ATT: Director Payments System and Strategy Unit, Financial System Division
The Treasury
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By email: paymentsconsultation@treasury.gov.au

Independent Payments Forum Australia – IPF Australia Submission
Reforms to the Payment Systems (Regulation) Act 1998 consultation paper.

Dear Director,

Thank you for the opportunity to make a submission to the Reforms to the Payment Systems (Regulation) Act 1998 consultation paper. If executed well, these reforms have the potential to make a profoundly positive impact on the daily lives of all Australians, as our society and economy become increasingly reliant on electronic and digital payments. They could also provide both the Treasury and the Reserve Bank of Australia with the tools necessary to address increasingly significant issues related to the control or influence of threat actors, artificial intelligent or globally dominant organisations.

IPF Australia - about us
Independent Payments Forum (Australia) (IPF) has recently been formed by a group of current and former payments professionals, to provide an alternative view about the health and wellbeing of the Australian payments system. IPF have been and is currently in discussion with a number of other payments participants who currently have little say in the decision-making process of government, including small business associations, about this consultation paper and issues contained in it.

Currently, the payments eco-system is dominated by a few major retailers, big banks, aggregators, two large US domiciled payments companies (Visa and MasterCard) and Australian Payments Plus. Collectively, these well-resourced organisations have a stranglehold on the payments market in Australia, and dominate industry forums that make recommendations to Government on payments issues.

Major technology companies (including Apple and Google) are making significant headway into the Australian market with digital wallets and other form factors and alternative payment methods are gaining traction, such as digital currency. Our view is that this has the potential to cause further burden and upward pressure on fees to merchants and their customers, especially those smaller merchants without appropriate representation in regulatory forums, or a depth of understanding around payments economics and technology.

IPF supports the need for change
IPF Australia supports the view that updates to the PSRA are required to broaden the RBA's ability to regulate all participants across the payments landscape.

We also support the adoption of ministerial power to designate payments systems and participants where it is in the public or national interest to do so, ensuring government can intervene to address emerging payment issues of national significance.

Done properly, these measures will help to ensure that all entities that play a role in facilitating or enabling payments, including new entrants, are appropriately regulated in the best interests of Australian consumers and businesses.

However, we do not believe the proposed reforms will necessarily address existing systemic issues, including the RBA's unwillingness to enforce through tangible public action, even when systemic issues are evident, or to fine participants who breach regulations.

Expanding definitions of 'payment system' and 'participant'
IPF broadly supports updating existing definitions of 'payment system' and 'participant' as described in the consultation paper as these new definitions would expand the regulatory coverage of the PSRA and ensure that all entities that play a role in facilitating or enabling payments, including new entrants, can be appropriately regulated if in the public interest or national interest.

For example, these new definitions would capture elements of the retail payments system which are forcing upward pressure on payments costs, including Apple Pay, Google Pay, Buy Now Paper later schemes, or creating unpredictable and unreliable outcomes, such as crypto payments.

However, we suggest the slight changes to the definition of "payment system", shown in brackets below, to cover smart contracts and AI driven protocols:

> "*A revised definition could apply to an arrangement [, understanding or protocol] or series of arrangements [, understandings or protocols] for enabling or facilitating payment or transfer of value, or a class of payments or transfer of value, and includes any instruments and procedures [, understandings or protocols] that relate to the arrangement [, understanding or protocol] or series of arrangements [, understandings or protocols]*".

In our view, it would be better to see the concepts referenced in the consultation paper referred to as being "operated by one or more persons" and to "cover a class or type of payment", even if by a without limitation example in the definition so as to capture "retail payments" as a class, and therefore enable the RBA to regulate all participants in retail payments, whether or not they belong to one network. This would help merchants, for example, as it could allow the RBA to regulate that choice be provided or, at least not be precluded, for merchants through the rules, procedures or protocols for any one network.

As for the changes to the definition of "participant", we agree with the concepts in the proposed change but suggest "one or more entities" be added before and also "or other legal entity, arrangement or understanding" (or preferably use of the term "person" per the UK and NZ frameworks) be added after the reference to "constitutional corporation", to close a loop hole that exists for partnerships, contractual joint ventures and associations that could operate aspects of the payment system.

Further, the best approach, to avoid the changes causing uncertain regulation, that the changes be made as suggested with an additional ability for the RBA to designate others based on public interest grounds given that this consultation has satisfied the need for consultation before regulation under the PSRA.

The existing need for the RBA to move swiftly to address issues as they arise has not been addressed by the consultation paper. Currently, and appropriately, the RBA must consult before regulating or changing regulation. However, in some instances, the RBA would benefit from a truncated consultation process period to address issues that it, or the Treasurer under the proposed new power to direct a regulator, has identified. We suggest that scope be provided in the PSRA for a truncated consultation process period to be invoked in public interest or national interest circumstances.

Ministerial power must be coupled with proper consultation & public interest criteria
IPF supports the adoption of Ministerial power to designate payments systems and participants in the public interest.

Government is best placed to provide enhanced leadership, vision and oversight for the payments ecosystem, as long as proper consultation processes are established that do not overlook the needs and rights of consumers, small business merchants and other participants.

There is no doubt that payments regulation and debate in Australia is overly influenced by large banks, large retailers, US card companies and, increasingly Big Tech. There is some risk that, without the proper checks and balances in place, this problem will prevail given the lobbying power of these powerful business interests.

When considering matters of national significance and public interest, the Government must look at issues such as fairness, cost of acceptance, privacy and equity, and their impact on consumers and small business merchants, to ensure there is a level playing field across the entire payments ecosystem.

Matters of public interest must tackle inequitable regimes such as the current system of strategic merchant rates (SMR) to the top 25 merchants in the country, and the 4 Big Banks being both issuer and acquirer for the American technology card schemes which, in our view creates a conflict of interest.

Government must also avoid making decisions that line the pockets of FinTech entrepreneurs to the detriment of consumers and merchants, or force consumers and businesses to adopt new payments technologies to prop up bank margins and technology rollout agendas.

Lastly, it is in the public intertest that government focus its regulatory "energy" on areas that impact the greatest number of payments users, such as the debit market (around 70% of payments volume) where competition is paramount. We must avoid the regulatory failures that we have seen on issues such as least cost routing, or diverting attention to areas of marginal impact.

An additional factor for consideration would be the potential need for urgent action or an exception or statement of order of legislative precedence in the case of national security, for example, how will this power of the Treasurer interact with the Security of Critical Infrastructure Act where not all participants in the payment system are listed in the Security of Critical Infrastructure Act as critical infrastructure providers?

The RBA needs sharper teeth

The Reserve Bank of Australia, as the county's primary payments system regulator, has historically chosen not to regulate or impose penalties even when clear market failures exit, or when regulatory breaches have occurred.

While we agree with the proposed change to the PSRA penalty framework, the RBA is known in many circles as the "reluctant regulator". This practice of reluctance to enforce appears to conflict with the RBA's mandate under the PSRA which includes promoting competition and efficiency.

In the case of least cost routing, for example, the RBA has failed to regulate where there has been a clear market failure over many years across multiple payment methods (cards and mobile), costing the economy billions in extra fees to banks and payments companies. This reluctance is clearly not in the public interest.

IPF supports reforming the PSRA to encourage better enforcement and compliance. Specifically, the unintended consequences of changes to payment system operator rules related to the information gathering. This issue should be considered carefully by the RBA when it looks at the type of information sought under its information gathering powers as proposed in order to avoid additional costs being imposed on merchants or consumers unintentionally as a result of the exercise.

The IPF also supports empowering the RBA to accept court-enforceable voluntary undertakings from payment system participants, consistent with powers already available to APRA, ACCC and ASIC. However, any undertaking, whether voluntary or court-enforceable, should also be made public.

Yours sincerely,

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