

SUBMISSION REFORMS TO THE PAYMENT SYSTEM

JULY 2023

INTRODUCTION

The Australian Retailers Association (ARA) welcomes the opportunity to provide a submission to Treasury regarding proposed reforms to the *Payment System (Regulation) Act 1998*.

The ARA is Australia's oldest, largest and most diverse retail body, representing a \$400 billion sector that employs 1.3 million Australians. As Australia's peak retail body, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail members trading through online stores and more than 120,000 retail shop fronts across the country.

The payments ecosystem is of critical importance to the retail sector, and retail transactions form the core of Australia's payments system. Retailers continually adapt to rapid technological changes, the emergence of new business models, and evolving customer behaviours. However, the increasing complexity of the payments ecosystem poses challenges for both consumers and retailers in terms of efficiency, reliability, and cost management, given the expanding array of payment options available.

In response to this dynamic environment, the ARA welcomes the opportunity to provide feedback on proposed reforms to the *Payment System (Regulation) Act 1998*. We note the scope of these proposed reforms includes national interest considerations, the scope of ministerial powers, the role of regulatory bodies, information disclosure powers, enforcement mechanisms, and the ongoing relevance of Section 11 of the Act governing the Reserve Bank of Australia (RBA).

By addressing these critical elements, we aim to ensure that the regulatory framework effectively supports the needs of the retail industry, promotes competition, and fosters a secure and accessible payment environment for all participants.

EXECUTIVE SUMMARY

The ARA has reviewed the proposed reforms to the payments system regulatory framework with members and puts forward recommendations from a retail perspective.

We believe that a well-functioning and resilient payments system is critical to the success of Australian retailers. While we acknowledge the need for appropriate regulatory safeguards, it is imperative that the reforms consider the diverse characteristics of the retail industry and the evolving needs of retailers and their customers.

The ARA recommends clarifications on the definition of the 'national interest'. We propose that the national interest test should identify critical factors impacting systemic risk, international competitiveness, financial inclusion, and ethical and social considerations. Such considerations should ensure that the regulatory framework supports an inclusive, stable, globally competitive, and ethical payments environment, benefiting both retailers and consumers.

Regarding the proposed Ministerial designation power, the ARA acknowledges the premise in addressing emerging issues. However, the ARA emphasises the importance of clear definitions and boundaries to prevent overreach and ensure transparency.

Establishing boundaries through consultation with industry stakeholders, payment service providers, consumer groups, and regulatory bodies is crucial to incorporate diverse perspectives and foster trust in the reformed system.

In respect of other proposed reforms, the ARA makes the following recommendations.

- The ARA supports the Treasurer's ability to allocate responsibility to regulators other than the RBA but stresses the need for coordination mechanisms and information sharing protocols among regulators. Striking a balance between regulatory independence and coordinated decision-making is vital to effectively address cross-cutting issues.
- Furthermore, the ARA recommends providing the RBA with greater information disclosure powers, accompanied by safeguards to protect sensitive information and comply with privacy regulations. Enabling the RBA to accept enforceable undertakings on a voluntary basis can enhance compliance and stability, but a risk assessment should be applied to each proposed case.
- The introduction of a more graduated penalty regime in the Payment Systems Regulation Act (PSRA) is deemed beneficial by the ARA, promoting deterrence, enforcement, and compliance while ensuring proportionate penalties.
- The ongoing role of section 11 of the RBA Act can be retained to ensure appropriate checks and balances between the Government and the RBA. Bypassing Section 11 should only be undertaken when determined by the National Interest test.
- Periodic reviews of the PSRA are recommended to address emerging risks, technological advancements, and industry practices. Collaboration with stakeholders, including the retail industry, is essential to ensure a regulatory framework that supports innovation, competition, and consumer protection.

Implementing these recommendations will address risks inherent in an expansion of definitions and powers, whilst allowing the evolution of a payments system that support public and national interest.

RESPONSE AND RATIONALE

The following considerations outlines the ARA's rationale for these recommendations and detailed responses to the questions raised the Treasury's Discussion Paper.

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

The proposed approach to updating the definition of 'payment system' is generally appropriate in capturing arrangements involved in facilitating or enabling payments.

However, it is important to ensure that the updated definition includes a comprehensive range of payment arrangements, including emerging technologies and innovative solutions that may become prominent in the future, whilst avoiding ambiguities leading to misinterpretation. This will ensure that the regulatory framework remains flexible and adaptable to evolving payment methods.

Advantages of the revised definition of a 'payments system':

- **Flexibility for emerging payment arrangements:** The revised definition expands the scope of a payments system to include a broader scope of arrangement, or a series of arrangements, that enable or facilitate payment or transfer of value. This allows for greater adaptability to emerging technologies and innovative payment methods that may not fit the traditional framework. It accommodates evolving industry practices and encourages payment system innovation.
- **Encompassing diverse payment classes:** The revised definition explicitly mentions a class of payments or transfer of value, indicating that it can cover specific types of payments, such as digital currencies, peer-to-peer transfers, mobile payments, and other alternative payment methods. This acknowledges the increasing diversity of payment options available and ensures that the regulatory framework remains relevant and inclusive.
- **Comprehensive regulatory coverage:** By including any instruments and procedures that relate to the arrangement or series of arrangements, the revised definition ensures that all necessary components and associated processes are considered within the payments system. This promotes a holistic approach to regulation and facilitates effective oversight of the entire payment ecosystem.

Disadvantages of the revised definition of a payments system:

- **Potential ambiguity and uncertainty:** The broader and more flexible language used in the revised definition may introduce ambiguity and potential interpretation challenges. The lack of specific criteria or boundaries could lead to differing interpretations among stakeholders, which may result in regulatory uncertainty or inconsistencies in enforcement.
- **Complexity in regulatory compliance:** The expanded definition may increase the complexity of regulatory compliance for participants in the payments system. Different types of arrangements

and series of arrangements may have varying regulatory requirements, and ensuring adherence to the appropriate rules and obligations could be challenging for industry participants.

- **Need for ongoing updates and monitoring:** As the payments landscape continues to evolve, the revised definition would require regular monitoring and updates to remain current and responsive to emerging payment arrangements. This necessitates ongoing regulatory review and adaptability to ensure that the definition remains effective and relevant over time.

To mitigate the potential disadvantages, it is crucial for regulators to provide clear guidelines, frameworks, and industry consultations to ensure consistent interpretation, regulatory clarity, and appropriate compliance measures within the revised definition of a payments system.

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?

The proposed approach to updating the definition of 'participant' expands the scope of entities that would be considered participants in a payment system. This broader definition would capture a wider range of entities that currently, and may in the future, play a role in the payments system. The focus on the 'whole of the payment systems value chain' should allow for the full range of entities to be captured by the updated definition.

Advantages of the proposed approach to updating the definition of 'participant':

- **Inclusion of service providers:** The new definition could include constitutional corporations that provide services to a payment system or enable/facilitate a transfer of value using a payment system. This recognises the significant role played by service providers in the payment's ecosystem, such as payment gateways, technology providers, and other intermediaries that play a significant role in the payments value chain. It ensures that these entities could become subject to relevant regulatory oversight and therefore contribute to a safe and efficient payments environment.
- **Adaptability to evolving industry:** The expanded definition allows for the inclusion of emerging participants and innovative payment methods that may not fit within the traditional framework. This flexibility supports technological advancements and fosters a conducive environment for payment innovation, promoting competition and enhancing customer experience.
- **Comprehensive regulatory coverage:** By encompassing a broader range of entities, the new definition ensures that all relevant participants in the payments system are subject to regulatory requirements. This promotes transparency, accountability, and consumer protection.

Disadvantages of the proposed approach to updating the definition of 'participant':

- **Increased compliance burden:** The broader definition may result in an increased compliance burden for a wider range of entities. These participants would need to ensure they meet regulatory obligations, such as anti-money laundering and consumer protection requirements. This could involve additional costs and administrative complexities.

- **Potential for regulatory overlap:** The expanded definition may lead to a potential overlap of regulatory oversight among different authorities. Clear coordination mechanisms and delineation of responsibilities would be necessary to avoid duplication of efforts and regulatory confusion.

It is important for regulators to carefully balance these advantages and disadvantages and seek input from industry stakeholders, such as the Australian retail industry, to strike the right balance between inclusivity and effective regulation.

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

In updating the definitions, it is crucial to consider factors such as consumer protection, competition, data-related issues, cyber security, and accessibility. These considerations will contribute to creating a robust and efficient regulatory framework that addresses emerging challenges and promotes a safe and competitive payments environment for both retailers and consumers.

The ARA proposes some other considerations in updating the definitions:

- **Evolving landscape and inclusion of non-traditional players:** The proposed approach to changing definitions acknowledges that as the payments landscape expands, non-traditional players such as fintech firms, third-party providers, and non-bank entities play significant roles. Definitions should be broad enough to capture these entities and their activities, ensuring regulatory oversight while fostering innovation and competition. However, it would be advantageous to set some clear boundaries in avoidance of ambiguity.
- **Regulatory gaps and overlaps:** Updating definitions may reveal regulatory gaps or overlaps between existing frameworks and new participants or systems. This requires a comprehensive assessment of the regulatory landscape to ensure consistency, coordination, and effective oversight. Harmonisation efforts across relevant regulatory bodies are essential.
- **Jurisdictional considerations:** Payments often involve cross-border transactions, making it necessary to consider jurisdictional differences and align definitions with international standards. Harmonisation and collaboration with other jurisdictions can facilitate consistency, enhance interoperability, and reduce compliance burdens for industry participants.
- **Clarity and legal certainty:** Clear and unambiguous definitions are critical to avoid confusion and promote legal certainty. Detailed guidance, explanatory materials, and industry consultations can provide additional clarity and foster a common understanding of the definitions among stakeholders.
- **Balancing innovation and consumer protection:** Definitions should strike a balance between promoting innovation and ensuring consumer protection. They should consider the risks associated with new payment methods, such as data privacy, cybersecurity, fraud, and financial stability, while not stifling innovation in the industry.
- **Collaboration and stakeholder engagement:** Engaging relevant stakeholders, including industry representatives, consumer groups, regulators, and technology experts, is essential when updating definitions. Collaboration ensures a comprehensive understanding of industry dynamics, perspectives, and potential impacts, leading to more effective and inclusive regulatory outcomes.

Is the proposed 'national interest' test appropriate for achieving the policy outlined in this paper?

The proposed 'national interest' test appears generally appropriate for achieving the policy outlined in the consultation paper. However, it is essential to provide clear guidelines and criteria for determining the national interest. This will ensure transparency, consistency, and accountability in the decision-making process and help prevent any potential misuse or ambiguity in the application of the national interest powers.

Advantages of the proposed National Interest test:

- **Comprehensive consideration:** The test allows for a broad range of factors to be considered in determining the national interest, including national security, consumer protection, data-related issues, innovation, cyber security, anti-money laundering, counter-terrorism financing, crisis management, and accessibility. This comprehensive consideration ensures that the payments system policies and actions align with the broader goals and priorities of the government.
- **Flexibility and adaptability:** The test provides flexibility to address emerging issues and challenges in the payments system that may not be adequately covered by existing legislation or regulatory frameworks. It allows the government to respond effectively to evolving threats and technological advancements, ensuring that the regulatory framework remains relevant and adaptable.
- **Coordination and collaboration:** The test acknowledges the need for coordination among relevant government agencies and regulators by involving other Ministers and regulators outside the Treasury portfolio when necessary. This promotes collaboration and ensures a holistic approach to addressing payments system issues that intersect with multiple areas of responsibility.

Disadvantages of the proposed National Interest test:

- **Lack of specific criteria:** The information provided does not outline specific criteria or guidelines for assessing the national interest. Without clear criteria, there is a risk of subjectivity and potential inconsistency in decision-making. It is important to ensure that the test is well-defined, transparent, and accountable to prevent misuse or arbitrary exercise of power.
- **Overlap with public interest powers:** The proposed test raises the possibility of an overlap between the powers of the Treasurer and the existing public interest powers of the RBA. This may create challenges in defining the respective roles and responsibilities of the two entities, as well as the hierarchy of decision-making based on the national interest versus the public interest.
- **Regulatory complexity:** The introduction of the national interest test may add complexity to the regulatory landscape, particularly if it overlaps with existing regulatory frameworks and mandates of various regulators. Ensuring proper coordination, clarity, and avoidance of duplication of efforts will be crucial to effectively implement and enforce the test.

Overall, the proposed National Interest test has the potential to enhance the regulatory framework by considering a broad range of factors and addressing emerging challenges. However, it is important to

establish clear criteria, ensure coordination, and provide transparency to mitigate any potential disadvantages and risks associated with its implementation.

Is the proposed approach to delineating the Treasurer's national interest powers clear and effective?

The proposed approach to delineating the Treasurer's national interest powers should be clear and effective, providing a framework that allows the Treasurer to intervene in payments system policy when necessary. It is important to strike the right balance between the RBA's existing public interest powers and the Treasurer's national interest powers to ensure coordination, accountability, and avoid duplication of responsibilities.

The proposed Ministerial powers would grant the Treasurer the ability to designate payment systems, allocate responsibilities to regulators, and issue certain directions. These powers would be exercised on the basis of the 'national interest' as determined by the Treasurer.

Advantages of the proposed Ministerial designation powers include:

- **Enhanced leadership and oversight:** The Treasurer, as a member of the Cabinet, can provide strategic leadership and oversight in the payments ecosystem, addressing emerging issues and ensuring the interests of consumers, businesses, and the Australian community are considered.
- **Timely decision-making:** The Treasurer's ability to make decisions on urgent issues can facilitate prompt action in response to emerging challenges and evolving payment system dynamics.
- **Collaboration with other agencies:** The Treasurer can engage with other relevant agencies and stakeholders when issues extend beyond the scope of a particular regulator, ensuring a coordinated and comprehensive approach to addressing payments system matters.
- **Flexibility and adaptability:** The Treasurer can respond to new and emerging issues in the payments system that may not fall within the existing 'public interest' mandate of the Reserve Bank of Australia (RBA). This allows for a more flexible and adaptable regulatory framework.

Disadvantages of the proposed Ministerial designation powers include:

- **Potential overlap with RBA's mandate:** There is a possibility of overlap between the powers of the Treasurer and the RBA, as the Treasurer's national interest powers may encompass factors considered under the RBA's 'public interest' test. Clear delineation and coordination between the roles and responsibilities of the Treasurer and the RBA would be essential to avoid duplication and ensure effective governance.
- **Lack of explicit provision for binding directions to payment system operators:** Unlike the recommendations in the Review, it is unclear whether the proposed approach grants the Treasurer the power to give binding directions to operators of, or participants in, payment systems. This lack of clarity may limit the direct regulatory influence of the Treasurer on specific actions taken by payment system operators, potentially impacting the effectiveness of oversight and regulatory enforcement in the payments industry. Clarification on the extent of the Treasurer's

authority to issue binding directions would provide greater certainty and enhance the ability to address potential issues or concerns in a timely and decisive manner.

- **Need for clear guidelines and safeguards:** The exercise of the Ministerial designation powers should be accompanied by clear guidelines, consultation requirements, oversight mechanisms, and reporting obligations to ensure transparency, accountability, and appropriate checks and balances in decision-making.

Overall, the proposed Ministerial designation powers provide an opportunity for enhanced leadership, responsiveness, and coordination in addressing payments system issues. However, careful consideration of the delineation of powers, collaboration with regulators, and robust safeguards are necessary to ensure effective implementation and avoid potential challenges and conflicts.

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?

Including a list of relevant considerations for the Treasurer to have regard to in the legislation, explanatory materials, or a separate policy document would be beneficial. This will provide clarity and guidance on the factors to be taken into account when making decisions based on the national interest. It will also promote transparency and consistency in the application of the Treasurer's powers.

Are there other considerations that have not been listed that should generally be considered in relation to 'national interest'?

In addition to the listed considerations, the ARA would like to highlight additional considerations that will help ensure that the regulatory framework supports the needs of the retail industry and promotes a competitive and accessible payment environment for all participants:

1. **Financial Inclusion:** The promotion of financial inclusion should be considered as part of the national interest. The accessibility and affordability of payment services for all segments of society, including underserved and marginalized populations, can contribute to a more inclusive financial system and socioeconomic development.
2. **Systemic Risk:** The assessment of systemic risk should be a key consideration. This involves evaluating the potential impact of payment system arrangements on the stability and resilience of the broader financial system. Measures to mitigate systemic risks, such as concentration risk, liquidity risk, or contagion risk, should be considered to safeguard financial stability.
3. **International Competitiveness:** The national interest should encompass the promotion of international competitiveness for the Australian payment system industry. This involves ensuring that the regulatory framework and policies support the competitiveness of domestic payment service providers in the global market, encouraging innovation, attracting investment, and facilitating cross-border payment flows.
4. **Regulatory Efficiency:** The efficiency and effectiveness of the regulatory framework itself should be considered. The national interest may involve streamlining regulatory processes, reducing

unnecessary burdens, and promoting regulatory coordination to ensure a well-functioning and agile payments environment.

5. **Ethical and Social Considerations:** Ethical and social considerations could be included as part of the national interest. This may involve assessing the alignment of payment system arrangements with societal values, ethical standards, and responsible business practices. Considerations such as environmental sustainability, social impact, and the promotion of ethical conduct could be relevant in certain cases.

Assessing these additional considerations would provide a more comprehensive framework for assessing the national interest in the context of the payment system. The specific circumstances and the evolving needs of the Australian society should guide the selection of relevant considerations to ensure that the regulatory framework supports the long-term interests of all stakeholders.

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

Overall, we believe that the scope of the proposed Ministerial designation power is effective and appropriate in addressing emerging issues and risks within the payments system. The expanded powers of the Treasurer in designating payment systems and allocating responsibilities to regulators can contribute to a more coordinated and responsive regulatory framework. However, we would like to highlight some key considerations to ensure its successful implementation.

Effectiveness: The proposed scope of the Ministerial designation power demonstrates the government's recognition of the need for enhanced leadership and oversight in the rapidly evolving payments landscape. By granting the Treasurer the authority to designate payment systems and allocate responsibilities, the regulatory framework can better address emerging challenges that may not fall within the Reserve Bank of Australia's (RBA) existing public interest mandate. This can foster a more efficient and effective approach in safeguarding the national interest and promoting a competitive and secure payments environment.

Appropriateness: While we acknowledge the need for expanded powers, it is crucial to ensure appropriate checks and balances to prevent regulatory overreach and maintain transparency. Clear guidelines and criteria for determining the national interest should be established to provide consistency, accountability, and fairness in decision-making processes. The scope of the Ministerial designation power should be clearly defined to strike the right balance between the RBA's existing mandate and the Treasurer's national interest powers, avoiding duplication of responsibilities and promoting effective coordination between relevant stakeholders.

Additionally, we emphasize the importance of robust consultation processes throughout the design and definition of Ministerial designation power. Engaging industry stakeholders, payment service providers, consumer groups, and relevant regulatory bodies in a meaningful and transparent manner will ensure that diverse perspectives are considered, enhancing the quality and effectiveness of decision-making. Timely and open feedback mechanisms should be established to facilitate constructive dialogue and foster trust among all stakeholders.

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

The Treasurer's proposed ability to allocate responsibility to regulators other than the RBA, within their respective mandates, appears appropriate. It will allow for a more coordinated and efficient regulatory approach by leveraging the expertise and knowledge of relevant regulators.

However, there must be clear guidelines and mechanisms for coordination among regulators to avoid regulatory gaps, overlaps, or inconsistencies.

Effective communication channels, information sharing protocols, and collaboration frameworks should be in place to ensure seamless coordination and exchange of relevant information between regulators. The roles, responsibilities, and accountabilities of each regulator should be well-defined to ensure clarity and avoid duplication of efforts.

It is important to strike a balance between regulatory independence and coordinated decision-making. While regulators operate within their respective mandates, the above guidelines and mechanisms for alignment must be deployed to address cross-cutting issues.

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

The scope of the Treasurer's power to direct Treasury portfolio regulators (ACCC, ASIC, RBA) to implement a policy position requires careful consideration to ensure it strikes an appropriate balance between effective policy coordination and the independence of regulatory bodies. This is particularly important when considering the Treasurer's role in determining matters related to the 'National Interest.'

The proposed powers of the Treasurer to direct regulators should be exercised within the framework of the 'National Interest' and with a clear understanding of the roles and responsibilities of the regulatory bodies involved. The 'National Interest' test should be unambiguous and clearly defined.

It must be ensured that the exercise of these powers does not compromise the independence and integrity of the regulatory bodies. The regulators, such as the ACCC, ASIC, and RBA, have specific mandates and expertise in their respective areas of regulation. Their decisions should be based on their own assessments, guided by legislation, established principles, and regulatory frameworks.

To strike the right balance, clear guidelines, consultation processes, and mechanisms for cooperation and coordination should be established between the Treasurer and the regulatory bodies. This ensures that policy positions are informed by diverse perspectives, expertise, and considerations while respecting the independence of the regulators.

The exercise of the Treasurer's power to direct regulators should be evoked under tightly defined criteria, be transparent (noting in some circumstances the 'National Interest' may best be protected with opacity), with clear justifications provided for any directions given. This transparency helps maintain accountability and fosters public trust in the regulatory process.

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

While a specific consultation process may not be mandated, the proposal recognises the importance of engaging with stakeholders and regulators as part of the decision-making process. The intention is to strike a balance between timely decision-making, regulatory effectiveness, and appropriate stakeholder engagement in accordance with the specific requirements and considerations of each

designation decision. However, the absence of a mandated level of engagement increases the risk of Ministerial overreach and other safeguards should be considered. This arrangement needs other safeguard mechanisms in the absence of consultation mandates.

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?

Providing the RBA with greater information disclosure powers can be beneficial, but it should be accompanied by appropriate safeguards and constraints. The RBA should have the power to gather information necessary for effective oversight and monitoring of the payments system. However, there should be clear guidelines regarding the purpose, scope, and confidentiality of the information disclosed. Safeguards should be in place to protect commercially sensitive or confidential information and ensure compliance with privacy regulations.

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

There is merit in providing the RBA with the power to accept enforceable undertakings on a voluntary basis. This can enhance cooperation and encourage compliance among payment system participants. The enforceable undertakings should be subject to clear guidelines, including the conditions for acceptance, monitoring, and enforcement. This approach can provide an additional tool for the RBA to address non-compliance and ensure the integrity and stability of the payments system.

There should be a clearly defined risk management framework that determines the acceptable risk appetite for agreeing to enforceable voluntary undertakings. The risk management framework should be consistent and transparent in determining risk, and appetite for risk, in each case of proposed voluntary enforceable undertakings.

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

Introducing a more graduated penalty regime into the PSRA can be beneficial. It should include a range of civil and criminal penalty provisions that align with the seriousness of the offense. This approach can promote deterrence, enforcement, and compliance while ensuring that penalties are proportionate to the nature of the breach. The penalties should be effective in addressing non-compliance and protecting the interests of the retail industry and consumers.

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?

If the proposed ministerial powers adequately cover the decision-making processes related to the national interest, it may be appropriate to maintain Section 11 for decisions that fall outside the scope of the national interest test. This would allow the RBA to retain its authority in setting and enforcing policies related to payment systems that are not directly tied to national interest framework.

By maintaining Section 11 for non-national interest decisions, the RBA can continue to exercise its expertise and independence in matters such as technical standards, efficiency, competition, and risk

management. This ensures that the RBA's regulatory role remains intact and that it can effectively fulfill its responsibilities as the central bank and overseer of the payments system.

However, the specific circumstances and mechanisms for determining when Section 11 should be applied or excluded would need to be clearly defined in the revised regulatory framework. This would provide clarity and guidance to both the RBA and the government regarding the appropriate use of Section 11 and the exercise of ministerial powers in different decision-making contexts.

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

The Government should conduct periodic reviews of the PSRA to ensure that it remains effective, responsive, and adaptable to the evolving payments landscape. Continuous assessment and updates should be undertaken to address emerging risks, technological advancements, and changes in industry practices. Collaboration with stakeholders, including the retail industry, should be a fundamental part of these review processes to ensure that the regulatory framework supports innovation, competition, and consumer protection.

SUMMARY OF RECOMMENDATIONS

Based on our assessment and the interests of the Australian retail industry, we propose the following recommendations.

1. Definition of Payment System	<ul style="list-style-type: none"> • Provide specific examples or guidance to clarify the scope of the updated definition. • Establish mechanisms for periodic review to check the accommodation of emerging technologies. • Engage with industry stakeholders for input on capturing diverse payment arrangements.
2. Definition of Participant	<ul style="list-style-type: none"> • Explicitly include fintech firms, third-party providers, and non-bank entities in the definition. • Regularly review the definition to ensure it remains comprehensive and adaptable. • Consult with industry stakeholders to gather insights on emerging participants.
3. Additional Considerations	<ul style="list-style-type: none"> • Include financial inclusion, systemic risk assessment, international competitiveness, regulatory efficiency, and ethical/social considerations. • Align payment system arrangements with broader societal values and address emerging risks.
4. National Interest Test	<ul style="list-style-type: none"> • Provide clear guidelines and criteria for determining the national interest. • Establish mechanisms for stakeholder engagement and consultation. • Clarify the relationship between 'national interest' and 'public interest' powers of the RBA.
5. Scope of Ministerial Designation Power	<ul style="list-style-type: none"> • Provide clear guidelines and criteria for exercising the power. • Clarify the extent of authority to issue binding directions to payment system operators.

6. Treasury's Ability to Allocate Responsibilities	<ul style="list-style-type: none"> • Clearly define roles, responsibilities, and accountabilities of regulators. • Establish communication channels and collaboration frameworks. • Provide guidance for resolving conflicts between regulators.
7. Other Considerations for National Interest	<ul style="list-style-type: none"> • Financial Inclusion: consider implications for accessibility and affordability of payment services for all segments of society. • Systemic Risk: Assess potential impact on the stability and resilience of the financial system, including the end-to-end payments supply-chain (including IT and service). • Ethical and Social Considerations: Assess alignment with societal values, ethical standards, and responsible business practices.
8. Scope of Ministerial Designation Power	<ul style="list-style-type: none"> • Clearly define guidelines and criteria for determining the national interest. • Establish clearer mechanisms for stakeholder consultation and engagement. Whilst no mandate for consultation is proposed, ensure other safeguards are in place. • Clarify the relationship between 'national interest' and 'public interest' powers of the RBA.
9. Treasurer's Ability to Allocate Responsibility to Regulators	<ul style="list-style-type: none"> • Define roles, responsibilities, and accountabilities of regulators in the context of the proposed new powers. • Establish communication channels and collaboration frameworks. • Provide guidance for resolving conflicts between regulators and Treasury.
10. Scope of Treasurer's Power to Direct Treasury Portfolio Regulators	<ul style="list-style-type: none"> • Exercise powers within the framework of the 'National Interest.' • Ensure clear guidelines, consultation requirements, and safeguards. • Establish transparent justifications and feedback mechanisms.
11. Proposed Consultation Approach	<ul style="list-style-type: none"> • Provide other safeguards in the absence of a mandated level of consultation to mitigate the risk of Ministerial overreach. • Strike a balance between timely decision-making and stakeholder engagement.
12. Greater Information Disclosure Powers for the RBA	<ul style="list-style-type: none"> • Provide clear guidelines on purpose, scope, and confidentiality of disclosed information. • Safeguard commercially sensitive or confidential information. • Ensure compliance with privacy regulations.

<ul style="list-style-type: none"> • Power for RBA to Accept Enforceable Undertakings 	<ul style="list-style-type: none"> • Subject enforceable undertakings to clear guidelines, monitoring, and enforcement conditions. • Undertake a standard risk assessment in all cases of proposed voluntary enforceable undertakings. • Enhance cooperation and encourage compliance among payment system participants.
<ul style="list-style-type: none"> • Graduated Penalty Regime 	<ul style="list-style-type: none"> • Introduce a range of civil and criminal penalty provisions aligned with the seriousness of the offense. • Promote deterrence, enforcement, and compliance. • Ensure proportionate penalties to the nature of the breach.
<ul style="list-style-type: none"> • Role of Section 11 of the RBA Act 	<ul style="list-style-type: none"> • Define boundaries for the use of Section 11 in light of the proposed framework (exclude areas determined by the National Interest test). • Define clear circumstances for its use in exceptional cases impacting national interest and policy objectives.
<ul style="list-style-type: none"> • Other Changes to the PSRA 	<ul style="list-style-type: none"> • Conduct periodic reviews of the PSRA to ensure effectiveness and adaptability. • Address emerging risks, technological advancements, and industry changes. • Collaborate with stakeholders, including the retail industry, for feedback and input.

These recommendations aim to enhance the proposed amendments, promote transparency, accountability, and effective regulation, and ensure the retail payments sector in Australia remains competitive, innovative, and customer-centric.

We trust that our consultation response provides valuable insights from the Australian Retail Industry perspective. We remain committed to engaging in further discussions and collaborating with relevant stakeholders to shape a robust and forward-thinking regulatory framework for the payments industry.

Thank you for considering our input. We look forward to the opportunity for further engagement on this important matter. For any queries in relation to this submission please contact policy@retail.org.au

Lead author: Alison Howe, Policy Manager (30 June 2023)

