



Commonwealth  
Bank

# Reforms to the *Payment Systems (Regulation) Act 1998* – *Exposure Draft legislation*

Response to Treasury Consultation Paper

1 November 2023

Public

The Commonwealth Bank of Australia (CBA) welcomes the opportunity to make a submission in response to the exposure draft legislation released by the Australian Government to make amendments to the *Payment Systems (Regulation) Act 1998* (PSRA).

We commend the Government's commitment to reform and support the approach taken. The changes proposed in the draft and the explanatory materials (EM) are essential to respond to the evolution of the payment system into a diverse payments ecosystem in the 25 years since the PSRA was enacted. CBA strongly supports the Government's intention to have the legislation introduced to Parliament in 2023.

PSRA amendments should enable payment regulations to meet the current and future ecosystem context, particularly by providing scope for intervention if the ecosystem falls out of balance with so many new entrants participating in new ways:

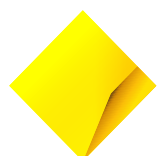
- Changes to the payments ecosystem is reaching a critical juncture where balance is at risk. On one hand, there is opportunity from enablers of innovation such as real-time 24/7 payments, an open ecosystem and international interoperability. On the other hand, these very features are appealing to malicious actors like scammers and money launderers and increase the sensitivity of the ecosystem to failure points
- According to the ACCC Australians lost \$3.1 billion to scams in 2022, an 80% increase in total losses recorded in 2021. Although these scams originate outside of the payments ecosystem, regulatory options to intervene in various payments systems and influence the behaviour of some participants will still be important in concert with upstream interventions
- The ecosystem is shifting from a linear payments value chain of regulated financial institutions into a complex ecosystem involving a diverse range of participants that in some cases have disproportionate influence and asymmetric incentives
- The pace of innovation in payments experiences and business models is increasing and will be difficult to deal with without a sufficiently broad regulatory mandate. For example, rapid growth of BNPL with 1 in 3 Australians using BNPL in 2022 and 30% of Australians using a mobile device to make a contactless payment in 2022, up 25% since 2019.<sup>1</sup> This is further complicated when innovation is paired with vertical integration into platforms that may undermine the intended efficiency gains of an open payments ecosystem.

CBA considers the Government's proposed amendments to the PSRA a welcome first step towards its vision of "a modern, world-class and efficient payments system that is safe, trusted and accessible, and enables greater competition, innovation and productivity across the economy" as set out in the Strategic Plan. The expanded scope of the Exposure Draft will enhance trust by consumers and businesses in the payments system by enabling regulators to address risk that currently prevails in the system and implement regulation where it is in the public interest or national interest. Importantly, the proposed amendments of the PSRA will support innovation and will not introduce undue regulatory burden. Systems and participants newly in scope will have no additional obligations or administration — they are only impacted if there is an imbalance that requires intervention in the public or national interest.

As payments are highly interconnected, regulatory supervision of all participants that play a role in facilitating or enabling payments is needed to enable intervention if risks arise at any stage of the payments value chain. The payment methods available to a consumer in 1998 were fairly limited by today's standards. Modern payment arrangements allow nesting of services or 'riding' on existing payment infrastructure. The definitions of 'payment

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<sup>1</sup> Thuong Nguyen and Benjamin Watson, "Consumer Payment Behaviour in Australia", RBA Bulletin, June 2023



system' and 'participant' should therefore be sufficiently broad to cover all parts of the payments ecosystem and reflect how modern payments operate in practice. For example, a BNPL provider may be a 'participant' in a traditional payment system (such as a debit or credit card system) yet operate its own separate payment system through its direct relationships with consumers, participants of the card systems, and merchants.<sup>2</sup> Appropriately broad definitions will provide the Minister and regulators sufficient flexibility to be able to respond quickly as technology, business models and consumer expectations evolve.

CBA is also supportive of the draft PSRA amendments that introduce new and more substantial penalties. However, CBA considers that more significant penalties may be necessary to deter breaches by all participants, particularly very large global institutions. Revenue-based penalties and fines have been introduced in Europe under the *Digital Markets Act* that allows the European Commission to impose penalties of up to 10% of a company's worldwide turnover. Recent amendments to the penalties under the *Competition and Consumer Act 2010* provide for a maximum penalty which takes into account 30 per cent of a corporation's adjusted turnover during the period of breach - this was considered necessary to deter unfair activity.<sup>3</sup>

The reform of the PSRA is one important part of the overall reforms to reflect the changing payments landscape. The proposed licensing regime should complement and enhance the objectives of an updated PSRA, and as such the PSRA amendments should anticipate the licensing regime by ensuring any designated system and its participants are in scope for licensing, and any licensed organisation is without doubt in scope of the PSRA. While this may need to be implemented at a later date, it may be beneficial to set this out in the EM at this time.

It is essential that these reforms are delivered speedily to enable regulators to address the ongoing, and growing risks and issues identified above, and provide sufficient flexibility to address emerging risks. We thank the Government for the opportunity to comment on this Exposure Draft and look forward to continuing to contribute to the remaining important reforms outlined in the Strategic Plan for the Australian Payments System.

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<sup>2</sup> PSB Annual Report 2023

<sup>3</sup> *Treasury Laws Amendment (More Competition, Better Prices) Bill 2022*, Explanatory Memorandum at [1.6].

