Commonwealth Bank

Reforms to the *Payment Systems (Regulation) Act 1998*

Response to Treasury Consultation Paper

7 July 2023

Public

The Commonwealth Bank of Australia (CBA) welcomes the opportunity to contribute its views in response to the Australian Government's Reforms to the *Payment Systems (Regulation) Act 1998* (PSRA) consultation paper (Consultation Paper). The Australian payments system has evolved significantly in the 25 years since the PSRA was enacted. During that time CBA has observed rapid and ongoing shifts in the ways our customers pay, and has innovated to meet changing customer expectations. For example, CBA was first to enable payments through a computer and mobile phone via Netbank and the CommBank app.

As noted in the 2021 Review of the Payments System (Farrell Review), technological developments and changing consumer preferences have led to a growth of new providers and business models, transforming a linear payments value chain consisting of predominantly financial institutions into a complex ecosystem involving a diverse range of participants. These changes have made payments faster and more convenient, while also creating new risks to both users and financial stability. If the Government's vision of a safe, trusted and accessible Australian payments system is to be met it is imperative that these risks are managed effectively.

CBA is of the view that the reforms proposed in the Consultation Paper will provide the Reserve Bank of Australia (RBA) and Treasurer with the powers to help manage these risks today and in the future, as innovation continues to transform payments. In particular, regulators should have the ability to regulate all participants that form part of the payments ecosystem so that consumers and businesses can have trust in, and access to, a range of payment services and providers that meet their needs. As payments are highly interconnected, regulatory supervision of all participants that play a role in facilitating or enabling payments is needed to enable intervention if risks arise at any stage of the value chain. In CBA's view the proposed reforms will deliver on these objectives.

The RBA's broadened remit under the proposed changes in the Consultation Paper will require a corresponding uplift in capability to enable effective supervision of participants that have traditionally operated outside the regulatory perimeter. In order for the reforms to be successful, an equally broad licensing regime is required to ensure that all participants of the ecosystem are appropriately regulated and meet minimum standards. This will include mandatory compliance with standards set by an industry standards body with appropriate oversight by the RBA.

In implementing these reforms, time is of the essence. The rapid development of the Australian payments ecosystem without regulatory frameworks keeping pace has put some companies in the position of innovating without clarity of obligations and regulatory oversight. While this may deliver innovation to end users, it is at the expense of safety and in some case efficiency. The risks identified in both the Farrell Review and the Government's Strategic Plan for Australia's Payment System exist today and will continue to grow with rapid innovation. For example, in the 12 month period to April 2023 CBA customer digital wallet transaction volumes have increased by 34% and spend has increased by 36%. Since the Farrell Review the volume of account to account payments on the New Payments Platform (NPP) has grown by 55% and PayTo has gone live, enabling a range of new participants to offer services on the NPP. It is on this basis that CBA supports the Government's accelerated timeline for implementation of the reforms to the PSRA to restore the balance between safety, efficiency and innovation. If the proposals in the Consultation Paper are legislated, we would encourage both the RBA and the Treasurer to act swiftly in exercising their new powers to mitigate current identified risks.

ANSWERS TO CONSULTATION QUESTIONS

EXPANDING THE REGULATORY PERIMETER OF THE PSRA

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

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?

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

CBA supports the proposed amendments to the definition of 'payment system' and 'participant' to ensure that the Government, RBA and other regulators have the ability to regulate all participants that form part of the payments ecosystem. They represent a necessary modernisation of the PSRA to ensure that all entities that play a role in the payments system are subject to appropriate regulatory oversight. The results of the Reserve Bank's 2022 Consumer Payments Survey show that consumers continue to shift to electronic payment methods, including growth in online payments up from 12% of all payments in 2019 to 18% in 2022.[1] Electronic payments involve multiple intermediaries that participate in the transfer of data and messages to enable a transaction. Therefore it is appropriate that definitions are updated and technology neutral to reflect the complex arrangements that underpin the transfer of value in a payment.

Newer entrants who may not be formal or direct members of a payment system and don't necessarily store value can still exert substantial influence on the risk, market structure and economics of payments – in turn affecting safety, security and liquidity. The proposed amendments will ensure that the Government, RBA and other regulators have adequate scope of powers to regulate the modern payments system, including providers of digital wallets that are now a key part of the payments value chain by facilitating the transfer of value through electronic messages and other means.

MINISTERIAL POWERS

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

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

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?

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

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

Given the critical role of payments in the economy, and the growing role of international participants in the Australian payments system, the broader perspective of the Treasurer is necessary to maintain safe, trusted and accessible payments. The Treasurer is uniquely positioned to understand how certain activity could compromise Australia's national interest and affect Australia's financial system eg. in matters of national security.

[1] https://www.rba.gov.au/publications/bulletin/2023/jun/consumer-payment-behaviour-in-australia.html

The proposed Ministerial designation power is an appropriate mechanism by which broader 'national interest' considerations can be addressed. To ensure sufficient flexibility to respond to a rapidly changing payments landscape, the legislation should not define national interest, with further detail spelled out in guidance (as is the case in other contexts such as the *Foreign Acquisitions and Takeovers Act* 1975 (FATA)). This will ensure that the 'national interest' definition remains relevant as the payment ecosystem evolves. This approach has worked successfully for many years in the context of the FATA and a similar approach should be adopted under the PSRA. Any guidance should make it clear that it is in the national interest to ensure local participants continue to be incentivised to invest in the safety and security of the Australian payment system.

We expect the Ministerial designation power will only be used to complement the active regulatory role of the RBA on occasional and targeted instances where intervention in the national interest may be beyond the RBA's mandate, powers, expertise or role.[2]

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

10) Is the scope of the Treasurer's power to direct Treasury portfolio regulators (Treasury Regulator) to implement a policy position appropriate?

Broader supervision of the payment system under a modernised PSRA will require regulation of more complex problems than those that have been dealt with by the RBA to date. It is therefore appropriate that responsibility can be allocated to another regulator where the responsibility is aligned and consistent with their mandate and capabilities, when it is in the national interest to do so.

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

CBA supports the proposed consultation approach. The consultation approach should not impose a barrier in the event that the Treasurer is required to act swiftly based on the nature of the risk.

FURTHER REFORMS FOR TESTING

12) 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?

CBA considers that the secrecy provisions of Part 6 of the *Reserve Bank Act 1959* should continue to apply to identifying information that is commercially sensitive or confidential pricing information.

[2] Consultation Paper, p 11.

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

Given the importance of the payments ecosystem to the overall economy and evolving risks as technology continues to evolve, it is necessary for the RBA to have similar powers to other Treasury regulators to ensure that the law is being complied with.

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

While to date there has been meaningful and consistent compliance with the PSRA by domestic payment systems and participants, as the Consultation Paper recognises, the current penalties under the PSRA are low relative to penalties in other frameworks. The current penalties must be able to deter breaches by all participants including very large global institutions that are entering the Australian payment ecosystem. CBA is supportive of a penalty framework that has appropriately calibrated penalties to cater for small and very large participants – as is the case in other jurisdictions where penalties may be imposed having regard to a proportion of not just Australian revenue but overall global revenue where appropriate. E.g. in Europe, under the *Digital Markets Act*, the European Commission can impose penalties and fines of up to 10% of a company's worldwide turnover.

15) 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?

We do not see the proposed designation power being in conflict with s11 of the RBA Act as CBA's understanding is that the designation power is not designed to resolve conflict between the Government and the RBA. Instead, it will complement the RBA's responsibilities regarding the public interest by ensuring that the Treasurer can intervene when it is in the national interest.

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

The Consultation Paper proposes broadening the scope of the RBA's powers to impose regulatory obligations. CBA agrees that the scope of the existing standards power should be clarified to be able to address the full range of conduct by participants that raises policy concerns. Access regimes are generally used to determine conditions under which payment system access is provided.[3] To effectively manage new and emerging risks the RBA should have the power to impose access regimes to any aspect of the payment flow (including infrastructure/services offered by particular entities within the ecosystem) and not just access to the payment system.

Any reforms will need to be supported by an equal uplift in regulatory capability and technological competence as the expansion of the PSRA will require supervision of a larger range of diverse participants than previously. As well as building sufficient skills to effectively supervise large technology companies, the expanded regulatory perimeter will also bring in smaller and less sophisticated participants that will likely require a greater level of education and support.

The proposed reform of the PSRA is one important part of the overall reforms to reflect the changing payments landscape. The proposed licensing regime should complement and enhance the objectives of the proposals in the Consultation Paper. As the primary payments regulator, the RBA should have oversight of all licensed participants. Further amendments to the PSRA may be indicated following the introduction of the payments licensing regime to minimise the risk of regulatory gaps arising in the future.

[3] Consultation paper, p 16.