
TCA response to *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023: Amendments of the Payment Systems (Regulation) Act 1998 – Exposure Draft*

Thank you for the opportunity to provide comments on the *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023* exposure draft (the draft bill). The Tech Council supports the modernisation of the *Payment Systems (Regulation) Act 1998* (“PSRA”) which we believe will provide a strong underpinning for the digital exchange of value in an increasingly technological era.

The Tech Council of Australia (TCA) is the peak industry body for the Australian tech sector. The Australian tech sector is a pillar of the Australian economy, contributing \$167 billion to GDP per annum and employing around 935,000 people. This makes the tech sector equivalent to Australia’s third largest industry, behind mining and banking, and Australia’s seventh largest employing sector.

The TCA represents a diverse cross-section of Australia’s tech sector, including startups, venture capital funds, and online platforms that link Australians to global markets.

TCA notes that many of our FinTech and payments systems members will make individual contributions to Treasury’s consultation on the draft bill. TCA provides the following comments from a sector-wide perspective.

Reforms to definitions

At a principles level, TCA supports a technology-neutral and product-neutral approach to regulation that will allow for the inclusion of new services that will emerge in the payments ecosystem. This added flexibility will enable the PSRA to encourage innovation. We believe that focusing on the function and purpose of financial services, rather than specific products, increases customer choice as well as promotes competition for those providers that meet the same regulatory standards.

TCA broadly supports the proposed new definitions of ‘payment system’ and ‘participant’ set out in Tables 1.2 and 1.3 of the Explanatory Memorandum (EM). We support these definitions encompassing both bi- and multilateral arrangements, as outlined in paragraph 1.15 of the EM.

The proposed new definition of ‘payment systems’ is better aligned with similar jurisdictions such as the United Kingdom, New Zealand and Canada. International

interoperability is crucial in facilitating global market access for Australian tech companies and will help to reduce the regulatory burden incurred when operating in multiple jurisdictions with different regulatory frameworks.

The TCA supports the proposed new definition of ‘participants’ as it acknowledges the diverse role of actors in the payments system that hold responsibility over safe and secure facilitation of value.

To provide greater clarity, TCA recommends that the EM include examples of instruments or procedures that illustrate the operation of each new definition.

These changes will allow the PSRA to more readily adapt to future technological change, which will lead to better outcomes for Australian businesses and consumers.

Treasurer’s power to designate payment systems

The TCA supports an expanded role for the Treasurer in Australia’s payments system. The Treasurer can take into account broader economic, fiscal, national security and social policy considerations as well as to make decisions that coordinate and align with the Government’s overarching goals.

Accordingly, we broadly support the Treasurer having a legislated power to designate payments systems, allocate responsibilities to regulators, and to issue directions to regulators.

However, the TCA urges caution as the Government implements these broader powers. It will be imperative to have strong guardrails around the exercise of any discretionary power granted to the Treasurer.

As such, TCA supports the inclusion of the following factors that the Treasurer must take into consideration before designating a payment system:

- Cyber-security;
- Competition;
- Anti-money laundering and counter-terrorism financing;
- Crisis management; and
- Accessibility.

In addition, we recommend that there be a transparent and accountable process for any exercise of the Treasurer’s discretionary power.

The TCA notes the clarification set out in 1.33 of the EM that a payment system may be designated by the Treasurer in the national interest where it has been previously

designated by the RBA on public interest grounds. TCA recommends that a clear policy rationale for this decision be established and incorporated into the EM. In addition, TCA recommends that any designation made in this circumstance be subject to public consultation or, at a minimum, a transparent and accountable process.

We recommend that Treasury clarify the practical implications of a payment system being declared both a designated payment system and special designated payment system. TCA believes that the policy rationale for this drafting has not been clearly stated.

The TCA reiterates our earlier position that the proposed law must be clear that the Minister has powers to designate payments systems in both the national interest and the public interest.

Nomination of regulators

The TCA notes the inclusion of Ministerial powers to nominate special regulators in relation to special designated payment systems and to provide directions about the performance of functions or exercises of power by the special regulator under the PSRA or the Regulatory Powers Act.

The TCA agrees with Treasury that the RBA is likely to be the most suitable special regulator to be nominated in relation to a special designated payment system, in most cases. We reiterate that there should be clear lines of accountability and adequate checks and balances on the Ministerial power to nominate special regulators and that the designation powers are clearly defined between the Treasurer and RBA. This ensures decisions that have the potential to impact large parts of the payments system and economy are made in a transparent and accountable manner.

Given the wide range of possible regulators that may include the RBA, the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), and the Australian Competition and Consumer Commission (ACCC), we would encourage the Government to ensure that:

- There be a standardised/common process for nomination
- The process be transparent
- Nominations are made in consultation with industry; and
- The leadership role of the Treasurer in coordinating work across the payments system is emphasised.

Thank you for the opportunity to provide comments on this exposure draft and explanatory memorandum.

We would welcome continued engagement with Treasury on this legislation and other relevant changes to Australia's payment systems regulation. We would also welcome clarification from Treasury on the timing of changes, including the removal of purchased payment facilities (PPFs) from the PSRA.

We look forward to working with Government on the implementation of these reforms.

Contact

For any further information please contact:

Ben Rice
Head of Policy Advocacy
ben@techcouncil.com.au