



9) Is the Treasurer's proposed ability to allocate responsibility to regulators (within their mandate) other than the RBA appropriate?

ABA considers this proposed ability is appropriate, while maintaining the operational independence of the regulators.

ABA asks Treasury to consider how matters affecting consumer trust and the safety or integrity of the payments system may be addressed in a timely way. For example, the use of payment systems to move proceeds of scams and fraud is likely to be a matter affecting the safety and integrity of the payments system. It would be appropriate and desirable to clarify the RBA's remit to address these issues including influencing industry-driven solutions, setting expectations or taking regulatory action.

10) Is the scope of the Treasurer's power to direct Treasury portfolio regulators (ACCC, ASIC, RBA) to implement a policy position appropriate?

ABA considers this proposed power is appropriate, while maintaining the operational independence of portfolio regulators.

As above, ABA asks Treasury to consider how matters affecting consumer trust and the safety or integrity of the payments system may be addressed in a timely way. For example, the use of payment systems to move proceeds of scams and fraud is likely to be a matter affecting the safety and integrity of the payments system.

Alignment between the focus and actions taken by various regulators would be particularly important given the urgency of this issue and the need for a holistic, 'ecosystem' approach to combatting scams.

11) Is the proposed consultation approach sufficient for both Ministerial designations and directions?

Yes.

12) Would it be appropriate to enable the RBA to have greater information disclosure powers? What constraints or conditions should be applied as part of such a power?

Yes.

ABA asks Treasury to clarify when the RBA may publish data about a participant and their arrangements with clients or other participants. For example, it may be in the public interest for RBA to publish data about one participant's commercial terms and/or fees that restrict access by other participants to the first participant's services, especially where the first participant's services have a gateway function or are 'must have' services. However, it may not be in the public interest for the RBA to publish data about a participants' terms and fees with corporate or business clients.

13) Is there merit in providing the RBA with the power to accept enforceable undertakings on a voluntary basis?

Yes for some types of matters. ABA agrees with RBA having the ability to accept enforceable undertakings.

14) Would there be benefits in introducing a more graduated penalty regime into the PSRA?

Yes. In principle, ABA supports the RBA having discretion to impose an appropriate penalty.

15) Given the arrangements in place and the proposed ministerial designation power is there an ongoing role for section 11 of the RBA Act or should it be removed? In what circumstances would section 11 of the RBA Act be the most appropriate mechanism to resolve differences of opinion between the Government and the RBA on payments system policy?

16) Are there any other changes to the PSRA that the Government should consider?