

Director – Payments Strategy and Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

7/07/2023

Via email: paymentsconsultation@treasury.gov.au

Treasury Consultation - Reforms to the Payment Systems (Regulation) Act 1998

Dear Treasury,

Australian Payments Plus (**AP+**) supports the Government's ongoing efforts to update the regulatory architecture governing payments to ensure our regulatory framework is fit-for-purpose now and into the future. AP+ is aligned with the Government's vision of maintaining a world-class payments ecosystem that serves the needs of its users and participants while supporting Australia's economic growth. The Australian payment ecosystem needs to be safe, resilient, efficient, and open to competition.

We welcome the consultation paper (**CP**) on proposed Reforms to the *Payment Systems (Regulation) Act 1998* (**PSRA**). In the attachment to this letter, AP+ has provided a response to each of the questions posed in the consultation paper. We make the following observations:

Proposed definitions: AP+ agrees that an updated PSRA should be capable of being applied to all entities that play a role in the payments value chain – including entities that facilitate, influence or enable payments. There is a need to ensure that the updated PSRA allows regulators and the Government to address new risks as the provision of payments evolves and increases in risk and complexity.

The proposed 'participant' definition seeks to include all entities that have a role in respect of facilitating or enabling payments that are made through a payment system. Treasury should also consider whether the wording of the proposed definition adequately captures entities whose technology solutions and/or instruments influences or enables the direction or flow of value but where that entity does not necessarily handle user funds or store value, given that the transfer is facilitated by another partner or entity who is a payment provider. Every participant, regardless of role, has a place in ensuring the Australian payments system is competitive, safe and resilient.

As an example, AP+ has a digital wallet solution called Beem (AFSL 515279) which has two functions, one, the ability for anyone to make, request or split payments instantly via a linked Visa or Mastercard debit card from an Australian bank. The Beem technology solution influences/enables the direction or flow of value (money) but Beem does not necessarily handle user funds given that the transfer is facilitated by partners (in this case Australian Banks) who are the payment providers. Two, as an open wallet that provides functionality for wallets to interact with the payment system by sending card and other payment details, without doing payments processing.

Another example is the tokenisation of payments. Tokenisation technology solutions are used to facilitate transactions and can influence the flow of value. There are many benefits to tokenisation solutions and AP+ expects the use to grow. An updated PSRA should be able to capture tokenisation



solutions, Beem and also the technology solutions of other entities such that they can be appropriately regulated under the PSRA if deemed necessary.

AP+ supports proposed amendments to the PSRA that enable the RBA in its capacity as the lead regulator of the Australian payments system to respond quickly to emerging developments and respond in the public interest.

Ministerial Power: AP+ supports the recommended creation of a Ministerial power to designate payments systems and the participants of payments systems where it is in the 'national interest' to do so. The designation power would involve the ability to direct regulators to develop regulatory rules and for the Treasurer to give binding directions to operators of, or participants in, payment systems. These powers are aimed at ensuring the Government can intervene to address current and emerging payment issues of national significance. AP+ agrees that the exercise of power should not only be retrospective but be prospective in nature too, such that it can address "emerging issues".

AP+ recommends that when the Treasurer is making a decision based on the *national interest* that the range of factors also explicitly include *national sovereignty* and also the consideration of the economy-wide benefits of ongoing investment in domestic systemically important payment systems and other pieces of critical national payment infrastructure.

RBA Public Interest Test: AP+ recommends that the current Public Interest Test in section 8 of the PSRA be amended in two ways:

To include *Payment Systems* (designated and not designated) and *Designated Participants*. AP+ notes that the New Payments Platform (**NPP**) is not currently an RBA-designated system under the PSRA but is subject to regulatory oversight (as is our 'RBA designated payment system' 'eftpos'¹).

AP+ also recommends that the test be expanded such that Payment Systems (designated and non-designated) and Designated Participants are also assessed against the criteria of integrity of the payment system ecosystem as a whole, and also the need to ensure confidence in Australia's payment ecosystem. AP+ makes this recommendation given that the provision of payments is evolving and increasing in risk and complexity, thus there may be instances of market volatility, cyber incidents, or legislative breaches (e.g., AML/CTF Act) where a power for the RBA to intervene quickly to resolve smaller issues (which may not satisfy the proposed national interest test) to preserve that confidence in the payments ecosystem would be appropriate.

AP+ notes that the above concept is discussed in the CP under the section "Further reforms for testing" which discusses the idea of the RBA being given a directions power that could be used to impose more general regulatory obligations, alongside an existing PSRA power which the RBA has to impose regulatory obligations through an access regime or a standard. AP+ would support such an expansion.

The modernisation of the PSRA represents a very important and welcome step in ensuring we have a modern and robust payment ecosystem that is diverse, secure, competitive and innovative; all while delivering benefits for the Australian economy and the Australian people.

¹ <https://www.auspayplus.com.au/our-brands/>



AP+ is available to answer any further questions Treasury may have.

Yours sincerely,

Aidan O'Shaughnessy
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Encl.

Australian Payments Plus (AP+) brings together Australia's three domestic payment providers, BPAY Group, eftpos and NPP Australia, into one integrated entity. Operating in the public interest, AP+ is a member-owned organisation. Members include banks, some of the country's largest merchants, payment service providers and payment processors. The AP+ integrated product roadmap includes new offerings that support opening the domestic payment flow, connecting next generation experiences to traditional payments infrastructure, driving innovation through QR payments, building open wallet infrastructure and a national trusted identity exchange.



AP+ response to consultation questions

1) Does the proposed approach to updating the definition of ‘payment system’ appropriately capture arrangements that are involved in facilitating or enabling payments?

AP+ agrees that an updated PSRA should be capable of being applied to all entities that play a role in the Australian payment ecosystem.

To ensure the updated power is broad enough to address future innovations, one amendment for consideration would be the move away from just the words "payment system". For example, the definition could be drafted to also capture 'payment arrangements' or 'payment facilities' thereby enabling any distinct or individual part of a system in the payments value chain to be regulated. Alternatively, the definition of "Payments System" needs to clearly include the broad range of payment arrangements/facilitation services.

2) Does the proposed approach to updating the definition of ‘participant’ appropriately capture the full range of entities that currently and may in future play a role in the payments system?

AP+ agrees that an updated PSRA should be capable of being applied to all entities that play a role in the payments value chain, including entities that facilitate or enable payments. There is a need to ensure that the updated PSRA allows regulators and the Government to address new risks related to payments as the provision of payments evolves and increases in both risk and complexity.

The proposed ‘participant’ definition seeks to include all entities that have a role in respect of facilitating or enabling payments that are made through a payment system. Treasury should also consider whether the wording of the proposed definition adequately captures entities whose technology solutions and/or instruments influences or enables the direction or flow of value but that entity does not necessarily handle user funds or store value given that the transfer function is facilitated by another partner or entity who is a payment provider. Every participant has a role in ensuring our payments system is competitive, safe and resilient.

As an example, AP+ has a digital wallet solution called Beem (AFSL 515279) which has two functions, one, the ability for anyone to make, request or split payments instantly via a linked Visa or Mastercard debit card from an Australian bank. The Beem technology solution influences/enables the direction or flow of value (money) but Beem does not necessarily handle user funds given that the transfer is facilitated by partners (in this case Australian Banks) who are the payment providers. Two, as an open wallet that provides functionality for wallets to interact with the payment system by sending card and other payment details, without doing payments processing.

Another example is the tokenisation of payments. Tokenisation technology solutions are used to facilitate transactions and can influence the flow of value. There are many benefits to tokenisation solutions and AP+ expects the use to grow across the globe. An updated PSRA should be able to capture tokenisation solutions, Beem and the technology solutions of other entities such that they can be appropriately regulated under the PSRA if deemed necessary.



3) Should other considerations be taken into account in updating the definitions?

As above.

4) Is the proposed ‘national interest’ test appropriate for achieving the policy outlined in this paper?

AP+ recommends that when the Treasurer is making a decision based on the *national interest*, the range of factors should also explicitly include *national sovereignty* and also the consideration of the considerable economy-wide benefits of encouraging ongoing investment in domestic systemically-important payment systems and other pieces of essential national payment infrastructure.

5) Is the proposed approach to delineating the Treasurer’s national interest powers clear and effective?

The proposed approach is clear and AP+ looks forward to the consultation on the draft wording of the legislative instrument and explanatory materials.

6) Are there views or considerations on whether the Government should include a list of relevant considerations for the Treasurer to have regard to in the legislation, explanatory materials, or a separate policy document?

In 2023, the Government released its Strategic Plan for the future of Australia’s payments system which sets out its policy objectives and priorities for the Australian Payments System. The Plan outlines the Government’s commitment for a modern, world-class and efficient payments system that is safe, trusted and accessible, and enables greater competition, innovation and productivity across the economy.

Therefore, considerations that the Treasurer should have regard to in the legislation and explanatory materials are the considerable economy-wide benefits of encouraging ongoing investment in domestic systemically important payment systems and other pieces of critical national payment infrastructure.

7) Are there other considerations that have not been listed that should generally be considered in relation to ‘national interest’?

As above, AP+ recommends that when the Treasurer is making a decision based on the *national interest*, the list of relevant considerations should also explicitly include *national sovereignty* and also include the consideration of the economic benefits of encouraging ongoing investment in domestic systemically-important payment systems and other pieces of critical national payment infrastructure.



8) Is the scope of the proposed Ministerial designation power effective and appropriate?

AP+ supports the recommended creation of a Ministerial power to designate payments systems and the participants of designated payments systems where it is in the 'national interest' to do so. These powers are aimed at ensuring Government can intervene to address current and emerging payment issues of national significance. AP+ agrees that the exercise of power should not only be retrospective but be prospective in nature too, to address "emerging issues²".

9) Is the Treasurer's proposed ability to allocate responsibility to regulators (within their mandate) other than the RBA appropriate?

Yes. The proposed approach is clear and appropriate – the entities within a modern and competitive payment ecosystem are diverse in nature, and not all would come under the full regulatory remit of just the RBA, hence the need to ensure other financial system regulators can be called upon if necessary. AP+ looks forward to the consultation on the draft wording for the legislative instruments and explanatory materials.

10) Is the scope of the Treasurer's power to direct Treasury portfolio regulators (ACCC, ASIC, RBA) to implement a policy position appropriate?

Yes. The proposed approach is clear and appropriate. The approach recognises that regulators may be best placed, and more efficient at developing regulatory rules or standards due to their powers, technical expertise and experience on relevant issues. AP+ looks forward to the consultation on the draft wording for the legislative instrument and explanatory materials.

In 2023, the Government released its Strategic Plan for the future of Australia's payments system which sets out its policy objectives and priorities for the payments system. The Strategic Plan outlines the Government's commitment for a modern, world-class and efficient payments system that is safe, trusted and accessible, and enables greater competition, innovation and productivity across the economy.

Combined, the Treasurer's direction power and the Strategic Plan will help coordinate action between the public and private sectors and provide certainty for industry investment and support for new entrants to navigate the regulatory landscape.

11) Is the proposed consultation approach sufficient for both Ministerial designations and directions?

Yes. AP+ would support the addition of an express requirement for the Treasurer to consult with the relevant regulator as a precondition for issuing a direction.

² Treasury Consultation - Reforms to the Payment Systems (Regulation) Act 1998. Page 11,



12) Would it be appropriate to enable the RBA to have greater information disclosure powers? What constraints or conditions should be applied as part of such a power?

Treasury proposes a mechanism for participant information to be publicly disclosed by the RBA without requiring consent from the participant.

This approach significantly changes the approach underpinning regulatory regimes in the financial services sector. Under regimes such as the *Banking Act 1959*, *Corporations Act 2001* and the *ASIC Act 2001*. Regulators have significant powers to require data and other information from regulated entities; the data and information can reveal the details of the entity's business strategy, financial and commercial positions. These legislative powers override the regulated entity's confidentiality obligations including under commercial contracts, common law and equity, and may include third parties' potentially commercially sensitive data.

The view of AP+ is that for the RBA to publicly disclose participant data the RBA should continue to have regard to the conditions upon which the material was supplied and be required to consult with those participants and payment system operators to allow them to make representations as to whether the data proposed for public disclosure contains confidential and/or commercial information. We note that the RBA often publishes data that is aggregated, in ranges, or de-identified which supports the exercise of its regulatory remit and this approach does assist in preserving the confidentiality of individual participant data.

13) Is there merit in providing the RBA with the power to accept enforceable undertakings on a voluntary basis?

The evolution of the nature and methods for payments provides convenience and opportunities for consumers and businesses, but it will also increase complexity and risk. The regulatory architecture needs to support the payment ecosystem through this transformation and granting the power for the RBA to accept enforceable undertakings will enhance their regulatory toolkit.

14) Would there be benefits in introducing a more graduated penalty regime into the PSRA?

The CP correctly identifies that the effect of expanding the definitions of participant and payments system proposed in this paper would mean that the PSRA will cover a broader range of entities, therefore a concern would be on the quantum of penalties that could be applied.

The size and profitability of payment systems and participants varies widely and an inappropriately calibrated penalty regime in the PSRA could put at risk the ability of new (smaller) entrants in the payment ecosystem being able to source appropriate insurances at commercial rates that preserves their commercial viability, which could even deter their initial entry into the Australian market.

Equally, an inappropriately calibrated penalty amount levied on a smaller participant could lead to an insolvency event for that participant – which could have an impact on consumer confidence in the wider payment ecosystem if not managed well by regulators.



15) Given the arrangements in place and the proposed ministerial designation power is there an ongoing role for section 11 of the RBA Act or should it be removed? In what circumstances would section 11 of the RBA Act be the most appropriate mechanism to resolve differences of opinion between the Government and the RBA on payments system policy?

Should the proposal for introducing an appropriate Ministerial designation power into the PSRA proceed, then that Ministerial designation power will provide for circumstances under which the Government, through the Treasurer, can intervene in respect of payments policy under the PSRA.

Therefore, for simplicity, and to preserve the operational independence of the RBA Payments System Board in regard to payments system policy; the procedures in section 11 in relation to RBA Payments System Board decisions could be repealed.

16) Are there any other changes to the PSRA that the Government should consider?

As the PSRA progresses through the legislative process, Treasury could consider concurrently making consequential amendments to the *Cheques Act 1986* to give effect to the commitment in the Strategic plan to Modernising payments infrastructure. Making the *Cheques Act 1986* and other Treasury portfolio legislation technology-neutral is a small but helpful first step in the roadmap for a modern, world-class and efficient payments system that is safe, trusted and accessible, and enables greater innovation and productivity across the economy.

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