



Response to Treasury on the
Reforms to the Payment Systems
(Regulation) Act 1998

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Group Country Manager Letter

13 July 2023

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

Via email: paymentsconsultation@treasury.gov.au

Dear Director of the Payments System and Strategy Unit,

Visa submission to Treasury on the Reforms to the Payment Systems (Regulation) Act 1998

Visa welcomes the opportunity to share its perspectives on Treasury's consultation paper on the Reforms to the Payment Systems (Regulation) Act 1998.

We agree with the Government's view that the regulatory architecture governing payments needs to be updated to reflect the changing payments landscape.¹

In responding to the consultation paper, Visa's submission focuses on several topics, including Treasury's proposed approach to the definitions of 'payment system' and 'participant' to ensure that the Reserve Bank of Australia can continue to adapt to an evolving payments ecosystem. In addition, we provide our perspectives on the proposed implementation of Ministerial powers and make recommendations regarding the further reforms for testing presented in the consultation paper.

Visa is available to provide further details on our submission if helpful.

Yours sincerely,

Julian Potter
Group Country Manager, Australia, New Zealand, and South Pacific

¹ Treasury (2023), [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), p4.

Executive summary

The following key points are addressed in Visa's submission to Treasury regarding its consultation paper on "Reforms to the Payment Systems (Regulation) Act 1998":

- Visa agrees with Treasury that there is value in reviewing **the Reserve Bank of Australia's (RBA) regulatory perimeter** with respect to the scope of: (1) a payment system; and (2) participants. An updated approach to these concepts can ensure that the RBA has sufficient flexibility to adapt to a continuously changing payments ecosystem.
- Any update to the **definition of 'payment system'** should focus on the nature of payment services provided rather than solely on the type of organisation providing the payment services. In turn, determining whether an organisation is providing payment services should be viewed through a technology-neutral lens.
- In addition, any changes to the definition of 'payment system' should not impose new obligations on payment systems already designated by the RBA.
- Visa agrees with Treasury that the **definition of a 'participant'** should be technology neutral and "not explicitly outline the operators and service providers captured, to increase the likelihood that the law covers future innovations, including if new services emerge with a role in a payments chain, or future issues with entities that are otherwise outside of the regulatory framework."² This increases the prospect of future proofing the definition.
- We believe that reasonable and proportional regulatory requirements on 'participants'³ are beneficial and contribute to a level playing field.
- Visa encourages Treasury to ensure that any finalised **Ministerial powers** are exercised in a manner narrowly tailored and proportional to the need, with sufficient notice and opportunity for industry to manage and mitigate any adverse impacts, to the fullest extent possible.
- Regarding Treasury's **further reforms for testing**, we strongly encourage the Department to undertake another round of public consultation with industry, given the significance of the reforms proposed and because there has been no previous engagement with industry on these matters.
- Visa has concerns regarding the proposal for the RBA to have greater **information gathering and public disclosure powers**, given that it is best regulatory practice to obtain

² Ibid., p8.

³ Ibid., pp8-9.

consent from a participant before any identifying information about the participant can be publicly disclosed (section 79A of the RBA Act), unless one of the other exceptions in section 79A apply.⁴ We hold this position because otherwise commercially sensitive data could be disclosed without consent, noting that the public interest based powers under sections 56 and 57 of the APRA Act⁵ were for a specific financial product and use case.

- If Treasury plans to proceed with this reform, then we would encourage it to be guided by providing appropriate notification to affected ecosystem participants and seek explicit consent that such commercially sensitive information can be publicly disclosed and accessed.
- On **enforceable undertakings**, Visa notes that the RBA concluded in 2021 that “there have not been any significant issues regarding compliance with the Bank’s standards and access regimes, and stakeholders have noted that good outcomes have been achieved under the existing regulatory framework and enforcement mechanisms.”⁶ Given this recent and well-considered conclusion, we consider that regulatory outcomes should be proportionate to the issues to be addressed and note the different purpose for which the Australian Competition and Consumer Commission has been granted this power.

⁴ Ibid., p17.

⁵ Australian Prudential Regulation Authority (APRA) Act 1998 can be found at [Australian Prudential Regulation Authority Act 1998 \(legislation.gov.au\)](https://www.legislation.gov.au/australian-prudential-regulation-authority-act-1998)

⁶ Reserve Bank of Australia (2021), [Review of Retail Payments Regulation - Conclusions Paper - October 2021 \(rba.gov.au\)](https://www.rba.gov.au/publications/papers/2021/10/retail-payments-regulation-conclusions), p63.

Response to Consultation Questions

Expanding the regulatory perimeter of the PSRA

Visa appreciates Treasury's thoughtful approach to modernising the Payment Systems (Regulation) Act 1998 (PSRA), and the specific proposals about how to potentially update the definition of 'payment system' and 'participants' to address new or emerging risks to the payments ecosystem (ecosystem). The PSRA and related legislation have been the foundational regulatory framework that has permitted the Reserve Bank of Australia (RBA) to exercise its role as the primary payment system regulator in Australia and, in turn, define the Bank's regulatory remit.

Given ongoing technological progress and changes in the ecosystem at large, both in Australia and elsewhere, there are a diverse set of businesses providing payment services well beyond the 'traditional' payment systems – ranging from established financial institutions to large technology companies and fintech companies to closed-loop systems. Visa, therefore, agrees with Treasury that it is worthwhile to review the regulatory perimeter more closely with respect to the scope of: (1) a payment system; and (2) participants. An updated approach to these concepts can enable the RBA to have sufficient flexibility to adapt to a continuously changing ecosystem.

As an overarching consideration, Visa commends Treasury for its principles-based approach to reforming the PSRA – rather than a highly prescriptive approach⁷ – which will provide the RBA with greater flexibility in exercising its functions under the Act. As we detail below, general principles that can guide Treasury's analysis in updating the definitions of payment system and participants include:

- Any update to the definition of 'payment system' should focus on the nature of payment services provided rather than solely on the type of organisation providing the payment services;
- In turn, determining whether an organisation is providing payment services should be viewed through a technology-neutral lens;
- A revised definition that focuses on the concept of 'transfer of value' should have a narrow scope of facilitating or enabling payments and not be expanded at this time to a broader interpretation of 'value' provided; and
- Any updates to the definition of payment system should not impose new obligations on payment systems already designated by the RBA.

Below we provide our responses to the consultation paper's specific questions.

[Definition of 'payment system'](#)

⁷ Treasury (2023), [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), p6.

Consultation Question

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

Visa Response

Currently, the existing definition of a 'payment system' in the PSRA is defined as "a funds transfer system that facilitates the circulation of money and includes any instruments and procedures that relate to the [payment] system".⁸ In Visa's view, this definition is intended to address "what" is a payment system and "what" activity the payment system is engaged in with respect to money. As is well known to Treasury, this definition has been in force since 1998 and at a time when Australia's digital ecosystem was still in the early stages of innovation and growth. Since then, there has been a significant evolution of the ecosystem as a result of new technological innovations and new ecosystem participants that are creating products, services, and technologies that are continuously changing the manner in which consumers and merchants are served.

Visa notes that four-party models like Visa are clearly in scope of the current PSRA definition of 'payment system'. However, there is a lack of clarity about whether other similar ecosystem participants – such as 'three-party' or 'closed loop' systems – are likewise within the ambit of the current definition. Accordingly, we support Treasury's approach to including 'three-party' and 'closed loop' systems in the remit of the PSRA and, in turn, the RBA's ability to designate them. This will bring clarity and certainty to the ecosystem as well as creating a level playing field among and between ecosystem participants.

Additionally, we encourage Treasury to update the definition to focus on the nature of services provided rather than solely on the form of organisations providing them. This will both reflect the manner in which the ecosystem in Australia currently operates and provide the RBA with greater adaptability to designate emerging payment systems in the future, which the RBA may determine as necessary and in the 'public interest'. In this way, updating the definition of 'payment system' to bring existing and future payment systems within the remit of the PSRA will ensure that the RBA's role as the primary payments regulator can adequately respond to the changing ecosystem.

Moreover, the existing definition of 'payment system' in the PSRA references the transfer of money. As innovation increasingly expands to the use and transfer of non-monetary digital assets, we agree with Treasury that a definition that focuses on the circulation of money may result in some limitations in determining whether a specific system is providing services in line with the definition of a payment system.⁹ A technology-neutral approach - with a focus on 'value' rather than 'money' - will build flexibility into the PSRA so that the RBA may exercise regulatory

⁸ Ibid.

⁹ Ibid.

authority over new and emerging payment systems that may be focused on new technologies that transfer 'value' rather than 'money'. While we agree with this revised definition, we encourage Treasury to consider 'value' as it relates to facilitating and enabling payments and not as a broader or more theoretical concept of value provided.

Visa understands that Treasury is proposing the following approach to update the definition of 'payment system', which is focused on the interrelated concepts of 'payments' and 'transfer of value':

A revised definition could apply to an arrangement or series of arrangements for enabling or facilitating payment or transfer of value, or a class of payments or transfer of value, and includes any instruments and procedures that relate to the arrangement or series of arrangements¹⁰

In determining Treasury's approach, it has listed as international comparisons in Box 1.2 the experiences of Canada, the United Kingdom, and New Zealand. We would also encourage Treasury to take into account the Bank for International Settlements' (BIS) definition of a 'payment system'. The BIS definition of a 'payment system' is a "set of instruments, procedures, and rules for the transfer of funds between or among participants; the system includes the participants and the entity operating the arrangement".¹¹

Definition of 'participant'

Consultation 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?

Visa Response

Visa supports Treasury's view that the RBA should be able to apply the PSRA as appropriate to entities that play a role in the payments value chain, including entities that facilitate or enable payments. This includes, as Treasury states, '[s]ome entities that are not direct members of a payment system may nevertheless play an important role in facilitating or enabling payments.'¹²

In addition, Visa agrees with Treasury's perspective that the definition of a 'participant' should be technology-neutral and "not explicitly outline the operators and service providers captured, to increase the likelihood that the law covers future innovations, including if new services emerge with a role in a payments chain, or future issues with entities that are otherwise outside of the

¹⁰ Ibid., p7.

¹¹ See BIS Glossary: <https://www.bis.org/cpmi/publ/d00b.htm?&selection=170&scope=CPMI&c=a&base=term>

¹² Treasury (2023), [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), p8.

regulatory framework.”¹³ This approach increases the prospect of future proofing the definition and supporting a level playing field for competition across a growing range of services.

Visa also supports the intention that a decision to designate a participant must be done on ‘public interest’ informed by an impact assessment and with such a decision typically being made after considering whether non-regulatory solutions (for example, market and commercial solutions) could address the relevant concerns. In recognition of the relative roles and attendant risks that each type of participant has and brings, we believe that tiered, reasonable, and proportional regulatory requirements on ‘participants’¹⁴ are beneficial and contribute to a level playing field.

Ministerial Powers

Visa appreciates Treasury’s thoroughness in consulting on the proposed introduction of Ministerial powers to be exercised in the ‘national interest’. We believe that any intention to exercise authority on the basis of the ‘national interest’ should be used only when necessary. In addition, Visa encourages Treasury to ensure any finalised Ministerial powers are exercised in a manner narrowly tailored and proportional to the need, with sufficient notice and opportunity for industry to manage and mitigate any adverse impacts, to the fullest extent possible.

Further Reforms for Testing

While Visa provides recommendations below regarding the further reforms for testing presented in the consultation paper, we strongly encourage Treasury to undertake another round of public consultation with industry, given the significance of the reforms being proposed. In addition, unlike the other reforms proposed in this paper, these prospective changes have not been previously raised during the Review of the Australian Payments System. Undertaking additional consultation would also assist with minimising unintended consequences arising from implementation of these reforms if introduced without thorough consideration of stakeholder feedback.

In undertaking a further round of consultation, written advice regarding the benefits of the new approach which has been proposed and which aspects of the current arrangements are deficient would be beneficial.

Information gathering and public disclosure

Consultation Question

- 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?

¹³ Ibid.

¹⁴ Ibid., pp8-9.

Visa Response

Visa notes that the consultation paper states that “[o]ne option is to introduce a mechanism for participant information to be publicly disclosed without requiring consent from the participant to support the RBA’s existing public interest-based powers (similar to APRA’s power under section 57 of the APRA Act)”.¹⁵ Visa notes that the RBA currently holds significant information disclosure and publication powers under section 79A of RBA Act¹⁶, which are comprehensive. Visa considers that it is important to strike an appropriate balance between information gathering for the regulator and the regulator’s ability to then disclose this information to third parties or to publish the information.

If Treasury plans to proceed with this reform, then we would encourage it to be guided by providing appropriate notification to affected ecosystem participants and seeking explicit consent that such commercially sensitive information can be publicly disclosed and accessed. At a minimum, we strongly recommend that the RBA:

- (i) notify the affected organisation(s) at least 60 days in advance of its proposal to potentially publicly disclose the information;
- (ii) provide the affected organisation(s) with the opportunity to respond in writing to such a proposal;
- (iii) provide the affected organisation(s) with the opportunity to redact or recast any commercial sensitive information; and
- (iv) engage in close collaboration with the affected organisation(s) on a mutually suitable approach.

Visa notes that Section 57 of the Australian Prudential Regulation Authority (APRA) Act¹⁷ was initially introduced by the Financial Sector (Collection of Data – Consequential and Transitional Provisions) Act 2001 (FSCOD Act)¹⁸, and initially did not include public-interest based powers, as per pages 4-5 of the Explanatory Memorandum:

“Section 56 is amended so that information received under the Act can be passed on to the ABS [Australian Bureau of Statistics] and the RBA. In addition, information collected under the Act is protected from public release, unless a determination by APRA has been made to the contrary. APRA is required to consult with industry prior to making a determination to enable the public release of information collected under the Act. It is envisaged that APRA will generally only publish aggregate data. Where APRA seeks to

¹⁵ Ibid., p17.

¹⁶ Reserve Bank of Australia Act 1959 can be found at <https://www.legislation.gov.au/Details/C2020C00322>

¹⁷ Australian Prudential Regulation Authority (APRA) Act 1998 can be found at [Australian Prudential Regulation Authority Act 1998 \(legislation.gov.au\)](https://www.legislation.gov.au/Details/C2017C00200)

¹⁸ [Financial Sector \(Collection of Data\) Act 2001 \(legislation.gov.au\)](https://www.legislation.gov.au/Details/C2017C00200) can be found at <https://www.legislation.gov.au/Details/C2017C00200>

publish unit record data of a particular institution, this can be done providing the item has not been flagged as confidential (following industry consultation). Further, the determination by APRA is to be a disallowable instrument. These amendments are essentially a matter of internal mechanics, and should not be a cause for concern among the regulated industries about APRA's protection of data nominated as commercial-in-confidence by them. APRA has no intention of removing the protected status of information currently classed as confidential, either now or in the near future. If APRA ever were to propose removing confidentiality of a protected data item in the longer-term future, this would require extensive consultation, industry agreement and a lengthy lead time."¹⁹

The RBA is already enabled to publish aggregated information under subsection 7 of section 79A of the RBA Act²⁰, including non-confidential information.

Visa would have continued concerns if Treasury is seeking to grant to the RBA any rights that extend beyond this and, in particular, if the RBA would be empowered to override the protection of data that has been nominated as commercial-in-confidence by industry participants, and publish this information without a participant's consent, and with strong objections. Visa would seek to align with Treasury over what it considers fundamental principles, including that regulation that overrides standard rules of confidentiality, trade secrets and commercial-in-confidence, will have unintended consequences, including to erode the level playing field and fundamental protections of a functioning market.

Visa notes that further amendment of sections 56 and 57 of the APRA Act²¹ (including the introduction of the public-interest based powers) by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012²² served a particular purpose as per page 35 of the Amendment Explanatory Memorandum which provided that:

""3.13 APRA will have an expanded role in the collection and publication of data on superannuation entities. The additional data to be published by APRA will provide members, employers, the industry, and other interested stakeholders with information to compare the performance of superannuation products. This will also enhance the accountability of trustees in meeting their heightened duties to promote the best financial interests of members that hold the MySuper product...

¹⁹ Explanatory Memorandum to the Financial Sector (Collection of Data--Consequential and Transitional Provisions) Bill 2001 can be found at <https://www.legislation.gov.au/Details/C2004B00972/Explanatory%20Memorandum/Text>

²⁰ Reserve Bank of Australia Act 1959 can be found at <https://www.legislation.gov.au/Details/C2020C00322>

²¹ Australian Prudential Regulation Authority (APRA) Act 1998 can be found at [Australian Prudential Regulation Authority Act 1998 \(legislation.gov.au\)](https://www.legislation.gov.au/Details/C2000A00171)

²² [Superannuation Legislation Amendment \(Further MySuper and Transparency Measures\) Act 2012](https://www.legislation.gov.au/Details/C2012A00171) can be found at <https://www.legislation.gov.au/Details/C2012A00171>

3.18 Where APRA's determination is on a type of document then an interested party is defined as an association or other body representing the entities or bodies which are required to give the information to APRA under the FSCOD Act. Again, APRA may make a determination that information is not confidential if, taking into account representations made by these parties, APRA considers that the benefit to the public from the disclosure outweighs any detriment to commercial interests that the disclosure may cause."²³

Visa submits that the information collected by the RBA can be characterised differently, as superannuation is a financial product. The governance measures taken in the APRA context appear to be proportionately balanced with the potential impact if these financial products are not appropriately managed, and a level of transparency provided over the financial products, underlying assets and the trustees who manage the financial interests of members. It follows that APRA is empowered to weigh the interests of members, employers, the trustees and industry in order to make a public interest decision in relation to confidentiality.

This differs quite substantially from the nature of transaction processing services. If consumers do not receive value from payment services, the consumer can simply decide (with little or no friction compared to changing superannuation financial product providers) to select a payment method outside the cards and wallet form factor, select an issuer which has a specific payment scheme, or select a different network when transacting with a dual network debit card. In Visa's view, superannuation can be further distinguished as it is a legislative requirement and comprises a large proportion of a natural person's assets. Payment services remain fungible and the consumer holds day-to-day decision-making capability, and little risk (compared with superannuation assets).

[Enforceable undertakings](#)

Consultation Question

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

Visa Response

The RBA has historically sought voluntary undertakings from schemes, and Visa has provided these conduct undertakings, including governance obligations such as providing annual compliance certifications.

²³ Explanatory Memorandum to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2001 can be found at <https://www.legislation.gov.au/Details/C2012B00161/Explanatory%20Memorandum/Text>

As the RBA's Review of Retail Regulation conclusions paper noted in 2021, "there have not been any significant issues regarding compliance with the Bank's standards and access regimes, and stakeholders have noted that good outcomes have been achieved under the existing regulatory framework and enforcement mechanisms."²⁴ Given this recent and well-considered conclusion, Visa considers that regulatory outcomes should be proportionate to the issues to be addressed and notes the different purpose for which the Australian Competition and Consumer Commission has been granted this power.

²⁴ Reserve Bank of Australia (2021), [Review of Retail Payments Regulation - Conclusions Paper - October 2021](https://www.rba.gov.au/publications/papers/2021/01/01/2021-01-01-review-of-retail-payments-regulation-conclusions-paper-october-2021) ([rba.gov.au](https://www.rba.gov.au)), p63.

About Visa

Visa is one of the world's leaders in digital payments. Our mission is to connect the world through the most secure, reliable, and innovative payment network – enabling individuals, businesses, and economies to thrive. We facilitate global commerce and money movement across more than 200 countries and territories and among consumers, financial institutions, businesses, strategic partners, and government entities through innovative technologies.

In Australia, Visa has offices in Sydney and Melbourne. Together with our Australian financial institutions, fintech and business clients, and our technology partners, we are committed to building a future of commerce that fosters Australian economic growth, security and innovation. Since 2020, Visa has worked with Global Sisters to provide business mentoring and coaching to aspiring businesswomen who recently graduated from Global Sisters' small business education program. In the same year, we launched #WhereYouShopMatters, an initiative focused on supporting Australian small businesses through education and promotion. Prior to this, Visa partnered with Quest Payment Systems and The Big Issue, the independent magazine sold by homeless, marginalised and disadvantaged people, to enable Big Issue vendors to accept digital payments.

Visa continues to enable new payment flows and expand acceptance across the ecosystem, ensuring that every Australian can both pay and be paid in a secure and convenient way. We are realising this through Visa Fintech Partner Connect and the Visa Accelerator Program. The program provides Australian fintechs with access to Visa's technologies, networks and solutions, enabling businesses to scale for the benefit of consumers, businesses and the economy. Regarding security, over a five-year period, Visa invested nearly US\$9 billion in systems resilience, fraud management and cybersecurity, including tokenisation, Artificial Intelligence (AI) and blockchain-based solutions, to bring even more security to every transaction.²⁵ In 2021, Visa's AI-driven security helped financial institutions prevent more than AU\$354 million in fraud from impacting Australian businesses.²⁶ As commerce moves rapidly online, the threat landscape is also changing and, in response, Visa released its updated [Australian Security Roadmap 2021-23](#), given the increasing risk of cybercrime and scams facing Australian businesses and consumers. The roadmap highlights the steps that Visa is taking, together with industry, to continue securing digital payments in Australia.

²⁵ Visa internal data on global technology and operations investments, FY15-FY19. For further detail, see <https://usa.visa.com/visa-everywhere/blog/bdp/2019/12/24/investing-in-the-1577207091483.html>

²⁶ Visa (2021), "Visa's AI prevents more than \$350 million in fraud from disrupting Australian businesses", <https://www.visa.com.au/about-visa/newsroom/press-releases/visas-ai-prevents-more-than-350-million-in-fraud-from-disrupting-australian-businesses.html>