



# Reforms to the Payment Systems (Regulation) Act 1998 - Exposure draft legislation

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## About the National Retail Association



The National Retail Association is a not-for-profit organisation that represents the interests of retailers across Australia.



We exist to support, inform, protect and represent the interests of retailers and fast food businesses. We understand the issues and opportunities facing retailers every day.



Our members can expect to receive the latest industry information, the fastest news updates and the best range of industry insights to help their business grow and succeed



The retail industry plays a huge role in Australia's economy, employment and greater livelihood and we are dedicated to helping unite retailers and stakeholders for the success of the industry now, and for the future.

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# Introduction

## Context

Following the June 2023 proposed reforms to the *Payment System (Regulation) Act 1988*, Treasury now seeks stakeholder feedback for their draft legislation and explanatory materials.

The National Retail Association welcomes the opportunity to represent the Australian retail industry on this matter. Our submission seeks to ensure that the payment system governance framework continues to support the retail industry, while providing appropriate security, efficiency, and minimising payment system costs for all participants.

Retailers and consumers support the RBA taking appropriate measures to ensure that new and emerging payment providers cannot prevent merchants from passing on the costs of their services to consumers as restrictions can increase the cost of goods for shoppers and prevent retailers from negotiating better rates.

## Core issues for retail

Payment system integrity, usability and affordability are critical to the success of the retail sector in Australia. Our members seek to facilitate secure and accessible purchase processes that maximise customer experience, streamline business operations and minimise transaction costs.

### Promote Innovation

Contemporary payment methods must seamlessly handle real-time and international transactions (compatible with credit/debit cards, mobile payments, buy-now-pay-later and systems adaptable to emerging technologies like blockchain and cryptocurrencies) and deliver robust security features (including data protection regulation, biometric authentication and encryption technology protections) to capture evolving technologies and customer preferences.

Payment systems that integrate with business loyalty programs, inventory and accounting software can also streamline operations to help retailers manage their businesses more efficiently (facilitating payment reconciliation, automated bookkeeping, and real-time reporting).

Payment systems with accessible interfaces can accommodate all customers, including those with disabilities, creating a more inclusive retail environment.

## Least Cost Routing

Retail payment trends show that Australians increasingly use mobile and electronic payment methods for their retail transactions<sup>1</sup>. To stay competitive, the Australian retail sector needs to offer a variety of modern, user-friendly, fast, and secure point-of-sale payment methods.

While retailers must adapt to consumer preferences and embrace new forms of payment to stay competitive, the increasing use of mobile wallets and online spending over traditional cash payments are applying upward pressure on merchant payment transaction costs.

Merchant fees are a large, and growing, expense for retail business. While regulations allow retailers to on-charge credit card fees, buy now pay later organisations (who offer the same service as a credit card) currently require retailers to abstain from recouping their transaction fees from users. This means that merchants absorb the extra transaction cost, reducing margins on goods and services sold via BNPL compared with other payment methods. Credit-related transaction fees should not be the retailers responsibility to pay, it should be users who pay for this credit service, and the users are the consumer.

There is a need for retailers to be able to deliver least-cost routing (LCR) to counteract low levels of transparency around fee structures, the inconsistent application of surcharging for merchants, and to allow retailers to cover the cost of a consumers' chosen payment method, without having to raise prices for all.

In times of high inflation, creating a more inclusive retail environment relies on a broad range of consumer choices in payment systems; particularly those which enable least cost and regional/remote access, such as the option for retailers to extend point of sale credit (POS) for purchases of their own goods and services. Maintaining this low-cost payment option relies on the exemption under the National Consumer Credit Act 2009, which should be maintained.

## Response

National Retail understands that legislative oversight should extend to all current and emerging payment system participants to ensure a level playing field, while ensuring appropriate security and cost benefits for a fair system that supports consumer choice and encourages lowest-cost payment options.

It is imperative that the future actions should support, not restrict, system innovation and employ a collaborative approach to ensure proposed changes are achievable and secure positive long-term cost and usability benefits.

National Retail note that the appeal of emerging payment options such as buy-now-pay-later are due to the ease for consumers to obtain small amounts of credit in real time. We strongly recommend that legislative instruments seek to maintain payment system simplicity and access, encourage innovation, and not add the unnecessary administrative burden of overly prescriptive and complex rules that would substantially detract from the value proposition of current payment options for consumers.

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<sup>1</sup> [Trends in Payments, Clearing and Settlement Systems | Payments System Board Annual Report – 2020 | RBA](#)

## Definitions

The Bill expands the regulatory coverage of the PSRA by updating key definitions to ensure all entities that play a role in facilitating or enabling payments, including new entrants and intermediaries, are appropriately regulated, namely:

- The definition of 'payment system' covers a broader set of arrangements, including payment systems that use non-monetary digital assets for payments or provide services that facilitate a payment being made, and 'three party' or 'closed loop' systems, and
- The definition of 'participant' captures all entities involved in the payments value chain, including entities with or without a direct relationship to a payment system.

The proposed changes aim to enable regulators to effectively address new and emerging risks; allowing the RBA to determine standards, ensure compliance and arbitrate disputes to embed effective customer protection such as:

- suitability and affordability checks (like any loan),
- prohibit BNPL to raise spending limits without permission,
- cap late fees, and
- improve hardship conditions and complaint processes.

## Point of Sale Exemption

We note that the new definition is explicitly **not intended to capture merchants that sell goods and services** unless they are a member of a payment system or provide payment services in their own right, and therefore assume Treasury's intention to maintain the Point of Sale Exemption (Retail) as currently provided for in the *National Consumer Credit Protection Act 2009*.

Under the NCCP Act, everyone involved in any way with the credit process is required to hold an Australian Credit Licence (ACL). This includes vendors who assist their customers obtain finance for the products or services they wish to purchase.

However, there are a range of exemptions, one of which applies to vendor introducers who facilitate finance for their customers, which is known as the Point of Sale (POS) exemption. Very specific criteria must be met for the exemption to apply; in cases where the introducer deals directly with the credit provider and facilitates finance of the vendor's own products or services.

In practice, this exemption applies to any retail businesses offering credit to consumers at the point of sale (e.g., to buy household items like refrigerators, computers, TVs, etc.). This service is an important element of enabling least cost routing and is highly valued by consumers with limited access to banking services (i.e. regional, rural and remote) to facilitate household maintenance in these times of high inflation.

National Retail considers that the removal of this exemption would create a high burden of compliance requirements and cost imposts that will disproportionately impact small businesses, and impact any enterprise involved in the provision of consumer credit at the point of retail sale.

Removing the exemption would require businesses offering consumer credit to ensure personnel holding Australian Credit Licences were always onsite when credit is being offered, or for corporate entities to become Licence Holders or authorised Credit Representatives. Both options involve substantial financial imposts across wages and regulatory compliance.

National Retail understands the importance of ensuring new risks are suitably addressed and therefore supports the proposed changes to the definitions of 'payment system' and 'participant' as this will extend regulatory compliance to new and emerging participants so that Australian payments systems can remain fair, flexible, and secure.

However, we strongly recommend the continued exemption of the retail point of sale consumer credit services.

## Ministerial Powers

The Bill introduces new Ministerial powers that can be exercised in the national interest to ensure the Government can respond to payments issues beyond the existing remit of the RBA, including:

- In addition to the powers of the RBA, the Minister has the power to designate a payment system if the Minister considers that it is in the national interest to do so. In determining 'national interest', the Minister must consult with the RBA and each special regulator on the designation, and the RBA or nominated special regulator must consider if it is in the public interest, so determined by factors of national security, consumer protection, data issues, innovation, cyber-security, anti-money laundering and counter-terrorism funding, crisis management and accessibility.
- The Minister has the power to nominate 'special regulators' to perform regulatory powers and functions in relation to a designated payment system. The nominated regulator may impose an access regime on participants and determine standards to be complied with by participants in a designated payment system.

National Retail considers it appropriate that the Minister is required to consult with the RBA and each nominated special regulator to consider the outcome of the designation when exercising the proposed new powers.

We encourage the Minister to also consider the impact of all payment system reforms on the retail industry and their customers in their determination of how the public interest is best served in any proposed designation.

## Penalty Regime

The Bill modernises the penalty regime in the PSRA by introducing civil penalty provisions, enforceable undertakings, and increases existing maximum criminal penalties for certain criminal offences to reflect the seriousness of the misconduct.

National Retail supports the proposed reform to give the Treasurer ability to allocate responsibility to regulators other than RBA, for providing RBA greater information disclosure powers, and introduction of a more graduated penalty scheme.

## Explanatory notes

National Retail find the draft explanatory material to be effective in clearly explaining the proposed legislative changes.

We recommend that Treasury develops additional guidance, in consultation with industry, for each new or amended regulation or mandatory standard as they emerge. Tailored advice for business and consumers is vital to ensure that all system participants understand the rules and costs associated with different forms of payment and to improve the intended outcome of mandatory standards.

## Conclusion

National Retail supports the proposed extension of regulatory coverage of the PSRA to adequately capture the full suite of systems and participants within the payments ecosystem in the interests of maintaining a fair, secure, innovative and low-cost payments system environment for retailers and consumers.

National Retail supports the introduced Ministerial powers and encourages industry consultation in the determination of 'public interest' grounds for setting any new (or amended) access regime, its standards and obligations.

National Retail supports the modernised penalty regime in the interests of maintaining system fairness.

We strongly recommend that any new payment system rules be guided by the principles of payment system usability, simplicity, inclusive access, and cost minimisation, and to this end, that industry is consulted in all developments to relay the practical implications of proposed regulation.

### Priority actions for new powers

Treasury and the RBA play critical roles in ensuring an even playing field in the evolving Australian payments ecosystem. This is not only for the benefit of consumers and competition, but also to drive certainty, innovation, and investment into the ecosystem for the benefit of the nation.

National Retail recommend that the Payments System Board engage their new regulatory powers to improve payment system transparency, cost viability and financial equity for businesses and their customers.

Immediate actions to simplify and reduce transactional costs could include, but are not limited to, the following:

- improve transparency of merchant fee structures (merchant and consumer awareness)
- harmonise payments terminology between government and the banking sector
- ensure consistent application of rules for merchants regarding surcharging and on-charging of fees to cover the cost of consumers' chosen payment method, and
- implement least-cost routing as a default.