

## Submission to the Treasury Consultation on Reforms to the Payment Systems (Regulation) Act 1998

### About the Tech Council of Australia

The TCA is Australia's peak industry body for the 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.

### Introduction

The TCA welcomes the release of the Government's Strategic Plan for the Payments System. This is a long overdue process of reform. Better payments regulation can drive more competition and innovation in our financial sector, which in turn means lower costs, greater choice and more convenience for Australians. The current regulatory regime creates barriers to competition and unfairly favours big banks over start-ups and scale-ups that are working to drive better outcomes for consumers. It is acting as a handbrake on growth of Australian FinTech businesses.

We welcome the consultation on reforms to the *Payments System (Regulation) Act 1998* (PSRA), particularly at a stage where firm decisions are yet to be taken on the best way forward. Broadly speaking we are supportive in principle of the direction that has been outlined in the consultation paper.

### Proposed definitional changes

The TCA welcomes the expansion of the regulatory perimeter of the PSRA and the proposed changes to the definitions of both payments systems and participants which will focus on substance over form. We support these definitions encompassing both bi- and multilateral arrangements. 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.

We received member feedback about potential wording changes to the proposed definitions, but we also note that the options outlined are intended to be indicative. As such, we will leave this feedback to individual members. However, we would be happy to engage on the precise definitions at the point that the Treasury has settled on its preferred wording. We are comfortable with the considerations that have been taken into account in updating the proposed definitions, however we would suggest adding further examples alongside the definitions to provide greater clarity for regulators and industry. These examples need not be exhaustive, but indicative.

## Ministerial Powers

The TCA supports an expanded role for the Treasurer in Australia's payments system, as we believe that the Treasurer has a broader strategic policy remit than the Reserve Bank of Australia (RBA). Accordingly, we support the Treasurer having a legislated power to designate payments systems, allocate responsibilities to regulators and issuing directions to regulators.

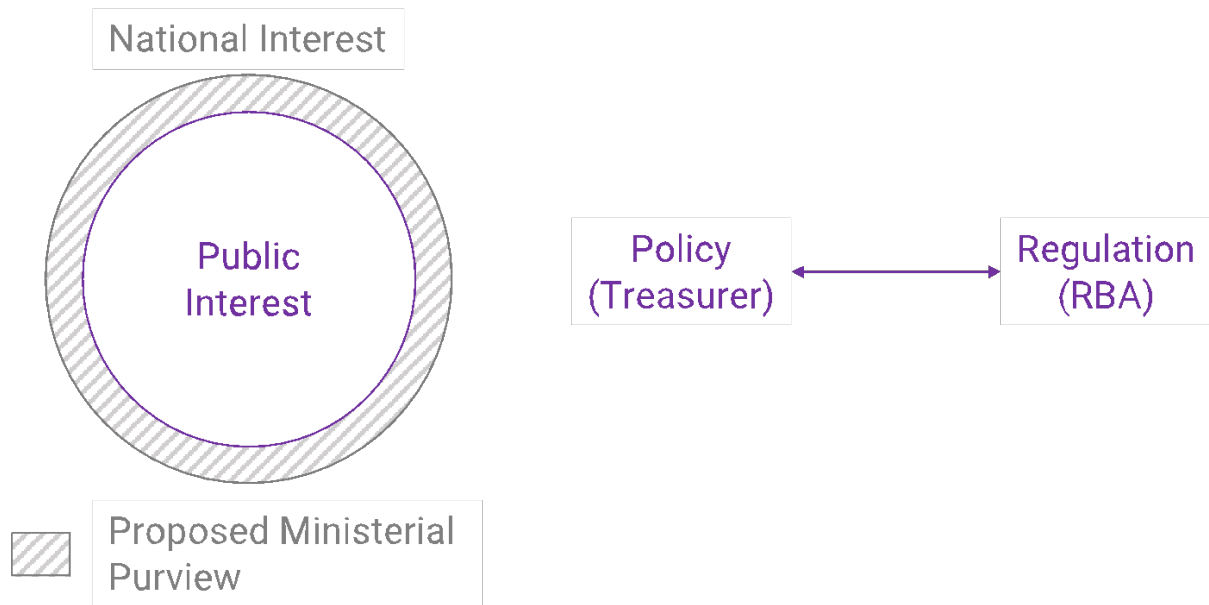
However, we are concerned that the proposed approach of allocating responsibility based on the distinction between *public* and *national* interest is not clear and that it could lead to confusion as to who is rightly placed to designate particular payments systems. We are also concerned that it could lead to a situation where the Treasurer may feel restricted in intervening in a way that would only meet a public rather than national interest definition.

In our view, matters in the national interest comprise both the range of factors identified on page 12 of the consultation paper, but also all of the factors that the RBA currently considers in its definition of the public interest. Or to put it differently, the national interest is a superset of the public interest. We do not support limiting the powers of the Treasurer to designate only those matters covered by the national interest but not the public interest (see figure below).

This is our position for two main reasons:

1. When it comes to payments systems, it is difficult to imagine circumstances in which the RBA would practically feel itself to be bound by their public interest definition from acting in the national interest. In the event of a sufficiently serious crisis affecting the payment system, it is unlikely that the RBA will encounter any opposition from system actors when exercising its public interest powers.
2. We believe that a broader policy rather than regulatory focus would be useful across the payments system, regardless of the definitional difference between public and national interest. We posit that the critical differentiation lies in the contrasting approaches of the two primary actors. The Reserve Bank of Australia (RBA), bound by its regulatory enforcement role and restricted mandate, exhibits a narrower focus. On the other hand, the Treasurer, while devoid of an enforcement role, holds a more comprehensive perspective on economic policy due to their position as the primary economic policy maker of the government. This also means that the Treasurer possesses greater democratic legitimacy to intervene more strategically.

Figure 1 Considerations in Defining Scope of Ministerial Power



Accordingly, we recommend that the Treasury consider whether quibbling over the precise difference between public and national interest is the most useful way to delineate the responsibilities of the two actors in the system. We propose that focusing on the different roles that these two actors play, rather than differences in characterising their areas of interest is potentially more fruitful.

At the least we recommend that it be made clear that the Treasurer shall have power to act both in the public and national interest.

In principle we support the outlined approach to designation; and engaging, providing directions to and consulting with the relevant regulators.

### RBA regulatory toolkit

We support the RBA taking a more active role in meeting its public interest requirements, and accordingly we in principle support the proposed increases in the RBA's powers as outlined from Page 16 of the consultation paper. These are all powers which we would consider part of the typical 'regulatory toolkit' that the consultation paper identifies is available to other regulators such as ASIC, APRA and the ACCC.

We would welcome the opportunity to make more detailed comments on the precise nature of these powers once the Treasury has a more settled view as to how and when they would be implemented.

### Contact

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