



14 July 2023

Nghi Luu
Assistant Secretary
Payments System and Financial Innovation Branch
The Treasury
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Dear Ms Luu

Reforms to the Payment Systems (Regulation) Act 1998 (PSRA)

Westpac Group (**Westpac**) appreciates the opportunity to provide a submission to the consultation paper on the Government's proposals to update the Payment Systems (Regulation) Act 1998 (Cth) (**the consultation paper**).

The payments system underpins our economy and financial system, acting as a key enabler of economy activity. It's therefore vital that the regulatory settings governing it are robust, allow for efficient operation and encourage innovation. It's also important that reforms to payments regulation are consistently managed in a way that allows for proper consideration of the impacts, benefits and risks.

It's noted that the Australian Banking Association (**ABA**) has also provided a detailed submission on behalf of its members, which Westpac supports. The following matters are raised in addition to those in the ABA submission.

Proposed ministerial power

Westpac supports the creation of a ministerial power and agrees that there are benefits to this power being vested with the Treasurer, including that they can engage more openly with industry due to them not playing an enforcement role.

However, practical consideration will need to be given to the time constraints of the Treasurer being able to engage in substantive, direct consultation with impacted parties. Even with the Treasury Department fulfilling a liaison role, decisions taken to allocate responsibilities under the new 'national interest' test are likely to warrant direct engagement between industry and the final decision maker. It will therefore be important to closely consider the legislative drafting of the decision making and consultation requirements to allow for substantive engagement.

Similarly, how 'national interest' is defined will be a critical factor. Alignment with other definitions of national interest at the Commonwealth level would ensure simplicity and consistency. It would also be preferential for the 'factors considered when making a decision based on the national interest' to be contained in a legislative instrument, rather than in the primary legislation or a policy document. This ensures the factors receive appropriate scrutiny, whilst also allowing the Government of the day the flexibility to amend them urgently, if required.

A detailed definition of 'national interest' contained in legislative instrument would also help to address the ambiguity around when a matter might shift from being one of 'public interest' and therefore in the remit of the RBA, to within the remit of the Treasurer.



Regulator coordination

With respect to the consultation paper's proposal to allow the Treasurer the power to allocate responsibility to one or more Treasury portfolio regulators, Westpac considers there are areas requiring further clarity and consideration. Firstly, the consultation paper envisages circumstances where multiple regulators are allocated responsibility. While this may be practically necessary, without a clear lead regulator or responsible entity, coordination and consultation with industry will be challenging, even with specific roles and responsibilities allocated.

It's also unclear how the powers would operate with respect to non-Treasury portfolio regulators. For example, the proposed 'national interest' factors include anti-money laundering and counter-terrorism financing (AML/CTF). However, AUSTRAC is not a Treasury portfolio regulator. In the event AML/CTF was a primary factor in determining that a payments system be designated, it's unclear how the Treasurer would allocate responsibilities that would remedy the problem.

Payment Systems (Regulation) Act reforms

Westpac is supportive of the need to update the definition of 'payment system', and the need for regulation to be both technology neutral and support innovation. However, transitioning from wording around 'a system' to 'arrangement's' takes away the scheme-type nature of a designated service, where parties were working within the defined boundaries of that scheme. This has the potential to lead to confusion if not drafted with particular care.

In addition, we suggest the definition of participant is broadened to capture both an entity and person, like the United Kingdom. The definition needs to ensure it captures entities with non-conventional legal structures (Decentralised Autonomous Organisations, etc) and those that are not incorporated in Australia.

The consultation paper notes an intention to conduct impact assessments before a decision to regulate a participant is taken. In the interests of transparency and consultation, those impact assessments should be provided to relevant participants for comment.

The consultation paper further notes that a decision to regulate a participant "would typically only be made after considering whether non-regulatory solutions could address the relevant concerns". Westpac strongly supports this principle and suggests that it is included in the updated PSRA structure in a formalised way.

Further clarity is also needed on several matters as outlined in the ABA submission. This includes the potential overlap of 'payment system' and 'participant', how that may be dealt with in the event of a dispute, and how matters affecting consumer trust and the safety or integrity of the payments system, such as scams, may be addressed in a timely way.

Information sharing

Westpac supports the information sharing proposals but notes the need for strong and effective governance arrangements, given the increased ability of the RBA to publish information without consent.

The approach to publicising information where consent hasn't been provided should be codified in a manner agreeable by the participants and the RBA. This could include requirements that information is published at bank-level only and mandatory standards of quality control to ensure consistency in reporting across the market. Codification of these could be developed jointly by the ABA, Treasury and the RBA.

If you have any questions about this submission or other matters, please feel free to contact me.

Yours sincerely

Signed by

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