



9 February 2024

Ms Nghi Luu
Acting First Assistant Secretary,
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600
paymentsconsultation@treasury.gov.au

Dear Ms Luu

PAYMENTS SYSTEM MODERNISATION (REGULATION OF PAYMENT SYSTEM PROVIDERS)

The Australian Finance Industry Association (AFIA)¹ is the only peak body representing the entire finance industry in Australia. We appreciate the opportunity to respond to Treasury's consultation paper on - *Payments System Modernisation: Regulation of payment service providers* ('consultation paper').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 <https://treasury.gov.au/consultation/c2023-469663>

INTRODUCTORY COMMENTS

AFIA welcomes the opportunity to provide input on the proposed amendments to the payments regulatory framework governing financial products and services. We support measures that enhance the clarity and efficiency of the financial regulatory landscape. However, emphasise the need for careful consideration in the implementation of these reforms, to ensure they do not inadvertently stifle innovation or impose undue burdens on entities.

AFIA has provided detailed comments and recommendations within **Attachment A**.

Our comments build on AFIA's previous submissions to Treasury on the reforms to the payments system.³ 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. 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.
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.
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. AFIA members operate within other jurisdictions, and we support global regulatory alignment to facilitate compliance.

We propose a tiered licensing system that imposes regulatory responsibilities in line with relevant risk levels of the entities. Our recommendations highlight the need to prevent the risk of duplication or inconsistent regulation for entities who currently hold an Australian financial services licence (AFSL) and/or an Australian credit licence (ACL). AFIA recommends mutual recognition of such entities, or at a minimum a streamlined licensing process.

Additionally, we highlight the importance of a well-structured transition period to enable entities to adequately prepare and adjust to the changes. We believe that it is imperative that there is effective collaboration between regulatory bodies and that clear and accessible regulatory guidance is provided.

³ Please see [AFIA Submission \(July 2023\) Licensing of Payments Service Providers](#), [AFIA Submission \(November 2023\) Draft PSRA 1998 Exposure Legislation](#) and [AFIA Submission \(February 2023\), Strategic Plan for the Payments System: Consultation Paper](#).

AFIA supports the establishment of mechanisms such as a regulatory sandbox to assist smaller payment providers in understanding and complying with the regulatory expectations.

We call for further clarity in the definitions and scope of exclusions and exemptions within the framework. AFIA believes that a cautious approach to modifying these aspects is crucial in order to maintain a dynamic and innovation-friendly regulatory environment.

We would appreciate the opportunity to discuss our recommendations. Should you wish to discuss our submission or require additional information, please contact AFIA Senior Policy Adviser, Sebastian Reinehr at sebastian.reinehr@afia.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roza Lozusic', with a stylized flourish at the end.

Roza Lozusic
Executive Director of Policy and Public Affairs

ATTACHMENT A: AFIA SUBMISSION TO PAYMENTS SYSTEM MODERNISATION

Streamlining regulatory obligations and aligning with international models

AFIA recognises the need to refine the regulatory landscape as outlined in the consultation paper and a considered approach is required in order to avoid regulatory duplication, particularly for entities currently regulated under Australian Credit Licences (ACLs) or Australian Financial Services Licences (AFSLs). We believe that the established regulatory mechanisms and oversight by authorities address the risks associated with financial activities, without imposing additional, unnecessary burdens on licenced entities.⁴

AFIA recommends aligning with international models which define Payment Service Providers (PSPs) based on the regularity and centrality of payment functions, thereby distinguishing primary financial services from ancillary payment functions. For example, in the UK, an entity is considered a PSP only if the payment function constitutes their regular occupation or business activity.⁵

These models emphasise the regularity and centrality of payment functions in business operations, distinguishing between primary financial services and ancillary payment functions. Such a distinction is crucial to prevent an overextended application of payment regulations to entities whose primary focus is not payment services, reflecting the multifaceted nature of financial service provision.

The consultation paper proposes that each individual payment function will be required to have its own separate AFSL authorisation which duplicates regulatory requirements. AFIA recommends that a clear and streamlined approach would be to have a singular payment licence covering a range of payment functions, where regulatory obligations for licenced entities are consistent across different payment functions. This structural adjustment would grant entities the flexibility to adapt, innovate, and expand their services, fostering growth in the payment services sector.

AFIA seeks clarity and specificity in the categorisation and definition of payment functions and instruments. Any ambiguities can risk inconsistent regulatory application and market uncertainties. For instance, not all Buy now pay later (BNPL) providers offer digital cards and therefore would not fall under the classification of a payment instrument. Given these distinct features of these products, further guidance is needed.

⁴ Regulation Taskforce (January 2006) 'Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business', <https://www.pc.gov.au/research/supporting/regulation-taskforce/report/regulation-taskforce2.pdf>

⁵ Payment Systems Regulator, <https://www.psr.org.uk/payment-systems/who-we-regulate/>

Furthermore, AFIA comments on the utility and structure of the Australian Securities and Investment Commission (ASIC) enhanced regulatory sandbox (ERS).⁶ AFIA urges the Government to revisit and potentially endorse previous suggestions that aim to broaden access for new entrants or payment providers within the ERS. Alternatively, AFIA proposes the creation of a specialised 'payments sandbox' tailored for smaller payment providers. Such an initiative would be instrumental in assisting these providers to precisely understand their regulatory duties and map out their licensing strategies, ultimately nurturing innovation and promoting a regulatory framework that is both supportive and balanced.

Advocating for extended transitional period and enhanced regulatory coordination

AFIA is supportive of an extension of the transitional period. This extension is crucial to allow sufficient time for the development and dissemination of joint licensing guidance, the establishment of necessary infrastructure such as a single website portal by ASIC, comprehensive stakeholder consultations, and for entities to align their operational frameworks with the new regulatory requirements.

We believe that a coordinated effort is required from regulatory bodies, including Australian Securities and Investments Commission (ASIC), Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Prudential Regulation Authority (APRA), Australian Competition and Consumer Commission (ACCC), and the Reserve Bank of Australia (RBA), to construct and maintain updated guidance. This joint regulatory guidance should be clear and comprehensive, ensuring that regulated product and service providers can accurately identify and apply for the appropriate authorisations.

AFIA recommends that appropriate transitional periods are put into place if exemptions are narrowed or removed, in order to avoid any unintended consequences. Specifically, we propose that any current exemption should remain effective until the conclusion of the 18-month transitional period. This approach will provide entities with sufficient time to adjust the structure of their products in compliance with the new requirements.

We recommend that amendments are avoided in the context of the 'non-cash payment facility if payments are debited to a credit facility' exemption. The administration of the current low-value non-cash payment facility exemption at the entity level has been a cornerstone in fostering innovation and enabling corporate groups to thrive within the regulatory framework. The current operation of the low-value non-cash payment facility exemption at the entity level (as opposed to the group level) should be maintained. Aggregating limits at the group level could disadvantage large corporate groups and stifle the very innovation the regulatory framework aims to promote.

Promoting regulatory flexibility and precision in payment services

⁶ Consultation paper, p 41

AFIA agrees with the proposal to increase the AFSL low-value non-cash payment facility exemption from \$10M to \$15M. We further recommend indexing thresholds to the Consumer Price Index (CPI) to maintain their sustained relevance and effectiveness.

AFIA seeks clarification on the potential replacement of the 'low value non-cash payment facility' with terminologies such as 'low value stored value facility' or 'low value payment product facility', questioning the implications for calculating monetary thresholds for varied financial activities such as cross-border transfers.

AFIA recommends the continued exclusion of loyalty schemes and promotional vouchers from the payments licensing framework. These schemes are generally well understood, present low risk, and are protected under other regulatory frameworks, such as the unfair contract terms regulations. Similarly, promotions and gift vouchers, which are generally low in value, are non-transferable and easily comprehensible, should remain explicitly excluded.

AFIA notes that credit products and services are currently regulated under specific legislation, including the National Consumer Credit Protection Act (NCCPA), National Credit Code (NCC), and other relevant regulations. The proposed regulations should not negate the current exemptions in the *Corporations Act*, and the existing frameworks should avoid unnecessary duplication.⁷

AFIA supports Option 1 for the limited network exclusion, which provides an exemption for payment instruments used within a limited network of service providers or for a very limited range of goods or services.⁸ We recommend that clarity is provided on the definitions of 'limited network of providers' and 'a very limited range of goods or services'.⁹

We propose that the limited network exclusion should outline the specific elements and/or characteristics that constitute a limited network of services providers and the range of products and services to which the exclusion applies. This supports the principle of regulatory precision and is crucial to ensuring that the regulatory framework is comprehensive, fair, and adaptable to the diverse nature of financial products and services.

Lastly, if bilateral closed-loop interest-free credit providers cannot be specifically excluded from the new regime, AFIA requests clarification on whether these issuers can rely on the 'Limited Network' exemption for a partial exclusion from the definition of 'Payment Instruments'. This clarification is crucial to ensure that the regulatory framework is comprehensive, fair, and adaptable to the diverse nature of financial products and services.

⁷ *Corporations Act* s 765A(1)(h)(ii)

⁸ Consultation paper, p 10

⁹ Consultation paper, p 35

Clarifying BNPLs inclusion and merchant pricing regulations within the payments framework

The classification of BNPL as a 'payment instrument' raises questions about the scope of the definition, especially concerning online BNPL purchases that do not involve cards, such as those made through mobile applications.

Assistant Treasurer, the Hon Stephen Jones, previously stated that *'Through its relatively low-cost offering, BNPL has also provided a valuable source of competitive pressure on traditional credit products, such as credit cards or payday loans.'*¹⁰

We note that the Government is also yet to finalise its approach to the regulation of BNPL products with draft legislation expected this year. Minister Jones has emphasised striking the right balance between innovation and consumer protection in this reform. With legislation yet to be finalised, AFIA considers it prudent to wait for the outcome of that process before adding another regulatory overlay.

In light of these considerations, AFIA strongly recommends a nuanced understanding of BNPL services within the regulatory framework. We seek detailed clarification on how the proposed regulatory approach would apply to BNPL arrangements that do not involve traditional payment instruments, such as physical or digital cards. The definition and regulatory treatment of 'virtual payment instruments' also warrant further exploration, especially in the context of emerging payment modalities like Non-Fungible Token (NFTs) or cryptocurrencies. AFIA requests further clarification around the application of the category of 'Payment Facilitation Service' and whether that is intended to capture BNPL.

Under the proposed changes, the regulatory perimeter for payments is expanded to a far greater range of payment-related functions. Before the obligations are applied to these functions, we recommend that an evidence-based review of their impacts would be helpful. For example, prior to any intervention in the BNPL market, the RBA should consider factors such as:

- the proportion of BNPL transactions in the payments landscape
- whether BNPL merchant fees are increasing, remain flat, or are declining
- the role of BNPL platforms in acting as a lead generation tool and marketing platform for merchants
- whether there is evidence of cross-subsidisation and whether cross-subsidies are regressive or otherwise
- the role of BNPL platforms in generating competition in the market for consumer credit products
- the consumer benefits that consumers receive from using BNPL products, and that credit card customers receive from increased competition.

¹⁰ The Hon Stephen Jones, 'Address to the Responsible Lending & Borrowing Summit'

<https://ministers.treasury.gov.au/ministers/stephen-jones-2022/speeches/address-responsible-lending-borrowing-summit>

Given the breadth of issues that require consideration, we also support the ACCC being tasked with conducting a review of competition in retail payments to inform the regulator's priorities and direction under new wide-ranging powers. In particular, this should consider card issuing, consumer credit, merchant acquiring, payment gateways and e-commerce platforms, and digital wallets.