



7 July 2023

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

Submission by email to: paymentsconsultation@treasury.gov.au

Response to “Reforms to the Payment Systems (Regulation) Act 1998 Consultation Paper”

Please find attached the submission of the Emerging Payments Association Asia (EPA Asia) to the Reforms to the Payment Systems (Regulation) Act 1998 Consultation Paper released by the Commonwealth Treasury in June 2023.

EPA Asia’s goal is to unify the payments agenda in the region, drive business development and improve the regulatory landscape for all organisations within the payments value chain. We are a community of payments organisations whose goal is to strengthen and expand the payments industry for the benefit of all stakeholders. More information about EPA Asia can be found on our website www.emergingpaymentsasia.org .

Please note, that while we have consulted with our membership, any views expressed in this submission are solely the views of EPA Asia and do not necessarily represent the views of individual contributors, EPA Asia Ambassadors or EPA Asia Members.

EPA Asia has been supportive of the Government’s payments reform agenda. We believe the Strategic Plan provides a robust framework within which the various Government and industry initiatives can be advanced to enable a vibrant, responsive and secure payments ecosystem for Australia.

EPA Asia is broadly comfortable with the Payment System (Regulation) Act (PSRA) changes as outlined in the Consultation Paper. We note that these changes implement the recommendations in Payment System Review Final Report chaired by Scott Farrell, in particular modernising the regulatory framework. The changes also support the enhanced leadership role for the Treasurer and the need for the regulatory framework to evolve in response to growing complexity and evolving risks. We believe that enhanced designation powers to both the RBA and the Treasurer provide the necessary powers to intervene when required. We are also pleased that the Ministerial designation power now includes safeguards and consultation requirements.

However, we believe these reforms could be further enhanced through the development of clear criteria that could both better ensure and provide confidence to industry players as to the use of the new designation powers - notably that they would be applied when genuinely required, in a

consistent manner and in such a way as to support competitive neutrality.

We elaborate on these matters in our responses to some of the consultation questions below.

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

We do not have any specific concerns over the updated definition of “payment system”. However, we would appreciate any further clarification that could be provided by the Treasury as to how this definition should be read alongside the payment functions captured through the proposed licensing regime as well as existing regulatory definitions. We believe it is important that there are no “gaps” whereby significant players could avoid either the possibility of designation or regulation via payment service provider licensing / existing regulation.

Question 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?

The enhanced definition of “participant” could capture providers that have, to date, operated outside of regulatory oversight. It will be important that this is able to capture entities that have claimed that they do not play a role with the payments system because they do not store value or handle money. The definition of “participant” should be such that these entities can be captured if required.

However, care needs to be taken in the interpretation and application of this definition so that an entity that is deemed to be a participant of a payment system is not subject to this status without their knowledge.

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

EPA Asia believes that the Ministerial designation power should ideally operate as a power that is, ideally, rarely exercised and, if so, only done so when other options have failed to address a particular issue (though we do recognise there may be emergencies when the Government may need to move quickly). This power should neither displace nor replace existing regulation. We note that in other jurisdictions this power has rarely or ever been used, for example in Canada.

While we appreciate the intent that the national interest test for the Treasurer and the public interest test for the RBA should be mutually exclusive, we do not believe they necessarily are, as written in the current PSRA. At section 11 of the current PSRA, the RBA can also consider “other matters” when considering the public interest and whether to designate. This could create some overlap and, as such, further clarity on this would be welcomed.

Question 5 - Is the proposed approach to delineating the Treasurer's national interest powers clear and effective?

We welcome the greater clarity around the safeguards and consultation process by which the Treasurer would exercise their designation power. As well, thought should be given as to whether these processes could inhibit quick action in the case of a genuine emergency (for example, a system-wide cyberattack).¹

Question 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?

While the national interest test is well established within other areas of Commonwealth law, its application in payments would be new and, as such, we would strongly encourage the development of clear criteria for interpretation of the national interest test and application of the Treasurer's designation powers. This would provide industry participants with greater visibility and comfort as to the interpretation of this test and the use of these new powers.

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

Given the role of the other regulators within the proposed licensing regime, it would seem sensible for the Treasurer to be able to allocate responsibilities to regulators other than the RBA.

We are more than happy to expand further on the items raised in this submission or to provide further information. If you do have any comments or questions, please feel free to contact me at camilla.bullock@emergingpaymentsasia.org or Dr Brad Pragnell at brad.pragnell@34south45north.com.

Kind regards,

Camilla Bullock

CEO, Emerging Payments Association Asia

¹ We note that in an emergency this would operate alongside other existing provisions such as APRA's existing powers to direct entities or impose licence conditions on entities they regulate and payments systems that would be covered by the Security of Critical Infrastructure Act 2018.