

Friday, 7 July 2023

Director - Payments Systems and Strategy Unit  
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The Treasury  
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Dear Director,

### **Reforms to the Payment Systems (Regulation) Act 1998 – consultation paper (June 2023)**

ASL formed in 1993 as a cooperative by our founding Members, Australian Building Societies, to provide settlement and payment services, and allow them to participate in the various financial sector clearing streams. ASL today supplies services to those member organisations and a wide range of other businesses. ASL as a Payments Aggregator powers smart and diverse payment for businesses, banks, and a range of other financial organisations including NPP access, Direct Entry Clearing, Austraclear and Pexa to name a few – and we aim to raise the bar in accessibility, customer experience, payment security, cost effectiveness and efficiency.

We welcome the opportunity to respond to The Treasury's consultation on reforms to the Payment Systems (Regulation) Act 1998. The payment system is at an important period of evolution to match the growing needs of our customers and end-users because of increased digital engagement and increasing expectations.

As mentioned above, as ASL is an aggregator of services. we sought input from our Member Banks who are Mutual Banks, to ensure their views were also captured for your consideration as part of our response.

Overall, we agree that these proposed reforms strike a balance between promoting innovation, competition, efficiency, and safeguarding the interests of consumers and the financial system. We also feel that our views as an APRA regulated institution and Payments Aggregator operating in market and supporting several of Australia's Mutual Banks (large and small) and emerging Neo Banks, FinTech's and Payment Service providers, are worth capturing for your information.

We have captured our thoughts on the following pages.

#### **Question 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 proposed approach to updating the definition of 'payment system' appropriately captures arrangements that engage in facilitating or enabling payments.

By expanding the coverage of the definition to include both bilateral and multilateral arrangements, including 'three party' and 'closed loop' systems, the revised definition encompasses a broader set of arrangements beyond traditional funds transfer systems. This

ensures that new entrants and innovative payment services are appropriately regulated if they play a role in facilitating or enabling payments.

While agreeing that the definition needs to extend beyond “A funds transfer system that facilitates the circulation of money”, the wording “enabling or facilitating payment or transfer of value, or a class of payments or transfer of value, and includes any instruments and procedures that relate to the arrangement or series of arrangements” is too confusing and ambiguous.

A preferred approach may be like the Canadian definition “means a system or arrangement for the exchange of messages effecting, ordering, enabling or facilitating the making of payments or transfers of value.”

Additionally, the proposal to update the definition to focus on the transfer of 'value' rather than strictly 'money' reflects the changing landscape of payments, where non-monetary digital assets and alternative payment infrastructures are increasingly available and used. This technology-neutral approach allows for flexibility in addressing payments in digital assets and accommodates the bypassing of traditional payment infrastructure.

**Question 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?**

Yes, the proposed approach to updating the definition of 'participant' appropriately captures the full range of entities that currently and may play a role in the payments system, both now and in the future.

This encompasses not only formal members but also entities that provide services to a payment system or services for the purpose of enabling or facilitating transfers of value through a payment system. This includes infrastructure providers, service providers such as gateways and digital wallet services, and entities involved in transferring, processing, and storing value in digital or physical form. The focus is on capturing entities that have a material involvement in the payments value chain, regardless of their formal membership in a particular payment system recognizes the evolving nature of payment services and business models, where entities outside the traditional membership structure can have significant impacts on the payments ecosystem.

Moreover, the proposed definition of a participant is intentionally technology-neutral and does not explicitly list the operators and service providers to allow for future innovations and emerging entities. This approach ensures that the regulatory framework remains adaptable and can encompass a wide range of entities that may emerge in the future.

We would like to raise the following edge/grey area case we see.

- ASL partner with a company to offer our Tokenisation Solution.
- This involves the provisioning of tokenisation and tokenisation lifecycle management for the card primary account number (PAN) within card payment message. We currently support tokenisation for the following schemes: Mastercard, Visa, Amex and eftpos and OEM wallets.
- Whilst not playing a part in the initiation of the payment or the settlement of the transaction there is a role in facilitating tokenisation for the transaction.

Given this scenario above, do you see the tokenisation provider as fitting into the new definition for participant for the payment system?

If so, this may impact considerations of such organisations seeking to operate in Australia or use Australia as a base for broader APAC business.

**Question 3. Should other considerations be taken into account in updating the definitions?**

Yes, several considerations should be considered when updating the definitions of 'payment system' and 'participant.'

- **Technological Advancements:** The rapid evolution of technology and its impact on the payments landscape. Definitions should be flexible enough to accommodate emerging technologies, digital assets, and innovative payment models.
- **Inclusion of Non-Traditional Participants:** The definitions should be broad enough to include entities that may not fit the traditional membership structure of payment systems but still play significant roles in facilitating or enabling payments. This includes infrastructure providers, fintech startups, digital wallet services, and other service providers that contribute to the payments value chain.
- **Regulatory Oversight:** The definitions should support effective regulatory oversight while avoiding unnecessary burdens. Balancing regulatory coverage with the need for innovation and competition is essential. The definitions should identify entities that require regulation to protect the public interest and maintain financial stability.
- **Clarity and Certainty:** The updated definitions should provide clarity and certainty to industry participants and regulators. Ambiguities in the current definitions should be addressed to avoid confusion and ensure consistent interpretation and application of the regulatory framework.
- **International Harmonization:** Consideration should be given to international standards and practices, particularly in jurisdictions with advanced payment systems regulation. Aligning definitions with international frameworks can facilitate cross-border payments, promote interoperability, and enhance regulatory cooperation.
- **Futureproofing:** The definitions should be future proofed to anticipate and accommodate emerging trends and developments in the payments industry. They should be sufficiently flexible to encompass innovative technologies, business models, and payment methods that may arise over time.

Overall, updating the definitions should be done with a forward-looking perspective, considering the evolving nature of payments, technological advancements, regulatory objectives, and the need for clarity and adaptability in the regulatory framework.

**Question 4. Is the proposed 'national interest' test appropriate for achieving the policy outlined in this paper?**

Yes, the proposed 'national interest' test aims to address the regulatory gap identified in the Review and provide the Treasurer with enhanced powers to respond to new and emerging issues in the payments system that fall outside the scope of the Reserve Bank of Australia's (RBA) 'public interest' mandate.

**Question 5. Is the proposed approach to delineating the Treasurer's national interest powers clear and effective?**

Yes, the approach has some clarity and effectiveness in distinguishing them from the Reserve Bank of Australia's (RBA) public interest powers. The aim of this approach is to preserve the RBA's independence in matters in the 'public interest' while empowering the Treasurer to address issues in the 'national interest' that go beyond the RBA's mandate.

It also attempts to strike a balance between empowering the Treasurer to address issues in the national interest and leveraging the expertise of regulatory bodies. However, the effectiveness of the delineation will depend on the clarity of communication, coordination, and collaboration between the Treasurer, regulators, and other relevant stakeholders.

**Question 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?**

The concept of "national interest" is central to the proposed Ministerial designation power, and providing clarity on the factors to be considered would help ensure transparency and consistency in decision-making, like, national security, consumer protection, data-related issues, innovation, cyber security, anti-money laundering and counter-terrorism financing, crisis management, and accessibility.

**Question 7. Are there other considerations that have not been listed that should generally be considered in relation to 'national interest'?**

Some other potential factors for consideration, include:

- Economic impact: potential effects on economic growth, employment, trade, investment, or industry competitiveness.
- Social welfare: issues like public health, education, poverty alleviation, social cohesion, and cultural preservation.
- Environmental sustainability: protection and preservation of the environment, including the mitigation of climate change, conservation of natural resources, and sustainable development.
- Geopolitical considerations: our nation's strategic interests, foreign relations, international alliances, regional stability, and geopolitical influence.
- Technological advancements: emerging technologies, their potential benefits, risks, and impact on various sectors of the economy, national security, and society.
- Public opinion and democratic values: reflect the views, values, and aspirations of the public, as well as the principles of democracy, human rights, and the rule of law.

**Question 8. Is the scope of the proposed Ministerial designation power effective and appropriate?**

Mostly, however it depends on numerous factors and perspectives, like:

- Addressing Regulatory Gaps: empowering the Treasurer to address issues in the payments system that go beyond the Reserve Bank of Australia's (RBA) public interest mandate.
- National Interest Considerations: such as national security, consumer protection, data-related issues, innovation, cyber security, anti-money laundering, crisis management, and accessibility.

- **Clarifying Responsibilities:** By delineating the responsibilities between the Treasurer and regulators, it could leverage the expertise of the relevant regulatory bodies while empowering the Treasurer to make decisions in the national interest.
- **Balancing Regulatory Roles:** recognizing the expertise of relevant regulators in developing rules and standards.
- **Safeguards and Consultation:** provide transparency, accountability, and opportunities for affected parties to participate in the decision-making process, thereby ensuring checks and balances.
- **Clarity and Consistency:** clear communication, coordination, and collaboration between the Treasurer, regulators, and other stakeholders. Clear guidelines, protocols, and mechanisms for information sharing and consultation will help ensure consistent decision-making and effective implementation.

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

Yes, however the appropriateness of the Treasurer's proposed ability to allocate responsibility to regulators, other than the Reserve Bank of Australia (RBA), should also depend on:

- **Utilizing Relevant Expertise:** recognize that different regulators may have specialized knowledge and experience in specific areas, allowing for more effective regulation and oversight.
- **Clear Allocation of Roles:** By specifying responsibilities to different regulators, the proposal aims to provide clarity regarding their respective roles and ensure that each regulator operates within its mandated boundaries, avoiding overlaps, gaps, or confusion.
- **Alignment with Mandates:** ensure regulatory decisions and rule development remain within the regulatory frameworks established for each regulator.
- **Consultation and Collaboration:** gather input, consider stakeholder perspectives, and ensure that the chosen regulators have the necessary capabilities and alignment with the designated policy issue.
- **Regulatory Coordination:** collaboration, information-sharing, and clear lines of communication between regulators are crucial to avoid fragmentation, promote consistency, and ensure a comprehensive approach to addressing policy issues.
- **Checks and Balances:** appropriate oversight mechanisms to maintain accountability and ensure that regulatory actions remain within the intended scope.
- **Clear communication** of which regulator will hold payment participant accountable.
- **Clear definition** on where the obligation sits for payment participant, that is, would it sit with ASL as an aggregator or at the financial institution initiating the payments?

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

Yes, however ensuring a range of factors, like:

- **Checks and Balances:** there should be mechanisms in place to review the exercise of the power, like regular reporting, periodic reviews, and evaluation of the policy positions and their impact can help ensure that the power is used appropriately and in the best interests of the payments system and stakeholders.
- **Expertise and Independence:** maintain the regulators' ability to exercise their professional judgment, fulfill their statutory mandates, and act independently in conducting their regulatory functions.

- Policy Alignment: should be used judiciously to ensure that policy positions are consistent with government priorities and overarching goals in the payments system.
- Regulatory Framework: should be exercised within the boundaries defined by legislation and should not undermine the regulators' existing statutory responsibilities, independence, or established processes.
- Clarity and Transparency: should be clearly defined, with guidelines and protocols in place to ensure transparent communication, clarity of expectations, and appropriate consultation with the regulators.
- Consistency with Regulatory Independence: should be exercised in a manner that respects and upholds the principles of regulatory independence.

**Question 11. Is the proposed consultation approach sufficient for both Ministerial designations and directions?**

Yes, however the following factors should be considered:

- Stakeholder Engagement: Engaging stakeholders, including industry participants, consumer groups, and other relevant stakeholders, helps ensure that their perspectives, concerns, and expertise are considered when making Ministerial designations or issuing directions.
- Transparency and Accountability: Effective consultation enhances transparency and accountability in the decision-making process.
- Timing and Timeliness: Adequate time should be provided for stakeholders to review and provide meaningful input.
- Clear Communication Channels: Establish clear channels of communication for stakeholders to express their views and concerns.
- Consideration of Feedback: The sufficiency of the consultation approach also rests on the extent to which stakeholder feedback is considered in the decision-making process. Demonstrate they have carefully considered the input received during the consultation and provide reasons for their decisions.
- Ongoing Engagement: Consultation should not be a one-time event but rather an ongoing process.

It is important to note that the specific consultation requirements may vary depending on the nature of the designation or direction, the stakeholders involved, and the legislative framework. Continuous evaluation and feedback from stakeholders can help assess the sufficiency of the consultation approach and identify areas for improvement.

**Question 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?**

Enabling the RBA to have greater information disclosure powers can be appropriate in certain circumstances to enhance regulatory effectiveness and ensure a well-functioning payments system. However, it is important to establish appropriate constraints and conditions to balance the need for information with the protection of sensitive data and privacy considerations, such as:

- Purpose and Necessity: should have a clear and specific purpose tied to the RBA's regulatory functions.
- Proportionality: should be proportionate to the regulatory objectives and the potential impact on participants' privacy and confidentiality.

- **Safeguards and Confidentiality:** to protect the confidentiality and security of the information collected.
- **Consent and Notice:** Participants' consent should be sought for the collection and disclosure of their information, where feasible and appropriate.
- **Data Minimization:** The RBA should collect and disclose only the minimum amount of information necessary to achieve the regulatory objectives.
- **Compliance with Privacy Laws:** should be developed in compliance with applicable privacy laws and regulations.
- **Oversight and Accountability:** should be established to ensure the responsible and lawful exercise of information disclosure powers.
- **Consultation and Stakeholder Engagement:** should be conducted to seek input and feedback on the proposed information disclosure powers.

It is important to strike the right balance between regulatory effectiveness and the protection of participants' privacy rights.

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

Yes, there is merit in providing the RBA with the power to accept enforceable undertakings on a voluntary basis from payment system participants. Enforceable undertakings can serve as a useful tool to promote compliance, address regulatory concerns, and establish clear expectations for participants in the payments system. However, the following should be considered:

- **Flexibility:** allow the RBA and payment system participants to negotiate and agree on specific measures or actions that participants will undertake voluntarily to rectify non-compliance or address regulatory concerns.
- **Cooperation and Industry Engagement:** promote a collaborative approach between the regulator and industry stakeholders, fostering constructive dialogue and enabling participants to take initiative-taking steps to address issues.
- **Timely Resolutions:** payment system participants can demonstrate their commitment to addressing compliance issues promptly and effectively.
- **Compliance Assurance:** provide a mechanism for monitoring and ensuring ongoing compliance, so the RBA can verify the implementation and adherence to the agreed-upon measures.
- **Legal Certainty:** provide participants with greater certainty regarding the consequences of non-compliance.
- **Consistency with Other Regulators:** align with practices in other regulatory frameworks, such as APRA, ACCC, and ASIC, who already have the authority to accept enforceable undertakings.

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

Yes, there would be benefits in introducing a more graduated penalty regime into the Payment Systems (Regulation) Act (PSRA).

A graduated penalty regime offers a range of penalties that are proportionate to the severity of non-compliance with regulatory obligations. This would provide:

- Proportional Deterrence: tailor penalties to the nature and seriousness of the non-compliance.
- Flexibility: provides regulators with a range of enforcement options.
- Effective Enforcement: enhance the effectiveness of enforcement actions by providing a stronger incentive for compliance.
- Proportional Accountability: promote accountability and fairness.
- Encouraging Compliance Culture: foster a culture of compliance.
- Consistency with Other Regulatory Frameworks: align with best practices and consistency across other regulatory frameworks.

It is essential to establish clear guidelines and criteria for determining the appropriate penalties within a graduated penalty regime. Factors such as the severity of the non-compliance, the financial impact on stakeholders, and the participant's compliance history should also be considered.

**Question 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?**

Yes, Section 11 provides a mechanism for resolving differences of opinion between the Government and the Reserve Bank of Australia (RBA) on whether a policy determined by the relevant RBA board is directed to the greatest advantage of the people of Australia.

In some potential circumstances where section 11 of the RBA Act could be the most appropriate mechanism include:

- Fundamental Policy Disagreements: could be invoked when there is a need to reconcile divergent perspectives and determine the policy direction in a way that aligns with the national interest.
- Matters of Significant Public Importance: could involve matters that have broad implications for the economy, financial stability, competition, or consumer welfare.
- Balancing Competing Objectives: It may be appropriate when striking the right balance between various considerations, such as financial stability, innovation, efficiency, and consumer protection, necessitates a collaborative approach.
- Extraordinary Circumstances: Section 11 might be invoked in exceptional circumstances where urgent action is required due to unforeseen developments or systemic risks in the payments system.

It is important to ensure that the chosen approach supports effective governance, accountability, and the pursuit of the national interest in the payments system domain.

**Question 16. Are there any other changes to the PSRA that the Government should consider?**

Yes, there are several other potential changes the Government could consider:

- Enhanced Consumer Protection: could involve introducing clearer disclosure requirements, addressing issues related to unauthorized transactions and fraud, and ensuring fair treatment of consumers in payment system operations.



- Interoperability and Standardization: could consider promoting interoperability and standardization within the payments ecosystem to facilitate seamless transactions, enhance competition, and promote innovation.
- Innovation Facilitation: consider mechanisms to streamline regulatory processes and approvals for innovative payment solutions.
- International Cooperation and Harmonization: Collaborate with other jurisdictions on regulatory approaches, standards, and information sharing can promote cross-border interoperability, enhance cybersecurity measures, and facilitate efficient and secure international payments.
- Initiative-taking Monitoring and Surveillance: empower regulatory authorities with the necessary tools and resources to detect and address emerging risks, such as cyber threats, money laundering, and terrorist financing, in a timely manner.
- Regulatory Oversight of New Payment Models: As the payments landscape evolves, the Government may need to consider specific provisions for regulating emerging payment models such as cryptocurrencies, stablecoins, and decentralized finance (DeFi).
- Collaboration with Industry and Stakeholders: emphasize greater collaboration with industry participants, consumer groups, and other relevant stakeholders in shaping the regulatory framework.

We thank you for the opportunity to review and respond to the Reforms to the Payment Systems (Regulation) Act 1998 Consultation Paper (June 2023) and are happy to provide further information as needed as Treasury develops policy on this important issue.

Yours sincerely,



**Trent Gunthorpe**

Chief Product Officer

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