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| **EXPOSURE DRAFT (04 October 2023)** |

Inserts for

Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023: Amendments of the Payment Systems (Regulation) Act 1998

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule [P] | The day after this Act receives the Royal Assent. |  |

Schedule [P]—Amendment of the Payment Systems (Regulation) Act 1998 etc.

Part 1—Definitions

Payment Systems (Regulation) Act 1998

1 Section 7 (definition of *access*)

Omit “the system” (wherever occurring), substitute “the payment system”.

2 Section 7

Insert:

***funds*** includes, but is not limited to, the following:

(a) money;

(b) digital units of value, including digital currency (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).

3 Section 7 (definition of *participant*)

Repeal the definition, substitute:

***participant*** in a payment system means:

(a) a constitutional corporation that operates, administers or participates in a payment system; or

(b) a constitutional corporation that provides services that enable or facilitate the operation or administration of, or participation in, a payment system.

4 Section 7 (definition of *payment system*)

Repeal the definition, substitute:

***payment system***:

(a) means an arrangement or series of arrangements under which transfers of funds are made; and

(b) includes any instruments and procedures that relate to that arrangement or series of arrangements.

5 Subsection 11(1)

Omit “payment system if it considers that designating the system”, substitute “payment system, or each payment system in a class of payment systems, if it considers that designating the payment system, or each payment system in the class,”.

6 Saving provision

To avoid doubt, any instrument made under subsection 11(1) of the *Payment Systems (Regulation) Act 1998* that was in force immediately before the commencement of this Part continues in force on and after that commencement.

Part 2—Special designated payment systems

Payment Systems (Regulation) Act 1998

7 Paragraph 6(3)(a)

Repeal the paragraph, substitute:

(a) the designation of payment systems (see Division 2 for designated payment systems and Division 2A for special designated payment systems); and

8 Paragraphs 6(3)(b) to (e)

Omit “designated payment systems”, substitute “payment systems that are designated payment systems or special designated payment systems (or both)”.

9 At the end of subsection 6(3)

Add:

Note: A payment system may be a designated payment system and a special designated payment system: see subsections 11(1A) and 11A(2).

10 Section 7

Before “In this Act”, insert “(1)”.

11 Section 7 (definition of *access regime*)

Omit “designated payment system”, substitute “payment system that is a designated payment system or a special designated payment system (or both)”.

12 Section 7 (paragraph (a) of the definition of *access regime*)

After “Reserve Bank”, insert “or a nominated special regulator”.

13 Section 7

Insert:

***head***, of a nominated special regulator, has the meaning given by subsection (2).

***national interest*** has a meaning affected by section 8A.

***nominated special regulator***, in relation to a special designated payment system, has the meaning given by subsection 11C(2).

14 Section 7 (definition of *public interest*)

Omit “the meaning given”, substitute “a meaning affected”.

15 Section 7

Insert:

***responsible Minister*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***special designated payment system*** means a payment system that is designated under section 11A.

***special regulator*** has the meaning given by section 11B.

16 At the end of section 7

Add:

(2) In this Act, a person is the ***head*** of a special regulator (including a special regulator that is a nominated special regulator) if the person is prescribed by the regulations as the head of that special regulator.

17 Section 8

Omit “public interest”, substitute “***public interest***”.

18 After section 8

Insert:

8A Meaning of *national interest*

In determining, for the purposes of this Act, whether a particular action is in the ***national interest***:

(a) the Minister may have regard to a matter (a ***core public interest matter***)that the Reserve Bank would be required to have regard to if it were determining, for the purposes of this Act, whether the action is in the public interest (see section 8); and

(b) the Minister must identify, and have regard to, one or more matters each of which:

(i) is not a core public interest matter; and

(ii) is a matter that the Minister considers relevant to determining whether the action is in the national interest.

19 Subsection 10(1)

Repeal the subsection, substitute:

(1) Under this Part:

(a) the Reserve Bank is given the power to designate payment systems, which are then known as designated payment systems (see Division 2); and

(b) the Minister is also given the power to designate payment systems, which are then known as special designated payment systems (see Division 2A).

Note: A payment system may be a designated payment system and a special designated payment system: see subsections 11(1A) and 11A(2).

20 After subsection 10(1)

Insert:

(1A) Under Division 2A, the Minister is given the power to:

(a) nominate special regulators in relation to special designated payment systems; and

(b) direct nominated special regulators about the performance of their functions or the exercise of their powers under this Act or the Regulatory Powers Act as it applies in relation to this Act.

21 Subsection 10(2)

After “designated payment system”, insert “, and a nominated special regulator has the following powers in relation to a special designated payment system”.

22 Paragraph 10(2)(a)

Omit “it may impose an access regime on the”, substitute “to impose an access regime on”.

23 Paragraphs 10(2)(b) to (d)

Omit “it may”, substitute “to”.

24 Division 2 of Part 3 (heading)

Omit “**Designation of**”, substitute “**Designated**”.

25 After subsection 11(1)

Insert:

(1A) To avoid doubt, the Reserve Bank may designate a payment system under subsection (1) whether or not that payment system has been designated by the Minister under subsection 11A(1).

Note: However, if the payment system has been designated by the Minister under subsection 11A(1), consultation requirements apply: see subsection 11AA(1).

26 After section 11

Insert:

11AA Multiple designation—consultation by Reserve Bank

Consultation before multiple designation

(1) If a payment systemis a special designated payment system, the Reserve Bank must, before designating the payment system under subsection 11(1), consult each nominated special regulator in relation to the payment system that is not the Reserve Bank.

Consultation after multiple designation

(2) Subsection (3) applies if a payment system (the ***target payment system***) is both a designated payment system and a special designated payment system.

(3) Before the Reserve Bank performs a function, or exercises a power, under this Act in relation to the target payment system (other than a function or power that the Reserve Bank has because it is a nominated special regulator in relation to the target payment system), the Reserve Bank must consult each nominated special regulator in relation to the target payment system that is not the Reserve Bank.

Note: See also subsection 11CA(4), which requires nominated special regulators to engage in consultation before performing functions or exercising powers under this Act.

27 After Division 2 of Part 3

Insert:

Division 2A—Special designated payment systems

11A Minister may designate payment systems

(1) The Minister may, by notifiable instrument, designate a payment system as a ***special designated payment system*** if the Minister considers that designating the payment system is in the national interest.

(2) To avoid doubt, the Minister may designate a payment system under subsection (1) whether or not the payment system has been designated by the Reserve Bank under subsection 11(1).

Conditions on designation

(3) Before designating a payment system under subsection (1), the Minister must:

(a) consult the Reserve Bank and each special regulator on the proposed designation; and

(b) consider the following:

(i) whether there are alternatives to the designation available under this Act or any other Act;

(ii) the outcome of the consultation undertaken by the Minister under paragraph (a);

(iii) any other matter the Minister considers relevant.

Revocation

(4) The Minister may revoke the designation if, at the time of the revocation, the Minister considers that the designation is no longer necessary or appropriate.

11B Meaning of *special regulator*

(1) An entity is a ***special regulator*** if it is prescribed as a special regulator by the regulations.

(2) An entity may be prescribed as a special regulator only if the entity is a Commonwealth entity or a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

11C Nomination of special regulators

(1) The Minister may, by legislative instrument, nominate one or more special regulators in relation to a special designated payment system if the Minister considers that doing so is in the national interest.

(2) If a special regulator is nominated in relation to a special designated payment system under subsection (1), then the special regulator is a ***nominated special regulator*** in relation to that special designated payment system.

(3) The special regulator is a nominated special regulator either:

(a) for the period specified in the nomination; or

(b) if no period is specified—until the nomination is revoked.

Conditions on nomination

(4) Before nominating a special regulator under subsection (1), the Minister must:

(a) consult the head of the special regulator; and

(b) be satisfied that the nomination is consistent with any functions of the special regulator under this Act or any other Act (and with any requirements that apply to the performance of those functions); and

(c) consider the following:

(i) the outcome of the consultation undertaken by the Minister under paragraph (a);

(ii) any other matter the Minister considers relevant.

Revocation

(5) The Minister may revoke a nomination made under subsection (1) if, at the time of the revocation, the Minister considers that the nomination is no longer necessary or appropriate.

11CA Functions and powers of nominated special regulators

(1) Subject to this section, a nominated special regulator in relation to a special designated payment system may perform the functions, and exercise the powers, of a nominated special regulator under this Act in relation to that special designated payment system.

Restrictions relating to Ministerial directions

(2) A nominated special regulator must not perform a function, or exercise a power, of the kind mentioned in subsection (1) unless:

(a) the performance of the function, or the exercise of the power, is for the purpose of giving effect to a direction given to the nominated special regulator by the Minister under subsection 11E(1); or

(b) the Minister has given the nominated special regulator a direction under subsection 11E(1) specifying matters that must be considered by the nominated special regulator before performing the function or exercising the power.

Note: One effect of this subsection is that if no directions to the nominated special regulator are in force under subsection 11E(1), then the nominated special regulator must not perform any of the functions, or exercise any of the powers, of the kind mentioned in subsection (1) of this section.

(3) In performing a function, or exercising a power, of the kind mentioned in subsection (1), a nominated special regulator must comply with any directions given to the nominated special regulator by the Minister under subsection 11E(1).

Consultation

(4) Before a nominated special regulator in relation to a special designated payment system performs a function, or exercises a power, under this Act in relation to the special designated payment system, the nominated special regulator must consult:

(a) the Reserve Bank (if the nominated special regulator is not the Reserve Bank); and

(b) if there are one or more other nominated special regulators in relation to the special designated payment system—each of those other nominated special regulators.

11E Ministerial directions to nominated special regulators

(1) The Minister may, by legislative instrument, give a direction to a nominated special regulator about the performance of functions or the exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by that nominated special regulator in relation to a special designated payment system.

Note 1: For the contents of a direction, see section 11F.

Note 2: Nominated special regulators must comply with directions given under this subsection: see subsection 11CA(3).

(2) To avoid doubt, the Minister may give a direction under subsection (1) to a nominated special regulator by giving a direction to all nominated special regulators.

Conditions on giving direction

(3) Before giving a direction to a nominated special regulator under subsection (1), the Minister must:

(a) consult the head of the nominated special regulator; and

(b) be satisfied that giving the direction is in the national interest; and

(c) be satisfied that giving the direction is consistent with any functions of the nominated special regulator under this Act or any other Act (and with any requirements that apply to the performance of those functions); and

(d) if the Minister is not the responsible Minister for the nominated special regulator—obtain written consent to the direction from the responsible Minister.

When direction is in force

(4) The direction:

(a) comes into force:

(i) unless subparagraph (ii) applies—on the day on which it is given; or

(ii) if the direction specifies a later day as the day on which it comes into force—on the day so specified; and

(b) continues in force until it is revoked.

Revocation

(5) The Minister may revoke the direction if, at the time of the revocation, the Minister considers that the direction is no longer necessary or appropriate.

11F Contents of ministerial directions to nominated special regulators

(1) Without limiting subsection 11E(1), a direction given to a nominated special regulator under that subsection may:

(a) relate to a particular special designated payment system; or

(b) relate to a particular function or power that the nominated special regulator may perform or exercise under this Act or the Regulatory Powers Act as it applies in relation to this Act; or

(c) specify the purposes for which a function or power mentioned in paragraph (b) of this subsection is to be performed or exercised; or

(d) specify matters that the nominated special regulator must consider when performing or exercising a function or power mentioned in paragraph (b) of this subsection; or

(e) provide that a function or power mentioned in paragraph (b) of this subsection must not be performed or exercised by the nominated special regulator, or must be performed or exercised by the nominated special regulator only in specified circumstances.

(2) The direction must specify the time by which, or period during which, the direction is to be complied with.

(3) The direction must not relate to a particular participant in a special designated payment system.

11G Reports by nominated special regulators

(1) The Minister may, by notice in writing, request a nominated special regulator in relation to a special designated payment system to report in writing to the Minister on:

(a) the performance of functions and exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by the nominated special regulator; or

(b) without limiting paragraph (a), the nominated special regulator’s compliance with a direction given to the nominated special regulator under subsection 11E(1).

(2) The nominated special regulator must comply with a request made by the Minister under subsection (1).

11H Authorised use or disclosure of information

(1) The Reserve Bank may use or disclose information or documents obtained by the Reserve Bank under or for the purposes of this Part if:

(a) the use or disclosure is to a nominated special regulator; and

(b) the use or disclosure is for the purposes of the performance of functions or the exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by the Reserve Bank or that nominated special regulator.

Note: This subsection, and subsection (2), constitute authorisations for the purposes of the *Privacy Act 1988*.

(2) A nominated special regulator (the ***first regulator***) in relation to a special designated payment system may use or disclose information or documents obtained by the nominated special regulator under or for the purposes of this Part if:

(a) the use or disclosure is to:

(i) the Reserve Bank; or

(ii) another nominated special regulator in relation to the special designated payment system; and

(b) the use or disclosure is for the purposes of the performance of functions or the exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by the first regulator, the Reserve Bank or that other nominated special regulator.

28 Division 3 of Part 3 (heading)

Omit “**to designated systems**”, substitute “**regimes**”.

29 Subdivision A of Division 3 of Part 3 (heading)

Omit “**Access regimes**”, substitute “**Operation of access regimes**”.

30 Subsection 12(1)

Omit “the participants”, substitute “participants”.

31 After subsection 12(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may, by legislative instrument, impose an access regime on participants in that special designated payment system.

32 Subsection 12(2)

After “Reserve Bank” (first occurring), insert “or the nominated special regulator (as the case may be)”.

33 Paragraph 12(2)(a)

Repeal the paragraph, substitute:

(a) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection (1)—whether imposing the access regime would be in the public interest; or

(ii) in the case of an access regime imposed by the nominated special regulator under subsection (1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the imposition of the access regime; and

34 Paragraph 12(2)(d)

After “Reserve Bank”, insert “or the nominated special regulator (as the case may be)”.

35 After subsection 12(2)

Insert:

(3) Without limiting subsection (1) or (1A), the Reserve Bank or the nominated special regulator (as the case may be) may, in an instrument made under either of those subsections:

(a) specify participants or classes of participants to whom the access regime does or does not apply; or

(b) provide that the access regime applies differently in relation to different participants or classes of participants.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

36 Subsection 12(5)

After “Reserve Bank”, insert “or the nominated special regulator”.

37 At the end of section 13

Add:

Note: The operation of section 15AA (which deals with conflicts between access regimes) may result in a part of an access regime ceasing to be in force before the time when the whole of the access regime ceases to be in force as provided in section 15.

38 Subsection 14(1)

After “Reserve Bank” (first occurring), insert “or a nominated special regulator in relation to a special designated payment system”.

39 Subsection 14(1)

After “access regime”, insert “that it has imposed”.

40 Subsection 14(1)

After “Reserve Bank” (second occurring), insert “or the nominated special regulator (as the case may be)”.

41 Paragraph 14(1)(a)

Repeal the paragraph, substitute:

(a) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—whether the variation would be in the public interest; or

(ii) in the case of an access regime imposed by the nominated special regulator under subsection 12(1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the variation; and

42 Paragraph 14(1)(d)

After “Reserve Bank”, insert “or the nominated special regulator (as the case may be)”.

43 Subsection 14(5)

After “Reserve Bank”, insert “or the nominated special regulator”.

44 Subsection 15(1)

After “access regime” (first occurring), insert “that the Reserve Bank or a nominated special regulator has imposed”.

45 Paragraph 15(1)(b)

Repeal the paragraph, substitute:

(b) the entity that imposed the access regime, on the application of the participants in the payment system concerned, revokes the access regime; or

46 Paragraph 15(1)(c)

Omit “Reserve Bank”, substitute “entity that imposed the access regime”.

47 Paragraph 15(1)(d)

Repeal the paragraph, substitute:

(d) the payment system concerned ceases to exist; or

(e) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—the payment system concerned ceases to be a designated payment system; or

(ii) in the case of an access regime imposed by a nominated special regulator under subsection 12(1A)—the payment system concerned ceases to be a special designated payment system; or

(f) the access regime ceases to be in force under section 15AA (which deals with conflicts between access regimes).

Note: The operation of section 15AA may also result in a part of an access regime ceasing to be in force before the time when the whole of the access regime ceases to be in force as provided in this section.

48 Subsection 15(3)

Omit “Reserve Bank” (first occurring), substitute “entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator)”.

49 Subsection 15(3)

Omit “Reserve Bank” (second occurring), substitute “entity”.

50 Paragraph 15(3)(a)

Repeal the paragraph, substitute:

(a) either:

(i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—whether revoking the access regime would be in the public interest; or

(ii) in the case of an access regime imposed by a nominated special regulator under subsection 12(1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the revocation; and

51 Paragraph 15(3)(d)

Omit “Reserve Bank”, substitute “entity”.

52 Subsection 15(5)

Omit “Reserve Bank”, substitute “entity that imposed the access regime”.

53 After section 15

Insert:

15AA Conflicts between access regimes

(1) This section applies if:

(a) a particular payment system is both a designated payment system and a special designated payment system; and

(b) the Reserve Bank has, under subsection 12(1), imposed an access regime (the ***normal access regime***) on participants in the payment system; and

(c) a nominated special regulator has, under subsection 12(1A), imposed an access regime (the ***special access regime***)on participants in the payment system; and

(d) the normal access regime is, to any extent, inconsistent with the special access regime.

(2) For the purposes of this Act, the normal access regime ceases to be in force to the extent that it is inconsistent with the special access regime.

54 Paragraph 15A(a)

Omit “designated payment system”, substitute “payment system that is a designated payment system or a special designated payment system (or both)”.

55 Section 16

Repeal the section, substitute:

16 Right to ask for directions

(1) This section applies if a person who has been denied access to a payment system that is a designated payment system or a special designated payment system (or both) considers that the denial of access constitutes, or is attributable (wholly or partly) to, a breach of a provision of an access regime by a participant.

(2) The person may ask the entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator) to use its power under section 21 to give a direction to remedy the situation.

56 Subsection 17(1)

Omit “designated payment system”, substitute “payment system that is a designated payment system or a special designated payment system (or both)”.

57 Subsection 17(2)

Repeal the subsection, substitute:

(2) The person must notify the entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator) of the application to the Federal Court.

(2A) The entity may apply to the Federal Court to be joined as a party to the proceedings for the order.

58 Division 4 of Part 3 (heading)

Omit “**for designated systems**”.

59 Section 18 (heading)

Repeal the heading, substitute:

18 Making of standards

60 After subsection 18(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may, by legislative instrument, determine standards to be complied with by participants in that special designated payment system.

Note 1: A failure to comply with a standard is not an offence, but it may lead to a direction being given under section 21.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(1B) Before determining a standard under subsection (1A), the nominated special regulator must have regard to any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the determination of standards.

61 Paragraph 18(2)(b)

Repeal the paragraph, substitute:

(b) continues in force until:

(i) it is revoked; or

(ii) it ceases to be in force under section 18AA (which deals with conflicts between standards).

Note: The operation of section 18AA may also result in a part of a standard ceasing to be in force before the time when the whole of the standard ceases to be in force as provided in paragraph (b) of this subsection.

62 Subsection 18(6)

After “Reserve Bank”, insert “or a nominated special regulator”.

63 After section 18

Insert:

18AA Conflicts between standards

(1) This section applies if:

(a) a particular payment system is both a designated payment system and a special designated payment system; and

(b) the Reserve Bank has, under subsection 18(1), determined a standard (the ***normal standard****)* to be complied with by participants in the payment system; and

(c) a nominated special regulator has, under subsection 18(1A), determined a standard (the ***special standard***)to be complied with by participants in the payment system; and

(d) the normal standard is, to any extent, inconsistent with the special standard.

(2) For the purposes of this Act, the normal standard ceases to be in force to the extent that it is inconsistent with the special standard.

64 Division 5 of Part 3 (heading)

Omit “**relating** **to designated systems**”.

65 Paragraph 19(a)

After “designated payment system”, insert “(that is not also a special designated payment system)”.

66 Paragraph 19(b)

Omit “designated payment system”, substitute “payment system that is a designated payment system or a special designated payment system (or both) and”.

67 Subsection 20(1)

Omit “section. The Reserve Bank must only do so if”, substitute “section if”.

68 After paragraph 20(1)(b)

Insert:

; and (c) if the dispute is of a kind mentioned in paragraph 19(b)—the dispute relates to whether an access regime imposed by the Reserve Bank under subsection 12(1) is being complied with.

69 After subsection 20(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may arrange for a dispute to which this Division applies to be settled by arbitration in accordance with this section if:

(a) the dispute is of a kind mentioned in paragraph 19(b); and

(b) the dispute relates to whether an access regime imposed by the nominated special regulator under subsection 12(1A) is being complied with; and

(c) the nominated special regulator has had regard to any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the arbitration; and

(d) the parties to the dispute agree to the nominated special regulator arranging the arbitration.

Note: The nominated special regulator may be acting on its own initiative or in response to a request from one or more of the parties to the dispute in arranging for the arbitration.

70 Subsection 20(2)

Repeal the subsection, substitute:

(2) The arbitration is to be conducted:

(a) in the case of an arbitration arranged by the Reserve Bank—by the Governor of the Reserve Bank, or by a person appointed in writing by the Governor to conduct the arbitration; or

(b) in the case of an arbitration arranged by a nominated special regulator—by the head of the nominated special regulator, or by a person appointed in writing by the head of the nominated special regulator to conduct the arbitration.

71 Division 6 of Part 3 (heading)

Omit “**in designated systems**”.

72 Paragraphs 21(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) the participant has failed to comply with a standard determined by the Reserve Bank under subsection 18(1); or

(b) the participant has failed to comply with an access regime imposed by the Reserve Bank under subsection 12(1).

73 After subsection 21(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may give a direction to a participant in the special designated payment system if the nominated special regulator considers that:

(a) the participant has failed to comply with a standard determined by the nominated special regulator under subsection 18(1A); or

(b) the participant has failed to comply with an access regime imposed by the nominated special regulator under subsection 12(1A).

74 Subsection 21(2)

After “Reserve Bank”, insert “or the nominated special regulator (as the case may be)”.

75 Paragraph 21(8)(b)

Repeal the paragraph, substitute:

(b) continues in force until:

(i) it is revoked; or

(ii) it ceases to be in force under section 21A (which deals with conflicts between directions).

Note: The operation of section 21A may also result in a part of a direction ceasing to be in force before the time when the whole of the direction ceases to be in force as provided in paragraph (b) of this subsection.

76 At the end of Division 6 of Part 3

Add:

21A Conflicts between directions

(1) This section applies if:

(a) a particular payment system is both a designated payment system and a special designated payment system; and

(b) the Reserve Bank has, under subsection 21(1), given a direction (a ***normal direction***) to a participant in the payment system; and

(c) a nominated special regulator has, under subsection 21(1A), given a direction (a ***special direction***) to that participantin the payment system; and

(d) the normal direction is, to any extent, inconsistent with the special direction.

(2) For the purposes of this Act, the normal direction ceases to be in force to the extent that it is inconsistent with the special direction.

77 Section 26 (heading)

After “**Reserve Bank**”, insert “**and nominated special regulators**”.

78 Subsection 26(1)

After “designated payment system”, insert “or a special designated payment system”.

79 After subsection 26(1)

Insert:

(1A) A nominated special regulator in relation to a special designated payment system may require a participant in the special designated payment system to give the nominated special regulator information relating to that special designated payment system and its participants.

80 Subsection 29(1)

After “Reserve Bank’, insert “or a nominated special regulator”.

81 Subsection 29(2)

After “Reserve Bank”, insert “or the nominated special regulator (as the case may be)”.

82 Subsection 29(3)

Omit “revokes a standard or an access regime, the Reserve Bank”, substitute “or a nominated special regulator revokes a standard or an access regime, the Reserve Bank or the nominated special regulator (as the case may be)”.

83 Section 31 (at the end of the heading)

Add “**—Reserve Bank**”.

84 Subsection 31(1)

After “this Act”, insert “or the Regulatory Powers Act as it applies in relation to this Act (other than its functions or powers as a nominated special regulator)”.

85 Subsection 31(2)

After “this Act”, insert “or the Regulatory Powers Act as it applies in relation to this Act (other than the Governor’s functions or powers as the head of a nominated special regulator)”.

86 At the end of section 31

Add:

(4) This section does not limit a power of delegation that a delegator mentioned in subsection (1) or (2) has under any other Act.

87 After section 31

Insert:

31A Delegation—nominated special regulators

(1) A nominated special regulator in relation to a special designated payment system may, by written instrument, delegate all or any of its functions or powers under this Act or the Regulatory Powers Act as it applies in relation to this Act to:

(a) the head of the nominated special regulator; or

(b) a person prescribed by the regulations as an eligible delegate in relation to the nominated special regulator.

(2) The head of a nominated special regulator in relation to a special designated payment system may, in writing, delegate all or any of the head’s functions or powers under this Act to a person prescribed by the regulations as an eligible delegate in relation to the nominated special regulator.

(3) Before delegating a function or power to a person under subsection (1) or (2), the delegator must have regard to:

(a) if the power or function is to be delegated to a person holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the person to perform the function or exercise the power; or

(b) otherwise—whether the person has appropriate qualifications or expertise to perform the function or exercise the power.

(4) In exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the delegator.

Note: For further information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901***.**

(5) This section does not limit a power of delegation that a delegator mentioned in subsection (1) or (2) has under any other Act.

Part 3—Criminal and civil penalties

Payment Systems (Regulation) Act 1998

88 Section 7

Insert:

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***contravene*** an offence or civil penalty provision has a meaning affected by section 9A.

Note: The meaning of ***contravention*** is correspondingly affected (see section 18A of the *Acts Interpretation Act 1901*).

***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.

89 At the end of Part 2

Add:

9A Functions and powers under this Act

In this Act, a reference to a function or power under this Act includes a reference to a function or power under the Regulatory Powers Act as it applies in relation to this Act.

9B Contravening an offence provision or a civil penalty provision

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

90 Subsections 21(6) and (7)

Repeal the subsections.

91 Before subsection 21(8)

Insert:

When direction is in force

92 Subsection 21(8)

Renumber as subsection (6).

93 Subsection 21(9)

Repeal the subsection.

94 At the end of section 21

Add:

Revocation of directions

(7) The Reserve Bank or the nominated special regulator (as the case may be) may revoke the direction by notice in writing given to the participant if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

Contravention of directions

(8) The participant contravenes this subsection if:

(a) the participant does, or fails to do, an act; and

(b) doing, or failing to do, the act results in a contravention of the direction given under subsection (1) or (1A); and

(c) if the direction was given under subsection (1)—the doing of the act, or the failure to do the act, occurs at a time when:

(i) the participant is still a participant in the payment system referred to in subsection (1); and

(ii) that payment system is still a designated payment system; and

(d) if the direction was given under subsection (1A)—the doing of the act, or the failure to do the act, occurs at a time when:

(i) the participant is still a participant in the payment system referred to in subsection (1A); and

(ii) that payment system is still a special designated payment system.

Fault‑based offence

(9) The participant commits an offence if the participant contravenes subsection (8). The physical elements of the offence are set out in that subsection.

Penalty: 100 penalty units.

Civil penalty provision

(10) A person is liable to a civil penalty if the participant contravenes subsection (8).

Civil penalty: 100 penalty units.

Continuing contraventions of offence provision

(11) If a contravention of the direction occurs in circumstances that give rise to the participant committing an offence against subsection (9), the participant commits an offence against that subsection in respect of:

(a) the day on which the contravention occurs; and

(b) each subsequent day (if any) on which the contravention continues (including the day of conviction for any such offence or any later day).

Note 1: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

Note 2: Subsection (10) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

95 At the end of subsection 26(1)

Add:

Note: Part VIII of the *Reserve Bank Act 1959* imposes secrecy requirements upon certain information provided to the Reserve Bank.

96 Before subsection 26(3)

Insert:

Refusal or failure to comply with requirement to give information

97 Subsection 26(3)

Omit “commits an offence”, substitute “contravenes this subsection”.

98 Subsection 26(3) (penalty)

Repeal the penalty.

99 Subsection 26(3) (notes 1, 2 and 3)

Repeal the notes.

100 After subsection 26(3)

Insert:

Fault‑based offence

(3A) A corporation commits an offence if the corporation contravenes subsection (3). The physical elements of the offence are set out in that subsection.

Penalty: 200 penalty units.

Civil penalty provision

(3B) A corporation is liable to a civil penalty if the corporation contravenes subsection (3).

Civil penalty: 200 penalty units.

Continuing contraventions of offence provision

101 Subsection 26(4)

Omit “(3)”, substitute “(3A)”.

102 Subsection 26(4) (note)

Omit “Note”, substitute “Note 1”.

103 At the end of subsection 26(4)

Add:

Note 2: Subsection (3B) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

104 After section 26

Insert:

26A Enforcement of civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the following are authorised applicants:

(a) in relation to subsection 21(10) of this Act—the entity (whether the Reserve Bank or a nominated special regulator) that gave the direction to which the contravention of that subsection relates;

(b) in relation to any other civil penalty provision of this Act—the Reserve Bank.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to each civil penalty provision of this Act:

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

Extension to external Territories

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

105 Application provision

(1) The amendments made by this Part apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of this Part.

(2) The amendments made by this Part apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement of this Part.

Part 4—Enforceable undertakings

Payment Systems (Regulation) Act 1998

106 Before section 26

Insert:

25A Acceptance and enforcement of undertakings

(1) The Reserve Bank may accept a written undertaking given by a participant in a payment system (whether or not it is a designated payment system or a special designated payment system) in connection with a matter in relation to which the Reserve Bank has a function or power under this Act, the regulations or another legislative instrument made under this Act.

(2) The Reserve Bank may accept an undertaking under subsection (1) only if doing so would be consistent with the Reserve Bank’s payments system policy (within the meaning of the *Reserve Bank Act 1959*).

(3) The participant may withdraw or vary the undertaking at any time, but only with the Reserve Bank’s consent.

(4) If the Reserve Bank considers that the participant who gave the undertaking has breached any of the terms of the undertaking, the Reserve Bank may apply to the Court for an order under subsection (5).

(5) If the Court is satisfied that the participant has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the participant to comply with that term of the undertaking;

(b) an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial benefit that the participant has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the participant to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

Authorisation for the purposes of the Competition and Consumer Act 2010

(6) For the purposes of subparagraph 51(1)(a)(i) of the *Competition and Consumer Act 2010*, the following are taken to be specified in, and specifically authorised by, this Act:

(a) anything done by the Reserve Bank under this section;

(b) the giving, by a participant in a payment system, of a written undertaking to the Reserve Bank under subsection (1) of this section;

(c) anything done by the participant in accordance with the terms of that written undertaking.

Definitions

(7) In this section:

***Court*** means:

(a) the Federal Court; or

(b) the Federal Circuit and Family Court of Australia (Division 2); or

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

107 Application provision

The amendments made by this Part apply in relation to undertakings given on or after the commencement of this Part.

Part 5—Consequential amendments

Australian Securities and Investments Commission Act 2001

108 Paragraph 12BAA(8)(e)

After “designated payment system”, insert “or special designated payment system (or both)”.

Competition and Consumer Act 2010

109 Section 55A

Insert:

***payment system standard*** means a standard determined under section 18 of the *Payment Systems (Regulation) Act 1998*.

110 Section 55A (definition of *Reserve Bank standard*)

Repeal the definition.

111 Subparagraph 55B(2)(a)(i)

Omit “Reserve Bank”, substitute “payment system”.

112 Paragraph 55B(2)(b)

Omit “Reserve Bank”, substitute “payment system”.

Corporations Act 2001

113 Paragraph 765A(1)(j)

After “designated payment system”, insert “or special designated payment system (or both)”.

Income Tax Assessment Act 1997

114 Paragraph 820‑588(3)(a)

After “section 11”, insert “or 11A”.