

EXPOSURE DRAFT

EXPOSURE DRAFT (04 October 2023)

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Inserts for
**Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023:
Amendments of the Payment Systems (Regulation) Act 1998**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Schedule [P]	The day after this Act receives the Royal Assent.	
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Schedule [P]—Amendment of the Payment Systems (Regulation) Act 1998 etc.

Part 1—Definitions

Payment Systems (Regulation) Act 1998

1 Section 7 (definition of *access*)

Omit “the system” (wherever occurring), substitute “the payment system”.

2 Section 7

Insert:

unds includes, but is not limited to, the following:

- (a) money;
- (b) digital units of value, including digital currency (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).

3 Section 7 (definition of *participant*)

Repeal the definition, substitute:

participant in a payment system means:

- (a) a constitutional corporation that operates, administers or participates in a payment system; or
- (b) a constitutional corporation that provides services that enable or facilitate the operation or administration of, or participation in, a payment system.

4 Section 7 (definition of *payment system*)

Repeal the definition, substitute:

payment system:

- (a) means an arrangement or series of arrangements under which transfers of funds are made; and
- (b) includes any instruments and procedures that relate to that arrangement or series of arrangements.

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1 **5 Subsection 11(1)**

2 Omit “payment system if it considers that designating the system”,
3 substitute “payment system, or each payment system in a class of
4 payment systems, if it considers that designating the payment system, or
5 each payment system in the class,”.

6 **6 Saving provision**

7 To avoid doubt, any instrument made under subsection 11(1) of the
8 *Payment Systems (Regulation) Act 1998* that was in force immediately
9 before the commencement of this Part continues in force on and after
10 that commencement.

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1 **Part 2—Special designated payment systems**

2 *Payment Systems (Regulation) Act 1998*

3 **7 Paragraph 6(3)(a)**

4 Repeal the paragraph, substitute:

- 5 (a) the designation of payment systems (see Division 2 for
6 designated payment systems and Division 2A for special
7 designated payment systems); and

8 **8 Paragraphs 6(3)(b) to (e)**

9 Omit “designated payment systems”, substitute “payment systems that
10 are designated payment systems or special designated payment systems
11 (or both)”.

12 **9 At the end of subsection 6(3)**

13 Add:

14 Note: A payment system may be a designated payment system and a special
15 designated payment system: see subsections 11(1A) and 11A(2).

16 **10 Section 7**

17 Before “In this Act”, insert “(1)”.

18 **11 Section 7 (definition of *access regime*)**

19 Omit “designated payment system”, substitute “payment system that is
20 a designated payment system or a special designated payment system
21 (or both)”.

22 **12 Section 7 (paragraph (a) of the definition of *access regime*)**

23 After “Reserve Bank”, insert “or a nominated special regulator”.

25 **13 Section 7**

26 Insert:

27 *head*, of a nominated special regulator, has the meaning given by
28 subsection (2).

29 *national interest* has a meaning affected by section 8A.

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1 *nominated special regulator*, in relation to a special designated
2 payment system, has the meaning given by subsection 11C(2).

3 **14 Section 7 (definition of *public interest*)**

4 Omit “the meaning given”, substitute “a meaning affected”.

5 **15 Section 7**

6 Insert:

7 *responsible Minister* has the same meaning as in the *Public*
8 *Governance, Performance and Accountability Act 2013*.

9 *special designated payment system* means a payment system that
10 is designated under section 11A.

11 *special regulator* has the meaning given by section 11B.

12 **16 At the end of section 7**

13 Add:

14 (2) In this Act, a person is the *head* of a special regulator (including a
15 special regulator that is a nominated special regulator) if the person
16 is prescribed by the regulations as the head of that special
17 regulator.

18 **17 Section 8**

19 Omit “public interest”, substitute “*public interest*”.

20 **18 After section 8**

21 Insert:

22 **8A Meaning of *national interest***

23 In determining, for the purposes of this Act, whether a particular
24 action is in the *national interest*:

- 25 (a) the Minister may have regard to a matter (a *core public*
26 *interest matter*) that the Reserve Bank would be required to
27 have regard to if it were determining, for the purposes of this
28 Act, whether the action is in the public interest (see section
29 8); and
30 (b) the Minister must identify, and have regard to, one or more
31 matters each of which:
32 (i) is not a core public interest matter; and

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1 (ii) is a matter that the Minister considers relevant to
2 determining whether the action is in the national
3 interest.

4 **19 Subsection 10(1)**

5 Repeal the subsection, substitute:

6 (1) Under this Part:

7 (a) the Reserve Bank is given the power to designate payment
8 systems, which are then known as designated payment
9 systems (see Division 2); and

10 (b) the Minister is also given the power to designate payment
11 systems, which are then known as special designated
12 payment systems (see Division 2A).

13 Note: A payment system may be a designated payment system and a special
14 designated payment system: see subsections 11(1A) and 11A(2).

15 **20 After subsection 10(1)**

16 Insert:

17 (1A) Under Division 2A, the Minister is given the power to:

18 (a) nominate special regulators in relation to special designated
19 payment systems; and

20 (b) direct nominated special regulators about the performance of
21 their functions or the exercise of their powers under this Act
22 or the Regulatory Powers Act as it applies in relation to this
23 Act.

24 **21 Subsection 10(2)**

25 After “designated payment system”, insert “, and a nominated special
26 regulator has the following powers in relation to a special designated
27 payment system”.

28 **22 Paragraph 10(2)(a)**

29 Omit “it may impose an access regime on the”, substitute “to impose an
30 access regime on”.

31 **23 Paragraphs 10(2)(b) to (d)**

32 Omit “it may”, substitute “to”.

33 **24 Division 2 of Part 3 (heading)**

34 Omit “Designation of”, substitute “Designated”.

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25 After subsection 11(1)

Insert:

- (1A) To avoid doubt, the Reserve Bank may designate a payment system under subsection (1) whether or not that payment system has been designated by the Minister under subsection 11A(1).

Note: However, if the payment system has been designated by the Minister under subsection 11A(1), consultation requirements apply: see subsection 11AA(1).

26 After section 11

Insert:

11AA Multiple designation—consultation by Reserve Bank

Consultation before multiple designation

- (1) If a payment system is a special designated payment system, the Reserve Bank must, before designating the payment system under subsection 11(1), consult each nominated special regulator in relation to the payment system that is not the Reserve Bank.

Consultation after multiple designation

- (2) Subsection (3) applies if a payment system (the *target payment system*) is both a designated payment system and a special designated payment system.
- (3) Before the Reserve Bank performs a function, or exercises a power, under this Act in relation to the target payment system (other than a function or power that the Reserve Bank has because it is a nominated special regulator in relation to the target payment system), the Reserve Bank must consult each nominated special regulator in relation to the target payment system that is not the Reserve Bank.

Note: See also subsection 11CA(4), which requires nominated special regulators to engage in consultation before performing functions or exercising powers under this Act.

27 After Division 2 of Part 3

Insert:

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1 Division 2A—Special designated payment systems

2 11A Minister may designate payment systems

- 3 (1) The Minister may, by notifiable instrument, designate a payment
4 system as a *special designated payment system* if the Minister
5 considers that designating the payment system is in the national
6 interest.
- 7 (2) To avoid doubt, the Minister may designate a payment system
8 under subsection (1) whether or not the payment system has been
9 designated by the Reserve Bank under subsection 11(1).

10 *Conditions on designation*

- 11 (3) Before designating a payment system under subsection (1), the
12 Minister must:
- 13 (a) consult the Reserve Bank and each special regulator on the
14 proposed designation; and
- 15 (b) consider the following:
- 16 (i) whether there are alternatives to the designation
17 available under this Act or any other Act;
- 18 (ii) the outcome of the consultation undertaken by the
19 Minister under paragraph (a);
- 20 (iii) any other matter the Minister considers relevant.

21 *Revocation*

- 22 (4) The Minister may revoke the designation if, at the time of the
23 revocation, the Minister considers that the designation is no longer
24 necessary or appropriate.

25 11B Meaning of *special regulator*

- 26 (1) An entity is a *special regulator* if it is prescribed as a special
27 regulator by the regulations.
- 28 (2) An entity may be prescribed as a special regulator only if the entity
29 is a Commonwealth entity or a Commonwealth company (within
30 the meaning of the *Public Governance, Performance and*
31 *Accountability Act 2013*).

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11C Nomination of special regulators

- 1
- 2 (1) The Minister may, by legislative instrument, nominate one or more
3 special regulators in relation to a special designated payment
4 system if the Minister considers that doing so is in the national
5 interest.
- 6 (2) If a special regulator is nominated in relation to a special
7 designated payment system under subsection (1), then the special
8 regulator is a *nominated special regulator* in relation to that
9 special designated payment system.
- 10 (3) The special regulator is a nominated special regulator either:
11 (a) for the period specified in the nomination; or
12 (b) if no period is specified—until the nomination is revoked.

13 *Conditions on nomination*

- 14 (4) Before nominating a special regulator under subsection (1), the
15 Minister must:
16 (a) consult the head of the special regulator; and
17 (b) be satisfied that the nomination is consistent with any
18 functions of the special regulator under this Act or any other
19 Act (and with any requirements that apply to the performance
20 of those functions); and
21 (c) consider the following:
22 (i) the outcome of the consultation undertaken by the
23 Minister under paragraph (a);
24 (ii) any other matter the Minister considers relevant.

25 *Revocation*

- 26 (5) The Minister may revoke a nomination made under subsection (1)
27 if, at the time of the revocation, the Minister considers that the
28 nomination is no longer necessary or appropriate.

29 11CA Functions and powers of nominated special regulators

- 30 (1) Subject to this section, a nominated special regulator in relation to
31 a special designated payment system may perform the functions,
32 and exercise the powers, of a nominated special regulator under
33 this Act in relation to that special designated payment system.

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Restrictions relating to Ministerial directions

- 1
- 2 (2) A nominated special regulator must not perform a function, or
3 exercise a power, of the kind mentioned in subsection (1) unless:
4 (a) the performance of the function, or the exercise of the power,
5 is for the purpose of giving effect to a direction given to the
6 nominated special regulator by the Minister under subsection
7 11E(1); or
8 (b) the Minister has given the nominated special regulator a
9 direction under subsection 11E(1) specifying matters that
10 must be considered by the nominated special regulator before
11 performing the function or exercising the power.

12 Note: One effect of this subsection is that if no directions to the nominated
13 special regulator are in force under subsection 11E(1), then the
14 nominated special regulator must not perform any of the functions, or
15 exercise any of the powers, of the kind mentioned in subsection (1) of
16 this section.

- 17 (3) In performing a function, or exercising a power, of the kind
18 mentioned in subsection (1), a nominated special regulator must
19 comply with any directions given to the nominated special
20 regulator by the Minister under subsection 11E(1).

Consultation

- 21
- 22 (4) Before a nominated special regulator in relation to a special
23 designated payment system performs a function, or exercises a
24 power, under this Act in relation to the special designated payment
25 system, the nominated special regulator must consult:
26 (a) the Reserve Bank (if the nominated special regulator is not
27 the Reserve Bank); and
28 (b) if there are one or more other nominated special regulators in
29 relation to the special designated payment system—each of
30 those other nominated special regulators.

11E Ministerial directions to nominated special regulators

- 31
- 32 (1) The Minister may, by legislative instrument, give a direction to a
33 nominated special regulator about the performance of functions or
34 the exercise of powers under this Act, or the Regulatory Powers
35 Act as it applies in relation to this Act, by that nominated special
36 regulator in relation to a special designated payment system.

37 Note 1: For the contents of a direction, see section 11F.

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1 Note 2: Nominated special regulators must comply with directions given
2 under this subsection: see subsection 11CA(3).

- 3 (2) To avoid doubt, the Minister may give a direction under
4 subsection (1) to a nominated special regulator by giving a
5 direction to all nominated special regulators.

6 *Conditions on giving direction*

- 7 (3) Before giving a direction to a nominated special regulator under
8 subsection (1), the Minister must:
9 (a) consult the head of the nominated special regulator; and
10 (b) be satisfied that giving the direction is in the national interest;
11 and
12 (c) be satisfied that giving the direction is consistent with any
13 functions of the nominated special regulator under this Act or
14 any other Act (and with any requirements that apply to the
15 performance of those functions); and
16 (d) if the Minister is not the responsible Minister for the
17 nominated special regulator—obtain written consent to the
18 direction from the responsible Minister.

19 *When direction is in force*

- 20 (4) The direction:
21 (a) comes into force:
22 (i) unless subparagraph (ii) applies—on the day on which it
23 is given; or
24 (ii) if the direction specifies a later day as the day on which
25 it comes into force—on the day so specified; and
26 (b) continues in force until it is revoked.

27 *Revocation*

- 28 (5) The Minister may revoke the direction if, at the time of the
29 revocation, the Minister considers that the direction is no longer
30 necessary or appropriate.

31 **11F Contents of ministerial directions to nominated special**
32 **regulators**

- 33 (1) Without limiting subsection 11E(1), a direction given to a
34 nominated special regulator under that subsection may:
35 (a) relate to a particular special designated payment system; or

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- 1 (b) relate to a particular function or power that the nominated
2 special regulator may perform or exercise under this Act or
3 the Regulatory Powers Act as it applies in relation to this
4 Act; or
5 (c) specify the purposes for which a function or power
6 mentioned in paragraph (b) of this subsection is to be
7 performed or exercised; or
8 (d) specify matters that the nominated special regulator must
9 consider when performing or exercising a function or power
10 mentioned in paragraph (b) of this subsection; or
11 (e) provide that a function or power mentioned in paragraph (b)
12 of this subsection must not be performed or exercised by the
13 nominated special regulator, or must be performed or
14 exercised by the nominated special regulator only in
15 specified circumstances.
- 16 (2) The direction must specify the time by which, or period during
17 which, the direction is to be complied with.
- 18 (3) The direction must not relate to a particular participant in a special
19 designated payment system.

20 **11G Reports by nominated special regulators**

- 21 (1) The Minister may, by notice in writing, request a nominated
22 special regulator in relation to a special designated payment system
23 to report in writing to the Minister on:
24 (a) the performance of functions and exercise of powers under
25 this Act, or the Regulatory Powers Act as it applies in
26 relation to this Act, by the nominated special regulator; or
27 (b) without limiting paragraph (a), the nominated special
28 regulator's compliance with a direction given to the
29 nominated special regulator under subsection 11E(1).
- 30 (2) The nominated special regulator must comply with a request made
31 by the Minister under subsection (1).

32 **11H Authorised use or disclosure of information**

- 33 (1) The Reserve Bank may use or disclose information or documents
34 obtained by the Reserve Bank under or for the purposes of this
35 Part if:
36 (a) the use or disclosure is to a nominated special regulator; and

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1 (b) the use or disclosure is for the purposes of the performance
2 of functions or the exercise of powers under this Act, or the
3 Regulatory Powers Act as it applies in relation to this Act, by
4 the Reserve Bank or that nominated special regulator.

5 Note: This subsection, and subsection (2), constitute authorisations for the
6 purposes of the *Privacy Act 1988*.

7 (2) A nominated special regulator (the *first regulator*) in relation to a
8 special designated payment system may use or disclose
9 information or documents obtained by the nominated special
10 regulator under or for the purposes of this Part if:

11 (a) the use or disclosure is to:

12 (i) the Reserve Bank; or

13 (ii) another nominated special regulator in relation to the
14 special designated payment system; and

15 (b) the use or disclosure is for the purposes of the performance
16 of functions or the exercise of powers under this Act, or the
17 Regulatory Powers Act as it applies in relation to this Act, by
18 the first regulator, the Reserve Bank or that other nominated
19 special regulator.

20 **28 Division 3 of Part 3 (heading)**

21 Omit “to designated systems”, substitute “regimes”.

22 **29 Subdivision A of Division 3 of Part 3 (heading)**

23 Omit “Access regimes”, substitute “Operation of access regimes”.

24 **30 Subsection 12(1)**

25 Omit “the participants”, substitute “participants”.

26 **31 After subsection 12(1)**

27 Insert:

28 (1A) A nominated special regulator in relation to a special designated
29 payment system may, by legislative instrument, impose an access
30 regime on participants in that special designated payment system.

31 **32 Subsection 12(2)**

32 After “Reserve Bank” (first occurring), insert “or the nominated special
33 regulator (as the case may be)”.

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33 Paragraph 12(2)(a)

1 Repeal the paragraph, substitute:

2 (a) either:

- 3 (i) in the case of an access regime imposed by the Reserve
4 Bank under subsection (1)—whether imposing the
5 access regime would be in the public interest; or
6 (ii) in the case of an access regime imposed by the
7 nominated special regulator under subsection (1A)—
8 any matters that the nominated special regulator has
9 been directed by the Minister under subsection 11E(1)
10 to consider in relation to the imposition of the access
11 regime; and
12

34 Paragraph 12(2)(d)

13 After “Reserve Bank”, insert “or the nominated special regulator (as the
14 case may be)”.

35 After subsection 12(2)

15 Insert:

- 16 (3) Without limiting subsection (1) or (1A), the Reserve Bank or the
17 nominated special regulator (as the case may be) may, in an
18 instrument made under either of those subsections:
19 (a) specify participants or classes of participants to whom the
20 access regime does or does not apply; or
21 (b) provide that the access regime applies differently in relation
22 to different participants or classes of participants.
23
24

25 Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

36 Subsection 12(5)

26 After “Reserve Bank”, insert “or the nominated special regulator”.

37 At the end of section 13

27 Add:

28 Note: The operation of section 15AA (which deals with conflicts between
29 access regimes) may result in a part of an access regime ceasing to be
30 in force before the time when the whole of the access regime ceases to
31 be in force as provided in section 15.
32
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38 Subsection 14(1)

After “Reserve Bank” (first occurring), insert “or a nominated special regulator in relation to a special designated payment system”.

39 Subsection 14(1)

After “access regime”, insert “that it has imposed”.

40 Subsection 14(1)

After “Reserve Bank” (second occurring), insert “or the nominated special regulator (as the case may be)”.

41 Paragraph 14(1)(a)

Repeal the paragraph, substitute:

(a) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—whether the variation would be in the public interest; or

(ii) in the case of an access regime imposed by the nominated special regulator under subsection 12(1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the variation; and

42 Paragraph 14(1)(d)

After “Reserve Bank”, insert “or the nominated special regulator (as the case may be)”.

43 Subsection 14(5)

After “Reserve Bank”, insert “or the nominated special regulator”.

44 Subsection 15(1)

After “access regime” (first occurring), insert “that the Reserve Bank or a nominated special regulator has imposed”.

45 Paragraph 15(1)(b)

Repeal the paragraph, substitute:

(b) the entity that imposed the access regime, on the application of the participants in the payment system concerned, revokes the access regime; or

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46 Paragraph 15(1)(c)

Omit “Reserve Bank”, substitute “entity that imposed the access regime”.

47 Paragraph 15(1)(d)

Repeal the paragraph, substitute:

(d) the payment system concerned ceases to exist; or

(e) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—the payment system concerned ceases to be a designated payment system; or

(ii) in the case of an access regime imposed by a nominated special regulator under subsection 12(1A)—the payment system concerned ceases to be a special designated payment system; or

(f) the access regime ceases to be in force under section 15AA (which deals with conflicts between access regimes).

Note: The operation of section 15AA may also result in a part of an access regime ceasing to be in force before the time when the whole of the access regime ceases to be in force as provided in this section.

48 Subsection 15(3)

Omit “Reserve Bank” (first occurring), substitute “entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator)”.

49 Subsection 15(3)

Omit “Reserve Bank” (second occurring), substitute “entity”.

50 Paragraph 15(3)(a)

Repeal the paragraph, substitute:

(a) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—whether revoking the access regime would be in the public interest; or

(ii) in the case of an access regime imposed by a nominated special regulator under subsection 12(1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the revocation; and

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51 Paragraph 15(3)(d)

Omit “Reserve Bank”, substitute “entity”.

52 Subsection 15(5)

Omit “Reserve Bank”, substitute “entity that imposed the access regime”.

53 After section 15

Insert:

15AA Conflicts between access regimes

(1) This section applies if:

- (a) a particular payment system is both a designated payment system and a special designated payment system; and
- (b) the Reserve Bank has, under subsection 12(1), imposed an access regime (the *normal access regime*) on participants in the payment system; and
- (c) a nominated special regulator has, under subsection 12(1A), imposed an access regime (the *special access regime*) on participants in the payment system; and
- (d) the normal access regime is, to any extent, inconsistent with the special access regime.

(2) For the purposes of this Act, the normal access regime ceases to be in force to the extent that it is inconsistent with the special access regime.

54 Paragraph 15A(a)

Omit “designated payment system”, substitute “payment system that is a designated payment system or a special designated payment system (or both)”.

55 Section 16

Repeal the section, substitute:

16 Right to ask for directions

(1) This section applies if a person who has been denied access to a payment system that is a designated payment system or a special designated payment system (or both) considers that the denial of

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1 access constitutes, or is attributable (wholly or partly) to, a breach
2 of a provision of an access regime by a participant.

3 (2) The person may ask the entity that imposed the access regime
4 (whether the Reserve Bank or a nominated special regulator) to use
5 its power under section 21 to give a direction to remedy the
6 situation.

7 **56 Subsection 17(1)**

8 Omit “designated payment system”, substitute “payment system that is
9 a designated payment system or a special designated payment system
10 (or both)”.

11 **57 Subsection 17(2)**

12 Repeal the subsection, substitute:

13 (2) The person must notify the entity that imposed the access regime
14 (whether the Reserve Bank or a nominated special regulator) of the
15 application to the Federal Court.

16 (2A) The entity may apply to the Federal Court to be joined as a party to
17 the proceedings for the order.

18 **58 Division 4 of Part 3 (heading)**

19 Omit “for designated systems”.

20 **59 Section 18 (heading)**

21 Repeal the heading, substitute:

22 **18 Making of standards**

23 **60 After subsection 18(1)**

24 Insert:

25 (1A) A nominated special regulator in relation to a special designated
26 payment system may, by legislative instrument, determine
27 standards to be complied with by participants in that special
28 designated payment system.

29 Note 1: A failure to comply with a standard is not an offence, but it may lead
30 to a direction being given under section 21.

31 Note 2: For variation and revocation, see subsection 33(3) of the *Acts*
32 *Interpretation Act 1901*.

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1 (1B) Before determining a standard under subsection (1A), the
2 nominated special regulator must have regard to any matters that
3 the nominated special regulator has been directed by the Minister
4 under subsection 11E(1) to consider in relation to the
5 determination of standards.

61 Paragraph 18(2)(b)

7 Repeal the paragraph, substitute:

8 (b) continues in force until:

9 (i) it is revoked; or

10 (ii) it ceases to be in force under section 18AA (which deals
11 with conflicts between standards).

12 Note: The operation of section 18AA may also result in a part of a standard
13 ceasing to be in force before the time when the whole of the standard
14 ceases to be in force as provided in paragraph (b) of this subsection.

62 Subsection 18(6)

16 After “Reserve Bank”, insert “or a nominated special regulator”.

63 After section 18

18 Insert:

19 18AA Conflicts between standards

20 (1) This section applies if:

21 (a) a particular payment system is both a designated payment
22 system and a special designated payment system; and

23 (b) the Reserve Bank has, under subsection 18(1), determined a
24 standard (the *normal standard*) to be complied with by
25 participants in the payment system; and

26 (c) a nominated special regulator has, under subsection 18(1A),
27 determined a standard (the *special standard*) to be complied
28 with by participants in the payment system; and

29 (d) the normal standard is, to any extent, inconsistent with the
30 special standard.

31 (2) For the purposes of this Act, the normal standard ceases to be in
32 force to the extent that it is inconsistent with the special standard.

64 Division 5 of Part 3 (heading)

34 Omit “relating to designated systems”.

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65 Paragraph 19(a)

After “designated payment system”, insert “(that is not also a special designated payment system)”.

66 Paragraph 19(b)

Omit “designated payment system”, substitute “payment system that is a designated payment system or a special designated payment system (or both) and”.

67 Subsection 20(1)

Omit “section. The Reserve Bank must only do so if”, substitute “section if”.

68 After paragraph 20(1)(b)

Insert:

; and (c) if the dispute is of a kind mentioned in paragraph 19(b)—the dispute relates to whether an access regime imposed by the Reserve Bank under subsection 12(1) is being complied with.

69 After subsection 20(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may arrange for a dispute to which this Division applies to be settled by arbitration in accordance with this section if:

- (a) the dispute is of a kind mentioned in paragraph 19(b); and
- (b) the dispute relates to whether an access regime imposed by the nominated special regulator under subsection 12(1A) is being complied with; and
- (c) the nominated special regulator has had regard to any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the arbitration; and
- (d) the parties to the dispute agree to the nominated special regulator arranging the arbitration.

Note: The nominated special regulator may be acting on its own initiative or in response to a request from one or more of the parties to the dispute in arranging for the arbitration.

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70 Subsection 20(2)

Repeal the subsection, substitute:

(2) The arbitration is to be conducted:

- (a) in the case of an arbitration arranged by the Reserve Bank—by the Governor of the Reserve Bank, or by a person appointed in writing by the Governor to conduct the arbitration; or
- (b) in the case of an arbitration arranged by a nominated special regulator—by the head of the nominated special regulator, or by a person appointed in writing by the head of the nominated special regulator to conduct the arbitration.

71 Division 6 of Part 3 (heading)

Omit “in designated systems”.

72 Paragraphs 21(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the participant has failed to comply with a standard determined by the Reserve Bank under subsection 18(1); or
- (b) the participant has failed to comply with an access regime imposed by the Reserve Bank under subsection 12(1).

73 After subsection 21(1)

Insert:

- (1A) A nominated special regulator in relation to a special designated payment system may give a direction to a participant in the special designated payment system if the nominated special regulator considers that:
- (a) the participant has failed to comply with a standard determined by the nominated special regulator under subsection 18(1A); or
 - (b) the participant has failed to comply with an access regime imposed by the nominated special regulator under subsection 12(1A).

74 Subsection 21(2)

After “Reserve Bank”, insert “or the nominated special regulator (as the case may be)”.

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75 Paragraph 21(8)(b)

Repeal the paragraph, substitute:

(b) continues in force until:

(i) it is revoked; or

(ii) it ceases to be in force under section 21A (which deals with conflicts between directions).

Note: The operation of section 21A may also result in a part of a direction ceasing to be in force before the time when the whole of the direction ceases to be in force as provided in paragraph (b) of this subsection.

76 At the end of Division 6 of Part 3

Add:

21A Conflicts between directions

(1) This section applies if:

(a) a particular payment system is both a designated payment system and a special designated payment system; and

(b) the Reserve Bank has, under subsection 21(1), given a direction (a *normal direction*) to a participant in the payment system; and

(c) a nominated special regulator has, under subsection 21(1A), given a direction (a *special direction*) to that participant in the payment system; and

(d) the normal direction is, to any extent, inconsistent with the special direction.

(2) For the purposes of this Act, the normal direction ceases to be in force to the extent that it is inconsistent with the special direction.

77 Section 26 (heading)

After “Reserve Bank”, insert “and nominated special regulators”.

78 Subsection 26(1)

After “designated payment system”, insert “or a special designated payment system”.

79 After subsection 26(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may require a participant in the special designated

EXPOSURE DRAFT

1 payment system to give the nominated special regulator
2 information relating to that special designated payment system and
3 its participants.

4 **80 Subsection 29(1)**

5 After “Reserve Bank”, insert “or a nominated special regulator”.

6 **81 Subsection 29(2)**

7 After “Reserve Bank”, insert “or the nominated special regulator (as the
8 case may be)”.

9 **82 Subsection 29(3)**

10 Omit “revokes a standard or an access regime, the Reserve Bank”,
11 substitute “or a nominated special regulator revokes a standard or an
12 access regime, the Reserve Bank or the nominated special regulator (as
13 the case may be)”.

14 **83 Section 31 (at the end of the heading)**

15 Add “—Reserve Bank”.

16 **84 Subsection 31(1)**

17 After “this Act”, insert “or the Regulatory Powers Act as it applies in
18 relation to this Act (other than its functions or powers as a nominated
19 special regulator)”.

20 **85 Subsection 31(2)**

21 After “this Act”, insert “or the Regulatory Powers Act as it applies in
22 relation to this Act (other than the Governor’s functions or powers as
23 the head of a nominated special regulator)”.

24 **86 At the end of section 31**

25 Add:

26 (4) This section does not limit a power of delegation that a delegator
27 mentioned in subsection (1) or (2) has under any other Act.

28 **87 After section 31**

29 Insert:

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31A Delegation—nominated special regulators

- 1
2 (1) A nominated special regulator in relation to a special designated
3 payment system may, by written instrument, delegate all or any of
4 its functions or powers under this Act or the Regulatory Powers
5 Act as it applies in relation to this Act to:
6 (a) the head of the nominated special regulator; or
7 (b) a person prescribed by the regulations as an eligible delegate
8 in relation to the nominated special regulator.
- 9 (2) The head of a nominated special regulator in relation to a special
10 designated payment system may, in writing, delegate all or any of
11 the head's functions or powers under this Act to a person
12 prescribed by the regulations as an eligible delegate in relation to
13 the nominated special regulator.
- 14 (3) Before delegating a function or power to a person under
15 subsection (1) or (2), the delegator must have regard to:
16 (a) if the power or function is to be delegated to a person
17 holding, occupying, or performing the duties of, a specified
18 office or position—whether the office or position is
19 sufficiently senior for the person to perform the function or
20 exercise the power; or
21 (b) otherwise—whether the person has appropriate qualifications
22 or expertise to perform the function or exercise the power.
- 23 (4) In exercising powers under a delegation under subsection (1) or
24 (2), the delegate must comply with any directions of the delegator.
- 25 Note: For further information about delegations, see sections 34AA to 34A
26 of the *Acts Interpretation Act 1901*.
- 27 (5) This section does not limit a power of delegation that a delegator
28 mentioned in subsection (1) or (2) has under any other Act.

EXPOSURE DRAFT

1 **Part 3—Criminal and civil penalties**

2 *Payment Systems (Regulation) Act 1998*

3 **88 Section 7**

4 Insert:

5 *civil penalty provision* has the same meaning as in the Regulatory
6 Powers Act.

7 *contravene* an offence or civil penalty provision has a meaning
8 affected by section 9A.

9 Note: The meaning of *contravention* is correspondingly affected (see
10 section 18A of the *Acts Interpretation Act 1901*).

11 *Regulatory Powers Act* means the *Regulatory Powers (Standard*
12 *Provisions) Act 2014*.

13 **89 At the end of Part 2**

14 Add:

15 **9A Functions and powers under this Act**

16 In this Act, a reference to a function or power under this Act
17 includes a reference to a function or power under the Regulatory
18 Powers Act as it applies in relation to this Act.

19 **9B Contravening an offence provision or a civil penalty provision**

20 (1) This section applies if a provision of this Act provides that a person
21 contravening another provision of this Act (the *conduct provision*)
22 commits an offence or is liable to a civil penalty.

23 (2) For the purposes of this Act, and the Regulatory Powers Act to the
24 extent that it relates to this Act, a reference to a contravention of an
25 offence provision or a civil penalty provision includes a reference
26 to a contravention of the conduct provision.

27 **90 Subsections 21(6) and (7)**

28 Repeal the subsections.

EXPOSURE DRAFT

91 Before subsection 21(8)

Insert:

When direction is in force

92 Subsection 21(8)

Renumber as subsection (6).

93 Subsection 21(9)

Repeal the subsection.

94 At the end of section 21

Add:

Revocation of directions

- (7) The Reserve Bank or the nominated special regulator (as the case may be) may revoke the direction by notice in writing given to the participant if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

Contravention of directions

- (8) The participant contravenes this subsection if:
- (a) the participant does, or fails to do, an act; and
 - (b) doing, or failing to do, the act results in a contravention of the direction given under subsection (1) or (1A); and
 - (c) if the direction was given under subsection (1)—the doing of the act, or the failure to do the act, occurs at a time when:
 - (i) the participant is still a participant in the payment system referred to in subsection (1); and
 - (ii) that payment system is still a designated payment system; and
 - (d) if the direction was given under subsection (1A)—the doing of the act, or the failure to do the act, occurs at a time when:
 - (i) the participant is still a participant in the payment system referred to in subsection (1A); and
 - (ii) that payment system is still a special designated payment system.

EXPOSURE DRAFT

Fault-based offence

- 1
- 2 (9) The participant commits an offence if the participant contravenes
3 subsection (8). The physical elements of the offence are set out in
4 that subsection.

5 Penalty: 100 penalty units.

6 *Civil penalty provision*

- 7 (10) A person is liable to a civil penalty if the participant contravenes
8 subsection (8).

9 Civil penalty: 100 penalty units.

10 *Continuing contraventions of offence provision*

- 11 (11) If a contravention of the direction occurs in circumstances that give
12 rise to the participant committing an offence against subsection (9),
13 the participant commits an offence against that subsection in
14 respect of:

- 15 (a) the day on which the contravention occurs; and
16 (b) each subsequent day (if any) on which the contravention
17 continues (including the day of conviction for any such
18 offence or any later day).

19 Note 1: This subsection is not intended to imply that section 4K of the *Crimes*
20 *Act 1914* does not apply to offences against this Act or the regulations.

21 Note 2: Subsection (10) is a continuing civil penalty provision under
22 section 93 of the Regulatory Powers Act.

23 **95 At the end of subsection 26(1)**

24 Add:

25 Note: Part VIII of the *Reserve Bank Act 1959* imposes secrecy requirements
26 upon certain information provided to the Reserve Bank.

27 **96 Before subsection 26(3)**

28 Insert:

29 *Refusal or failure to comply with requirement to give information*

30 **97 Subsection 26(3)**

31 Omit “commits an offence”, substitute “contravenes this subsection”.

EXPOSURE DRAFT

1 98 Subsection 26(3) (penalty)

2 Repeal the penalty.

3 99 Subsection 26(3) (notes 1, 2 and 3)

4 Repeal the notes.

5 100 After subsection 26(3)

6 Insert:

7 *Fault-based offence*

8 (3A) A corporation commits an offence if the corporation contravenes
9 subsection (3). The physical elements of the offence are set out in
10 that subsection.

11 Penalty: 200 penalty units.

12 *Civil penalty provision*

13 (3B) A corporation is liable to a civil penalty if the corporation
14 contravenes subsection (3).

15 Civil penalty: 200 penalty units.

16 *Continuing contraventions of offence provision*

17 101 Subsection 26(4)

18 Omit "(3)", substitute "(3A)".

19 102 Subsection 26(4) (note)

20 Omit "Note", substitute "Note 1".

21 103 At the end of subsection 26(4)

22 Add:

23 Note 2: Subsection (3B) is a continuing civil penalty provision under
24 section 93 of the Regulatory Powers Act.

25 104 After section 26

26 Insert:

EXPOSURE DRAFT

26A Enforcement of civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the following are authorised applicants:
- (a) in relation to subsection 21(10) of this Act—the entity (whether the Reserve Bank or a nominated special regulator) that gave the direction to which the contravention of that subsection relates;
 - (b) in relation to any other civil penalty provision of this Act—the Reserve Bank.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to each civil penalty provision of this Act:
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

105 Application provision

- (1) The amendments made by this Part apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of this Part.

EXPOSURE DRAFT

-
- 1 (2) The amendments made by this Part apply in relation to the
2 contravention of a civil penalty provision if the conduct constituting the
3 contravention of the provision occurs wholly on or after the
4 commencement of this Part.

EXPOSURE DRAFT

1 Part 4—Enforceable undertakings

2 *Payment Systems (Regulation) Act 1998*

3 106 Before section 26

4 Insert:

5 25A Acceptance and enforcement of undertakings

- 6 (1) The Reserve Bank may accept a written undertaking given by a
7 participant in a payment system (whether or not it is a designated
8 payment system or a special designated payment system) in
9 connection with a matter in relation to which the Reserve Bank has
10 a function or power under this Act, the regulations or another
11 legislative instrument made under this Act.
- 12 (2) The Reserve Bank may accept an undertaking under subsection (1)
13 only if doing so would be consistent with the Reserve Bank's
14 payments system policy (within the meaning of the *Reserve Bank*
15 *Act 1959*).
- 16 (3) The participant may withdraw or vary the undertaking at any time,
17 but only with the Reserve Bank's consent.
- 18 (4) If the Reserve Bank considers that the participant who gave the
19 undertaking has breached any of the terms of the undertaking, the
20 Reserve Bank may apply to the Court for an order under
21 subsection (5).
- 22 (5) If the Court is satisfied that the participant has breached a term of
23 the undertaking, the Court may make all or any of the following
24 orders:
- 25 (a) an order directing the participant to comply with that term of
26 the undertaking;
- 27 (b) an order directing the participant to pay to the
28 Commonwealth an amount up to the amount of any financial
29 benefit that the participant has obtained directly or indirectly
30 and that is reasonably attributable to the breach;
- 31 (c) any order that the Court considers appropriate directing the
32 participant to compensate any other person who has suffered
33 loss or damage as a result of the breach;
- 34 (d) any other order that the Court considers appropriate.

EXPOSURE DRAFT

1 *Authorisation for the purposes of the Competition and Consumer*
2 *Act 2010*

3 (6) For the purposes of subparagraph 51(1)(a)(i) of the *Competition*
4 *and Consumer Act 2010*, the following are taken to be specified in,
5 and specifically authorised by, this Act:

6 (a) anything done by the Reserve Bank under this section;

7 (b) the giving, by a participant in a payment system, of a written
8 undertaking to the Reserve Bank under subsection (1) of this
9 section;

10 (c) anything done by the participant in accordance with the terms
11 of that written undertaking.

12 *Definitions*

13 (7) In this section:

14 ***Court*** means:

15 (a) the Federal Court; or

16 (b) the Federal Circuit and Family Court of Australia
17 (Division 2); or

18 (c) a court of a State or Territory that has jurisdiction in relation
19 to the matter.

20 **107 Application provision**

21 The amendments made by this Part apply in relation to undertakings
22 given on or after the commencement of this Part.

EXPOSURE DRAFT

1 **Part 5—Consequential amendments**

2 *Australian Securities and Investments Commission Act 2001*

3 **108 Paragraph 12BAA(8)(e)**

4 After “designated payment system”, insert “or special designated
5 payment system (or both)”.

6 *Competition and Consumer Act 2010*

7 **109 Section 55A**

8 Insert:

9 *payment system standard* means a standard determined under
10 section 18 of the *Payment Systems (Regulation) Act 1998*.

11 **110 Section 55A (definition of *Reserve Bank standard*)**

12 Repeal the definition.

13 **111 Subparagraph 55B(2)(a)(i)**

14 Omit “Reserve Bank”, substitute “payment system”.

15 **112 Paragraph 55B(2)(b)**

16 Omit “Reserve Bank”, substitute “payment system”.

17 *Corporations Act 2001*

18 **113 Paragraph 765A(1)(j)**

19 After “designated payment system”, insert “or special designated
20 payment system (or both)”.

21 *Income Tax Assessment Act 1997*

22 **114 Paragraph 820-588(3)(a)**

23 After “section 11”, insert “or 11A”.

24