



1 November 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](mailto:paymentsconsultation@treasury.gov.au)

Dear Mr Black

**REFORMS TO THE *PAYMENT SYSTEMS (REGULATION) ACT 1998* – EXPOSURE DRAFT LEGISLATION (NOVEMBER 2023)**

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia.<sup>1</sup> We appreciate the opportunity to respond to the *Reforms to the Payment Systems (Regulation) Act 1998 – Exposure draft legislation* ('the exposure draft').<sup>2</sup>

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.

**SUBMISSION**

A key strategic priority of AFIA is to advocate for a regulatory framework that is fit for the future. It is important that we ensure the payments infrastructure is fit for the future and incorporates changing consumer payment

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

<sup>2</sup> [Treasury \(October 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 – Exposure draft legislation.](#)

behaviours. We recognise that consumer payment patterns in Australia have shifted substantially since previous major reviews of the Australian financial system.<sup>3</sup> This environment is creating opportunities to maximise choice and access to payment facilities, financial products and services, and to foster competition and innovation, including attracting new entrants into our financial system. This is providing Australian consumers and small businesses with convenient, simple, and efficient payment options which in turn supports greater financial, and therefore social, participation across our community. Digital wallets and Buy now pay later (BNPL) products are more recent examples of innovation and competition in the payments space.

The 2021 Review of the Australian Payments System noted, *‘over time, the payments system has expanded in size and complexity to such an extent that it should be thought of as the payments ecosystem. Technology has enabled new methods of payment and has led to the entry of a range of new providers offering new services using traditional payment infrastructures. Consumers are also adopting digital payment methods in record numbers, further accelerating the transformation in the payments ecosystem towards greater digitalisation.’*<sup>4</sup>

AFIA continues to support 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.<sup>5</sup> We note that this exposure draft is part of the overarching and ongoing process related to the reform of the payments system, which also includes a further Treasury consultation on the precise regulatory obligations to apply to ‘payment system providers’ later this year, and a consultation on legislation to implement the licensing regime in 2024.<sup>6</sup>

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.

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<sup>3</sup> See [Steven Wallis \(1997\) Financial System Inquiry Final Report](#) and [Treasury \(2021\) Payments system review: From system to ecosystem](#).

<sup>4</sup> [Treasury \(August 2021\) Review of the Australian Payments System – Final report](#).

<sup>5</sup> Please see [AFIA Submission \(7 February 2023\) A Strategic Plan for the Payments System, Consultation Paper December 2022](#), [AFIA Submission \(5 February 2021\) Payments System Review Issues Paper](#), [AFIA Submission \(21 July 2023\) Licensing of payment system providers - payment functions](#) and [AFIA Submission \(7 July 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation Paper June 2023](#).

<sup>6</sup> [Treasury \(June 2023\) Payments System Modernisation \(Licensing: Defining Payment Functions\)](#), pages 5-8.

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.
6. Aim for international interoperability to ensure Australia is an attractive market for investment with regards to payment service provision.

As noted in the June 2023 consultation paper, the Reserve Bank of Australia (RBA) is the primary payments system regulator, with policy determined by the Payment System Board, to address public interest issues. The RBA's mandate under the *Payment Systems (Regulation) Act 1998* ('the PSRA') is to promote competition, efficiency and safety, and to control risk to maintain financial stability.<sup>7</sup>

The RBA's powers under the PSRA include the ability to:

- designate a payment system as being subject to its regulation.
- impose an access regime on participants in that system.
- determine standards to be complied with by participants in that system.
- give directions to comply with those regimes or standards.
- arbitrate disputes between participants in that system.<sup>8</sup>

The exposure draft:

- expands the regulatory coverage of the PSRA by updating key definitions to capture all entities that play a role in facilitating or enabling payments. Including allowing the RBA to designate a 'class' of payment systems.<sup>9</sup>
- introduces new Ministerial powers that can be exercised in the 'national interest'.
- introduces civil penalty provisions, enforceable undertakings, and increases existing maximum criminal penalties.<sup>10</sup>

#### *'Public interest' and 'National interest' grounds*

As described in the June 2023 consultation paper, 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.<sup>11</sup> Further, a decision to regulate a participant in the payment system must be done on 'public interest' or on 'national interest grounds' (with respect to the newly proposed Ministerial power), after an impact assessment, and such a decision would only be made after considering non-regulatory solutions.<sup>12</sup> Further guidance and clarity on the 'public interest' and 'national interest' grounds would be beneficial to further delineate between the RBA and Ministerial powers to avoid the risk of any conflict between the exercise of those powers.<sup>13</sup>

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<sup>7</sup> [Treasury \(June 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper](#), page 5.

<sup>8</sup> [Treasury \(October 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Exposure Draft Explanatory Materials](#), page 6.

<sup>9</sup> [Treasury \(October 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Exposure Draft Legislation](#), Section 1.90-1.92.

<sup>10</sup> [Treasury \(October 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Exposure Draft Legislation](#), page 5.

<sup>11</sup> [Treasury \(October 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Exposure Draft Legislation](#), page 6.

<sup>12</sup> [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), pages 8-9.

<sup>13</sup> For example, see the United Kingdom (UK) *Financial Services (Banking Reform) Act 2013* and the New Zealand (NZ) *Retail Payment System Act 2022*.

AFIA submits that potential regulatory action by the RBA when capturing new entities under the expanded PSRA must consider existing regulations and standards, to avoid any risk of duplication or confusion. As noted in our position above, we believe that self-regulation should continue to play an important role in setting high standards in this regard. As noted in the *Payments System Modernisation (Licensing: Defining Payment Functions)* consultation paper, AFIA agrees that the proposed updates to the PSRA must be consistent with the reforms to the payments licensing framework, in line with a holistic overall reform of the regulatory framework.<sup>14</sup> The PSRA and RBA's ability to regulate 'payment systems' and 'participants' in those systems, is not a licensing regime. The RBA can take regulatory action to address specific public interest concerns related to the competitiveness, efficiency and safety of the payments system. Payment system participants defined under the PSRA therefore we note encompass a broader range of entities than those 'payment system providers' (PSPs) subject to the proposed payments licensing regime.

It is therefore essential that any potential regulatory overlaps are avoided, and consideration given to the increased compliance burdens on entities subject to this regulation. These new requirements risk adding complexity in regulatory compliance and burden on subject entities. Additionally, before the RBA's powers in this regard as used, consideration should be given to the implementation time and transitional periods entities will require.

#### *Definitions of 'payment system' and 'participant'*

As previously advised in our earlier submission, AFIA broadly supports the proposed approach to the definitions of 'payment system' and 'participant'.<sup>15</sup> The proposals include broadening the scope of arrangements that qualify as a 'payment system' and the kinds of persons defined as 'participants' who can be subject to standards and access regimes.

The definition of 'participant' captures 'all entities involved in the payments value chain.' We note that the intention of the expanded definition of 'participant' is to include entities who are not formal members of any payment system, but that provide services to enable or facilitate payments via a payment system. The exposure draft suggests capturing digital wallets storing digital representations of payment cards through an updated definition of 'participant' in a payment system, not through an updated definition of 'payment system'.

In line with our position above regarding the regulation of payments, AFIA supports a technology neutral approach taken to the definitions, focussing on the functions which operate the payments system, provides the infrastructure and the payment service provider, rather than the entity. Therefore, focussing on the function provided as opposed to legal entity type.

AFIA recommends further guidance and examples are provided within the exposure draft explanatory material to clarify the intent of the changes, to avoid any potential uncertainty and interpretation challenges.

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<sup>14</sup> [Treasury \(June 2023\) Payments System Modernisation \(Licensing: Defining Payment Functions\) - Consultation paper.](#)

<sup>15</sup> [AFIA Submission \(7 July 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation Paper June 2023.](#)

The practicalities of implementing what a regulator may request of an entity means, potentially, changes to internal systems and/or diverting engineering efforts to 'build' compliance of these potential measures. Prior to invoking the powers the PSRA has provided to regulators, regulators should complete a Regulatory Impact Statement, consistent with the requirements under the Government's *Guide to Regulatory Impact Analysis* and ensure an adequate transitional period has been provided to entities to enable participants to have sufficient time and resources to comply.<sup>16</sup>

It must also be made expressly clear that Ministerial designation decisions under the proposed powers section 11A remain subject to parliamentary scrutiny and disallowance under the *Legislation Act 2003*.<sup>17</sup>

#### *Enforceable undertakings*

AFIA understands that the RBA currently obtains voluntary undertakings in relation to standards under the PSRA. We note that the exposure draft creates a framework for accepting and enforcing undertakings with participants prior to an access regime being imposed under Section 12 of the PSRA, or a standard being made under Section 18.<sup>18</sup> The exposure draft further states that a participant may withdraw or vary an undertaking at any time, but only with the RBA's consent.

AFIA recommends that the RBA provide clarity on what factors they will consider when considering providing consent to withdraw an undertaking.

#### **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.

Yours sincerely



Roza Lozusic  
**Director Policy and Public Affairs**

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<sup>16</sup> [Guide to Regulatory Impact Analysis](#), page 14.

<sup>17</sup> [Legislation Act 2003 \(Cth\)](#)

<sup>18</sup> [Treasury \(October 2023\) Reforms to the Payment Systems \(Regulation\) Act 1998 - Exposure Draft Legislation](#), Section 1.93.