

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

Thank you for the opportunity to provide feedback on the Reforms to the *Payment Systems (Regulation) Act 1998* (PSRA) - exposure draft legislation.

About Block

Block (ASX: SQ2) is a global technology company and an overarching ecosystem of many businesses, including Afterpay, Square, Cash App and TBD, united by their purpose of economic empowerment.

Our Square hardware and software products are used by thousands of Australian SMEs to help run and grow their businesses. Square offers purpose-built software to run complex retail operations and financial services, including embedded payments tools. Block also provides buy now pay later (BNPL) services through our brand Afterpay.

Proposed changes to definitions

The proposed definition of a 'payment system':

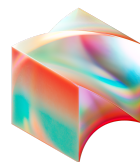
1. Means an arrangement or series of arrangements under which transfers of funds are made; and
2. includes any instruments and procedures that relate to that arrangement or series of arrangements.

We understand that this is deliberately designed to be a very broad definition, to help future proof the RBA's ability to intervene. Although we support this approach, we urge the Treasury and the RBA to be mindful of the implications of a significantly expanded regulatory perimeter.

As the regulatory perimeter is expanded, a holistic and first principles approach must be taken to the associated regulatory toolkit. The market dynamics in the broader payments ecosystem are fundamentally different from those in the traditional payments system and associated card schemes. In the example of BNPL products, this sector is highly competitive, with significant price and product differentiation, transparent pricing for businesses and covers a tiny fraction of overall payments. None of these characteristics readily apply to existing regulated payments functions - so the regulatory tools that apply to them must look different.

In applying particular standards and/or requirements to new and innovative products, such as BNPL, Block recommends regulators be cognisant of existing and incoming BNPL regulations that would already be applicable to BNPL products to ensure any proposed new standards and/or requirements do not contradict or replicate BNPL regulations.

Similarly, other participants are also subject to a myriad of regulatory obligations that could replicate or contradict standards / requirements generated under the PSRA. Block recommends that regulators first consider whether an existing regulatory obligation would allay concerns the regulator has before subjecting the entity to additional standards / obligations under the PSRA.



Reforms to the regulation of payment systems

Under the proposed changes to the PSRA, regulators will be able to impose an access regime, make standards, arbitrate disputes, and give directions to participants. This creates significant uncertainty for entities that will be captured under the regulatory remit of the PSRA.

The practicalities of implementing what a regulator may request of an entity means, potentially, changes to internal systems and/or diverting software and hardware engineering efforts to 'build' compliance of these potential measures. Prior to invoking the powers the PSRA has provided to regulators, Block recommends regulators complete an impact analysis and ensure an adequate transitional period has been provided to entities to enable participants to have sufficient time and resources to comply. This is particularly important given the significant penalties that are attached to non-compliance of particular PSRA clauses.

Designation powers under the PSRA

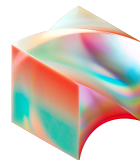
Block has consistently supported an expanded role for the Treasurer and Treasury in regulating the payments system. As the Treasury has a broader strategic policy remit than the RBA, it can more readily incorporate a broader range of inputs into decision making. This will help support the Strategic Plan's objectives of driving greater competition and innovation into the payments ecosystem. Accordingly, we support the Treasurer having a legislated power to designate payments systems, allocate responsibilities to regulators and issue directions to regulators.

While Treasury's expanded role is welcomed, the proposed approach of allocating responsibility between the Treasurer and RBA could be made clearer. The difficulty in distinguishing between public and national interest could lead to confusion as to who is rightly placed to designate particular payment systems. This lack of clarity may also restrict the Treasurer's ability to intervene in situations that may not be perceived to meet the threshold of 'national' interest. For the avoidance of doubt, the powers of the Treasurer should be expanded to cover matters of national *and* public interest.

The value of an expanded lens for assessing payments regulation is evident in the response to date by the RBA regarding the Buy Now Pay Later sector. The RBA has stated that it would be in the public interest to prevent BNPL providers to remove no-surcharge rules¹. This appears based on the RBA's traditional approach to regulating surcharging for the highly concentrated international card schemes. However, this approach fails to fully incorporate the costs of such a policy - including direct customer savings and competition benefits arising from differentiated and lower cost alternatives to traditional credit cards, as well as impact to the Government's economic growth and job creation in the tech sector².

¹ Reserve Bank of Australia, [Payments System Board Annual Report](#), 2023

² An [Accenture report](#) commissioned by Afterpay found that Afterpay customers in 2020 saved more than \$110m in fees and charges when compared to credit cards. An [Oxford Economics Report](#) commissioned by AFIA found in 2022 found BNPL users in Australia gained \$264 million in gross benefits from using BNPL services in FY21, driven by savings in interest and fee costs (relative to credit cards) surcharge savings and the benefits to consumers of delaying payment, and allowing for more effective budgeting.



Thank you for the opportunity to provide a submission to the Reforms to the *Payment Systems (Regulation) Act 1998* - Exposure draft legislation. Should you have any further questions please do not hesitate to contact Maggie Kaczmarska on maggiek@block.xyz.

Yours sincerely,

Michael Saadat

International Head of Public Policy
Block inc.