

7 July 2023

Taylor Black
Director
Payment System and Strategy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: paymentsconsultation@treasury.gov.au

Dear Mr Black

REFORMS TO THE *PAYMENT SYSTEMS (REGULATION) ACT 1998* – CONSULTATION PAPER JUNE 2023

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia.¹ We appreciate the opportunity to respond to the consultation paper on *Reforms to the Payment Systems (Regulation) Act 1998* ('the consultation').²

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

¹ [Australian Finance Industry Association \(afia.asn.au\)](http://afia.asn.au)

² [The Treasury \(June 2023\) 'Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper'](#)

INTRODUCTORY COMMENTS

A key strategic priority of AFIA is to advocate for a regulatory framework that is fit for the future. We recognise that consumer payment patterns in Australia have shifted substantially since previous major reviews of the Australian financial system.³ It is important that we ensure the payments infrastructure is fit for the future and incorporates changing consumer payment behaviours.

AFIA continues to support the Treasury's payment systems reform agenda, insofar as it is fit-for-purpose now and in the future and can support continued innovation for the benefit of consumers, businesses, and the broader economy.⁴

AFIA supports in principle the Government's proposal to update the *Payment Systems (Regulation) Act 1998* (PSRA) in a manner which is targeted, scalable and proportionate. Our view is that any approach to regulation of payments should be 'function based' rather than entity based. In other words, regulating the activity undertaken rather than the legal entity type.

Additionally, consistent with our previous recommendations, we support in principle a greater role for Treasury in setting overall policy within the payments system, including in defining what systems are subject to regulatory oversight and review.⁵ AFIA supports in principle the consultation proposals to introduce ministerial designation powers which are targeted, proportionate, and risk-based, and when in the 'national interest'. We believe that consultation with industry, affected parties and regulators will be key to exercising these powers effectively.

AFIA's position regarding the regulation of payments is that it should:

1. Be targeted and right sized – proportionate, scalable, and functions-based.
2. Support competition and innovation, specifically, ensuring open access to facilitate mobile and contactless payments and telecommunications infrastructure providers do not have an unfair advantage or ability to limit competition and innovation in payments and financial services in Australia.
3. Balance financial stability and consumer protection, which is particularly important to ensure vulnerable customers are not disadvantaged with this next evolution and we avoid a new 'digital divide' in Australia.
4. Exist alongside self-regulation which should continue to play an important role in setting high standards, getting ahead of change and customer expectations, and adapting existing frameworks to drive better customer outcomes.

³ Please see [Steven Wallis \(1997\) Financial System Inquiry Final Report](#) and [Treasury \(2021\) Payments system review: From system to ecosystem](#).

⁴ [AFIA Submission \(7 February 2023\) A Strategic Plan for the Payments System, Consultation Paper December 2022](#) and [AFIA Submission \(5 February 2021\) Payments System Review Issues Paper](#).

⁵ [AFIA Submission \(5 February 2021\) Payments System Review Issues Paper](#), page 3.

5. Be efficient and effective – supportive of Australia retaining our global position as a financial centre and an incubator for ideas and responsive to this dynamic environment.

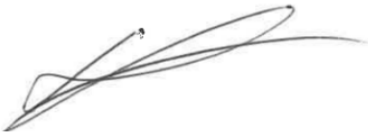
Appendix A provides our detailed recommendations to the consultation proposals.

CLOSING COMMENTS

Thank you for providing the opportunity to respond to this consultation. AFIA looks forward to a continued focus on improving innovation, competition and efficiency in the payments sector to support Australia's economy and ensure the regulatory framework is fit for the future.

Should you wish to discuss our submission or require additional information, please contact Leisha Watson, Senior Policy Advisor, Leisha.Watson@afia.asn.au.

Yours sincerely



Roza Lozusic
Director Policy and Public Affairs

ATTACHMENT A: Detailed Recommendations

Expanding the regulatory remit of the PSRA

- Definition of ‘payment system’

AFIA supports in principle the Government’s proposal to update the *Payment Systems (Regulation) Act 1998* (PSRA) in a manner which is targeted, scalable and proportionate. We note the specific aim of the proposed reforms in the consultation paper to update the existing definitions of ‘payment system’ and ‘participant’ in order to expand the current regulatory coverage of the PSRA.⁶

The Review of the Australian Payments System in August 2021 (‘the Review’) recommended the expansion of the definition of ‘payment system’ in the PSRA and recommended in particular to:

‘Expand [the] definition of payment system in the PSRA: The RBA should be better positioned to regulate new and emerging payment systems that are part of the changing and growing payments ecosystem. Expanding the definition of a payment system will broaden the RBA’s ability to designate new and emerging payment systems under the Payment Systems (Regulation) Act 1998 (PSRA), where it is in the public interest as defined in the PSRA.’⁷

The PSRA currently defines a ‘payment system’ as:

‘[A] funds transfer system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system’.⁸

We note the difficulties described in the consultation paper that the current definition is generally interpreted as a multilateral arrangement. This can lead to uncertainty if it extends to three party or closed loop systems (systems under which an entity enters multiple bilateral arrangements with payers and payees). The consultation paper states this may exclude systems which use non-monetary digital assets for payments or bypass traditional payment infrastructure.

The consultation paper proposes to expand coverage to both bilateral and multilateral arrangements, as well as to expand the coverage of the definition ‘beyond money’.⁹

⁶ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#), page 6

⁷ [Treasury, Review of the Australian Payments System \(n 3\)](#), page xii, Recommendation 6.

⁸ [Payment Systems \(Regulation\) Act 1998](#), Part 2 – Interpretation, Section 7 Definitions.

⁹ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#), page 6

AFIA's view is that any approach to regulation of payments should be 'function based' rather than entity based. In other words, regulating the activity undertaken rather than the legal entity type. AFIA's position is that regulation should be neutral to technology, business model or the store of value utilised.

We are supportive in principle of a revised definition for 'payment system' which helps to address these identified issues and ensures that the full suite of arrangements involved in facilitating payments are included.

We believe there are benefits to a principles-based approach to the definition, to ensure that there is flexibility for further evolution of the payments system and to 'future-proof' regulation. Furthermore, any changes to the overall framework of the PSRA should aim for international interoperability, where possible, to ensure Australia is an attractive market for investment with regards to payment service provision.¹⁰

- **Definition of 'participant'**

The existing definition of 'participant' is described as:

'A participant in a payment system means: (a) a constitutional corporation that is a participant in the system in accordance with the rules governing the operation of the system; or (b) a constitutional corporation that is an administrator of the system'.¹¹

The consultation paper raises concerns that this current definition may imply limited application in respect of entities that are not formal members of a designated payment system.

The consultation paper proposes that a revised definition of 'participant' could apply to a:

'[C]onstitutional corporation that operates, participates in or administers a payment system'.¹²

It could also include *'a constitutional corporation that provides services to a payment system, or provides services for the purposes of enabling or facilitating a transfer of value using a payment system'.¹³*

AFIA supports the aim that the PSRA apply to all entities that play a role in the payments value chain, including those that facilitate and enable payments, including digital wallets. We have previously

¹⁰ [AFIA Submission, A Strategic Plan for the Payments System \(n 4\)](#), page 5.

¹¹ [Payment Systems \(Regulation\) Act 1998](#), Part 2 – Interpretation, Section 7 Definitions

¹² [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#), page 5.

¹³ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#), page 8.

expressed concerns that there is an inconsistent application of regulation and blind spots in current regulatory supervision.¹⁴ While AFIA members who participate in the payments system are subject to a vast array of regulatory and self-regulatory obligations, including prudential, market conduct and credit law obligations, other participants in the ecosystem are not. As the Deputy Governor of the RBA has previously stated, many participants in the payments system (such as gateways, mobile wallet providers, payment facilitators) are not captured by RBA's regulatory powers but play a 'critical role in ensuring that payments are safe, secure, and efficient'.¹⁵

We are supportive of a definition of 'participant' which is technology neutral and captures all participants in the payments system to ensure consistent application of regulation. We stress the importance of a definition being focussed on functions which operate the payments system, provides the infrastructure and the payment service provider. The definition should focus on the 'function' provided as opposed to the legal entity type.

AFIA recommends an approach where all the 'participants' in the definition intends to cover are expressly outlined, such as the examples called out within the consultation paper in New Zealand and the United Kingdom.¹⁶ As above, the revised definitions should aim for international interoperability, where possible.

Introduction of ministerial designation power

- Definition of 'national interest'

We note that the Reserve Bank of Australia's (RBA) mandate relates to issues that are in the 'public interest', as defined by the PSRA. Including relevant factors of financial safety, efficiency, competition and controlling risk in the financial system.¹⁷ The PRSA authorises the RBA to designate a payment system where it considers doing so would be in the public interest.¹⁸ Once designated, the RBA can:

- impose an access regime on the participants in that designated payment system.
- set standards that must be complied with by participants in designated payment systems.
- Any such standards may be varied or revoked by the RBA.¹⁹

¹⁴ [AFIA Submission, A Strategic Plan for the Payments System \(n 4\)](#) page 4.

¹⁵ Michelle Bullock, Deputy Governor, Reserve Bank of Australia, Transcript of Speech and Q&A Session, Panel Participation at the Regulators 2022 (FINSIA) (2022).

¹⁶ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#) Box 1.4 International Comparisons

¹⁷ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#) page 11. See also [Payment Systems \(Regulation\) Act 1998](#), Section 8 'Meaning of *public interest*'.

¹⁸ [Payment Systems \(Regulation\) Act 1998](#), Part 3, Division 2.

¹⁹ [Payment Systems \(Regulation\) Act 1998](#), Sections 12 and 18.

We further note the Review advised that there are issues currently beyond the RBA's mandate, powers, expertise, and role.²⁰ The Review recommended that the:

*'[The] Treasurer should have the power to designate payment systems and participants of designated payment systems where it is in the 'national interest' to do so. The designation power [recommended by the Review] includes the power to direct regulators to develop regulatory rules and the power for the Treasurer to give binding directions to operators of, or participants in, payment systems.'*²¹

AFIA notes the proposal is that powers be introduced to *'address issues arising in respect of new or emerging payment systems that pose a national security risk that cannot be addressed sufficiently under other legislation and that are outside the scope of the RBA's public interest mandate'*.

AFIA has previously recommended that the Treasury be given a greater role in setting overall policy within the payments system, including in defining what systems are subject to regulatory oversight and review.²²

We are supportive in principle of the consultation proposals to introduce ministerial designation powers, insofar as they are targeted, proportionate, and risk-based, where necessary in the 'national interest'. We believe that additional regulatory powers should only be introduced in a targeted manner where there has been an identified regulatory gap or 'blind spot'.²³

Any such regulations made using such Ministerial powers should be subject to parliamentary scrutiny via the normal rules for the disallowance of regulations under the *Legislation Act 2003* (Cth), or such equivalent oversight legislation as may be in existence from time to time.

The consultation paper comments that:

'formal regulation is generally only used by the RBA when an industry-driven solution is unlikely to lead to a satisfactory outcome in the public interest. This is consistent with the intent of the PSRA'.

We recommend that the additional regulatory powers should also promote self-regulation which should continue to play an important role in setting high standards. We agree with the consultation paper that

²⁰ [Treasury, Review of the Australian Payments System \(n 3\)](#) page 54.

²¹ [Treasury, Review of the Australian Payments System \(n 3\)](#) page xii, Recommendation 7.

²² [AFIA Submission, Payments System Review Issues Paper \(n 4\)](#), page 3.

²³ [AFIA Submission, A Strategic Plan for the Payments System \(n 4\)](#) page 4.

‘national interest grounds’ should be informed by an impact assessment and decision made only after considering non-regulatory solutions.

AFIA supports the Government’s emphasis on preserving the RBA’s independence with respect to matters which are wholly in the ‘public interest’. It is important that the relationship between the RBA’s public interest scope and the Treasurer’s proposed national interest powers are distinct to the risk of any potential avoid confusion. We believe it should be made expressly clear that the intention of the Ministerial powers is not to stand in for the RBA in any way or remake any RBA decision.

We agree in principle with the range of factors outlined in the consultation paper that would be taken into account by the Treasurer in considering decisions based on ‘national interest’, including national security, consumer protection, data-related issues, innovation, cyber security, anti-money laundering and counter-terrorism financing, crisis management and accessibility. We would recommend further detail of the factors that will be considered be outlined in further explanatory material.

Any powers introduced should avoid any risk of regulatory overlap, be proportionate to the risks posed and support competition and innovation. ‘Innovation’ was outlined as a key principle by the Treasury in the *Strategic Plan for the Payments System* consultation, as an innovative payments system is one which is:

‘[A]gile, forward-looking and adds value to the user’s payment experience. It is proactive and can quickly reposition itself to realise new opportunities and respond to challenges. Creating an environment that fosters innovation has the potential to enhance the payment experience for consumers and businesses, support competition and trust in the system.’²⁴

- **Designating payment systems**

The proposed Ministerial designation power would allow the Treasurer to designate a ‘payment system’ for regulatory oversight. However, the paper outlines that such a designation will not in itself impose an obligation on a payment system or its participants but indicate a ‘national interest’ to regulate. The Treasurer instead appropriately allocates relevant responsibilities to regulators and will only be able to take actions and allocate responsibilities in relation to powers under the PSRA.

²⁴ [Treasury \(December 2022\) A Strategic Plan for the Payments System’ Consultation paper](#) page 8.

- **Engaging regulators**

We note the proposal that the Treasurer will have the power to allocate responsibility to one or more Treasury regulators, and to direct them to implement a particular policy position on an issue or matter. We recommend that this power be transparent, targeted and proportionate. In line with recommendation 13 of the Review, alignment of approaches and regulatory requirements between regulators is essential.

We agree with the consultation paper that the Treasurer should be specifically required to consult with the head of a regulator before deciding to allocate responsibility to them.²⁵ This consultation process is necessary to establish clear expectations and understandings around their mandates and operational practicalities. It is important that any risk of diluting the regulatory focus and expertise of the regulators is fully addressed.

- **Directions to regulators and the powers of regulators under the PSRA**

We agree with the consultation paper that the Treasurer should be precluded from directing a regulator on the enforcement of regulatory rules, specific implementation mechanisms or directing operators of payment systems or participants directly, for the reasons set out above.

The powers of the Treasurer to direct the regulators should be proportionate and targeted. We recommend that the legislation and accompanying guidance should be clear about the scope of the powers. Furthermore, transparency over any decisions made by the Treasurer will be important to assist participants in the payment system.

- **Consultation requirements**

We agree with the consultation paper that the Treasurer should consult with industry and affected parties, including regulators, before a designation decision.²⁶ As the consultation paper advises, the RBA consults with participants in the payment system before the RBA designates a payment system. However, there is no formal requirement to consult.

AFIA recommends that for transparency and clarity, and to recognise the importance of this consultation process, that this practice of consultation with industry and affected parties is an express requirement under the PSRA. We recommend that this requirement is outlined in addition to the proposal to consult with a regulator before allocating responsibilities under the PSRA to them.

²⁵ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#) page 14.

²⁶ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#) page 15.

Further reforms for testing

- Information gathering and disclosure

AFIA agrees with the objective of ensuring the regulatory architecture governing the payments system under the PSRA is appropriate and effective.²⁷ This should be balanced with introducing proportionate and targeted regulation which are required to deliver balanced outcomes for customers, businesses, the financial system and the broader economy, without creating barriers to entry.

The consultation paper acknowledges that the RBA's information gathering powers under s 26 of the PSRA will be expanded by the proposed changes to the definitions of 'payment system' and 'participant'.²⁸ The paper further considers providing the RBA with more ability to publicly disclose participant information without first requiring their consent. AFIA recommends that, in order to provide comment on the implications of this, further detail is provided as to the rationale for this reform and implications.

²⁷ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#) page 16.

²⁸ [Treasury, Reforms to the Payment Systems \(Regulation\) Act 1998 \(n 2\)](#) page 17.