



31 October 2023

The Treasury

Langton Crescent

PARKES ACT 2600

Email: paymentsconsultation@treasury.gov.au

Lodged at approximately 2000hrs, 31 October 2023, Sydney time.

Reforms to the Payment Systems (Regulation) Act 1998 – Exposure Draft Legislation

1. Introduction to Azupay

Azupay Trading Pty Ltd (**Azupay, we, our, or us**) welcomes the opportunity to provide feedback to Treasury's consultation, *Reforms to the Payment Systems (Regulation) Act 1998 – Exposure Draft Legislation (the consultation)*.

Established in 2019, Azupay operates as an Australian fintech based in Sydney and Melbourne, providing account-to-account payment solutions using the New Payments Platform (**NPP**)¹. Thereby, bypassing the need for traditional payments products (e.g., cards) and conventional batch payments systems that require longer times to process and settle.

By connecting to the NPP as an Identified Institution, Azupay provides account-to-account real-time payments using NPP overlay services, PayID and PayTo. The latter of which, saw Azupay apply for and was issued with an Australian Financial Services License from the Australian Securities and Investments Commission (**ASIC**), which continues in operation.

¹ A table of abbreviations is provided on the last page of this submission.

Azupay further provides an outbound payment solution, PayOut. PayOut facilitates real-time payments via the NPP for payroll, insurance claims, and Government payments, and the gig economy.

Our [leadership team](#) comprises of well-known, and highly regarded professionals who between them, have amassed considerable experience in payments systems, payments products and strategy, and payments regulation. While having worked for and consulted on major initiatives across the corporate and government sectors.

Azupay expresses its genuine interest to participate in future engagements with Treasury in the spirit of collaboration, to assist Treasury with insights from a sectoral perspective of a payments fintech firm.

2. Summary

Azupay recognises the Australian Payments System continues to undergo significant regulatory reforms and innovative advances aimed at enhancing the customer experience. While continuously tightening security and strengthening payments systems resiliencies to bring Australia to the forefront of payments innovation.

Azupay generally agrees with the proposals raised in the consultation, and thanks the Government's and Treasury's continued collaborative efforts with payments system participants.

We recognise and support Treasury's objectives in prioritising significant payments reforms to enhance the customer experience, promoting efficiency and accessibility, while raising the competitive landscape. Azupay views balanced and proportional regulatory and legislative reforms as critical in future proofing the Australian Payments System.

Azupay further recognises the importance of this legislative reform to the Payment Systems (Regulation) Act 1998 (**PSRA**), given payments innovation has diversified and evolved considerably through the efflux of time. And that if tested, the Reserve Bank of Australia's (**RBA**) powers *'may not adequately capture the full suite of systems and participants within the payments ecosystem.'* As articulated in the consultation.

Equally, we wish to also raise the importance of the Government providing further clarity on these new Ministerial powers in nominating a **special designated payment system** and **special regulators**.

We believe that the establishment of a dedicated payments regulator, like the UK's Payment Systems Regulator (**PSR**), offers improved efficiencies in participants' dealings and understanding from a dedicated payments regulatory mandate.

Averting possible confusion from multiple special nominated regulators in their attempts to establish clear boundaries of powers each is mandated to uphold regarding a special designated payment system.

In our submission, Azupay provides feedback on the following key points raised in the consultation:

- Reforms to the definition of a Participant;
- Reforms to the definition of a Payment System;
- Enforceable Undertakings;
- Nominated Special Regulator; and
- Special Designated Payment System.

3. Reforms to the definition of a Participant

Azupay notes, the Government intends to expand the definition of a **participant** thereby casting a wider net on entities and subsets of entities involved in the payments value chain. Whether such entities have a direct relationship to a payment system, or not.

We generally believe this proposal holds merit, given, for example, national supermarket chains continue to evolve their payments proposition that extend beyond payments, to payments platform-as-a-service. Which can include, but is not limited to, payment transaction processing and payment fraud management².

We agree with the Government's position to expand the definition of a participant to the extent it will now cover **digital wallet providers**. As we acknowledge digital wallet providers contribute ubiquitously to payments and through their storage of digital payment cards. Furthermore, these digital wallet providers have recently expanded their product propositions to facilitate contactless payments using a smart device³.

Noting, one digital wallet provider has come under media and regulatory spotlights in their reluctance to opening their proprietary technologies on payments and other investigatory efforts by the Australian Competition and Consumer Commission (**ACCC**)⁴ on this matter.

Equally, we note that with the Government expanding the definition of a participant, this may have the effect of including entities that are very small in size, participation, and ultimately, risk exposure to the broader payments ecosystem.

² [Woolworths creates Wpay to offer payment platform as-a-service.](#) itnews. 2 June 2021. Hendry., J. Accessed by Azupay on 22 October 2023.

³ [Apple Tap to Pay on iPhone a 'game changer' for contactless payment for Australians businesses.](#) 7news.com.au 17 October 2023. Accessed by Azupay on 24 October 2023.

⁴ [Review of Retail Payments Regulation – Conclusions Paper October 2021.](#) Reserve Bank of Australia - see section 7.3, *Mobile Wallets*. Accessed by Azupay on 25 October 2023.

In light of this, the Government may wish to reconsider additional pragmatic measures on very small and remote participants in the payments value chain. Excessive regulatory impost on these small entities may result in creating a potential barrier to entry into the Australian Payments System through heightened regulatory compliance costs. To add incremental compliance and regulatory requirements on such entities, could result in impeding their financial prosperity.

For example, a small technology firm that develops a component of a mobile payment app, or even a widget within a mobile payment app to initiate a payment via NPP, or a similar technology firm that develops a biometric passkey to authenticate the user before a payment can be initiated; would such entities be captured under the definition of a *participant*?

We wish to acknowledge and agree with the Government's decision to expand the definition of a participant to include *services that facilitate payment in **crypto assets***. We believe this aligns to the Government's recent consultation on **Regulating digital asset platforms**⁵.

Digital asset and crypto platforms have been widely reported by industry, media, regulators, and government concerning criminal activity spanning across fraud, scams and money laundering and terrorism financing.

We remain hopeful that by the Government bringing digital asset and crypto platforms under greater regulatory oversight, that it will weed out more criminal activity. While instilling greater confidence across other payments participants that these platforms strengthen their regulatory and compliance frameworks, where in time, this may see more **strengthened, established, and trusted presence** in their operations across the Australian Payments System.

4. Reforms to the definition of a Payment System and Funds

With the new definition of a payment system now expanded to include, *three party* or *closed loop* systems like American Express and Diners Club, and *non-monetary digital assets*, we acknowledge this represents a positive step forward.

While at this time, Azupay's operating model does not include card payment products, we support the Government's approach on this matter which brings into alignment, payment systems that previously may not have been under the equivalent regulatory and legislative lenses as other payment systems.

Given recent spending data on American Express cards has hit a 20-year high. Currently there are approximately 1.5 million American Express cards issued in Australia with an

⁵ [Regulating digital asset platforms - Proposal Paper and Factsheet. 16 October 2023.](#) Accessed by Azupay on 24 October 2023.

annual spend reaching almost AUD \$50,000 per card. In February 2023, combined spend of American Express and Diners club reached AUD \$7.24 billion⁶.

Compared to the combined tally of Visa and Mastercard credit cards on issue is 16 million, but the average annual spend on each card has fallen to AUD \$17,000.

Azupay also agrees with the Government's intent to expand the definition of a payment system to include **non-monetary digital assets for payments**. As we have seen the evolution money expanding to no longer holding relevance purely as a store of value but also, providing participants with **rich data**. Rich data that can be utilised by participants for analysis and strategy, promotional offers, and thwarting criminal activities.

5. Enforceable Undertakings

We note that currently, the RBA can obtain **voluntary undertakings** from participants, as it has done on various occasions in relation to the Australian Payments System⁷. We further recognise the effectiveness and benefit of these voluntary undertakings in establishing an additional collaborative lever between the RBA and participants.

While voluntary undertakings may not carry the legal and judicial powers of an enforceable undertaking, we further recognise the need to clarify the way, or ways, in which an enforceable undertaking can be accepted. This is affirmed in the consultation where it references clarity on the acceptance by the RBA of a voluntary undertaking:

*The RBA currently obtains voluntary undertakings in relation to **standards** determined under section 18 of the PSRA.*

The consultation broadly explains the mechanism in which an enforceable undertaking could be accepted by the RBA:

*The RBA can accept enforceable undertakings relating to **matters** in relation to which the RBA has a function or power under the PSRA, regulations or other legislative instrument made under the PSRA.*

⁶ [Banks absorb revenue losses as spending on AMEX cards hits 20-year high. Banking Day. 12 April 2023. Lekakis., G. Accessed by Azupay on 26 October 2023.](#)

⁷ [Promoting Competition in the Debit Card Market. Reserve Bank of Australia Media Release 2023-15. 21 June 2023. Accessed by Azupay on 22 October 2023.](#)

We ask the Government, and for the benefit of participants' understanding to provide further guidance in which circumstances an enforceable undertaking could be accepted. As the Government has made it clear voluntary undertakings can be obtained by the RBA in relation to **standards**. We believe this request aligns to the consultation where it lists which **factors** the Minister can designate a payment system as a special designated payment system, under matters of national interest.

By providing participants with guidance at least, on which circumstances an enforceable undertaking could be accepted, whilst not necessarily being too prescriptive, can give further clarity. Clarity which participants can factor any additional controls in their compliance and regulatory frameworks and avert the regulatory and reputational risks (among other risks), of being faced with an enforceable undertaking.

6. Nominated Special Regulator

We note in the consultation, the Minister would hold power to nominate **special regulators** in relation to a **special designated payment system**. With the likelihood of the RBA being the most **suitable regulator**.

With these new Ministerial powers, to designate a payment system under national interest, the Minister can nominate multiple special regulators, which may likely include the **ACCC**, **ASIC**, and **APRA**, again, with the RBA being the most **suitable special regulator**. We foresee potential challenges on participants where multiple special regulators nominated by the Minister may lack clearly defined mandates.

There is a risk that participants in a special designated payment system may be left without correctly understanding each special nominated regulator's powers and mandates, and how participants can be best placed to ensure their compliance requirements to each nominated special regulator's mandate are met, accordingly.

The Government would benefit from ensuring that participants clearly understand the roles and responsibilities of each special nominated regulator to avert participants misunderstandings of any duplication of special nominated regulators' mandates. Especially in times of urgent matters of national interest that may require more expeditious action by participants caught in a special designated payment system.

For which, the nominated special regulator(s), need to hold, as the consultation states, the ***appropriate expertise, knowledge, and resources to carry out such functions***.

It is for this reason, we refer back to the **Payment Systems Review – Issues Paper** of 2020 (**the Issues Paper**), where feedback was sought on Australia's comparison of its payments regulatory framework with international jurisdictions. The Issues Paper

referred to the UK's **Payment Systems Regulator (PSR)**⁸. Since its establishment in 2015, the PSR has been recognised for its considerable efforts in establishing the UK as a payments technology class leader. Spanning across such payments initiatives and consultations including, but not limited to:

- Authorised push payment fraud;
- Access to cash;
- Card scheme and processing fees (incl., card-acquiring market reviews);
- The UK's New Payments Architecture;
- Consumer Data Right – including write access (payment initiation); and
- Confirmation of Payee.

The PSR have recently expanded their executive team to include a comprehensive supervision and compliance monitoring section⁹. The PSR's intent in creating this new supervision and compliance monitoring section was to ensure its compliance requirements are driven effectively to boost competition, increase choice and tackle payment fraud.

We note in the Treasury's, **Payments System Review – From system to ecosystem**¹⁰, the below extract from the final report, aligns with our feedback in this section on the risk of duplication of mandates between the special nominated regulators.

*Providing a regulator with **broad authority** can lead to the creation of a **two-tiered regulatory architecture** that adds to the complexity of the system by **duplicating mandates and responsibilities between the 'lead' regulator and other financial regulators.***

We note in this case, that the nomination by the Minister of **multiple special regulators may create more than a two-tiered regulatory architecture** that may lead to

⁸ [Payments System Review - Issues Paper 2020. The Treasury. See questions 10 and 11 on page 12. Accessed by Azupay on 24 October 2023.](#)

⁹ [UK payments regulator PSR unveils new-look executive team. FinTech Futures. 23 May 2023. Accessed by Azupay on 23 October 2023.](#)

¹⁰ [Review of the Australian Payments System – Final report. The Treasury, 30 August 2021. Accessed by Azupay on 26 October 2023.](#)

further complexity of understanding by participants through possible duplication of mandates.

It is also noted that the named writer of this submission attended an industry roundtable convened by the Council of Financial Regulators (**CFR**) in November 2018 at the RBA's Sydney Head Office. The industry roundtable was scheduled to discuss proposed reforms to Australia's Stored Value Facilities (**SVF**). The CFR published a report in October 2019 capturing certain points raised by participants from that same industry roundtable, including the following¹¹.

*Current regulatory arrangements in Australia were generally viewed as **somewhat complicated, partly because of the involvement of multiple regulators**.*

These are some examples we present to the Government on the potential challenges participants may face in dealing with multiple nominated special regulators. Which further emphasises the need for clear mandates.

This leads us to return to our feedback regarding the UK's PSR. In its near first decade of operations, the UK's PSR has led the way in establishing a successful roadmap of payments regulatory reforms from the above bullets called out in this section, while coordinating with the Bank of England in the modernisation of the UK's payments infrastructure.

It is for these reasons that we encourage the Government to reconsider its position regarding a regulatory authority responsible for overseeing Australia's Payments System. Where this regulatory authority would benefit from employing personnel, referencing *(and adding)* to a comment in the consultation, with **appropriate expertise (specifically in payments), knowledge, and resources to carry out such functions**.

The consultation comments that prior to a special nominated regulator performing their functions or exercising their powers, it must **consult** the RBA. Additionally, where there are multiple nominated special regulators in relation to a particular special designated payment system, each regulator must first **consult** the other regulators for the system.

While we recognise the need and benefit of such multi-regulatory authority consultation, we request the Government considers the importance of these consultations being streamlined. Especially where participants are awaiting critical announcements from any

¹¹ [Regulation of Stored-value Facilities in Australia. Conclusions of a Review by the Council of Financial Regulators October 2019](#). Council of Financial Regulators. Page 10. **Accessed by Azupay on 30 October 2023.**

and all of the special nominated regulators that can influence their operations and change their regulatory compliance frameworks.

Any lag in this multi-regulatory authority consultation process and possible ambiguity in messaging could be viewed as bureaucratic layers that may be at risk of not delivering pragmatic and efficient outcomes to participants.

On the opposite spectrum, we also see an opportunity that such multi-regulatory authority consultation can promote stronger collaboration, and with participants, if applied correctly. This further promotes special nominated regulators in sharing their subject matter experts on payments. And offers secondments of personnel between special nominated regulators who are well versed in payments, to absorb more insights and understandings that make their payments skills more transferrable with other fellow nominated special regulators.

7. Special Designated Payment System

We note that the new reforms will expand the powers of the Minister, by virtue of a notifiable instrument to designate a payment system as a **special designated payment system** *if the Minister **considers** that doing so is in the **national interest**.*

With **national interest** to become a **new concept** in the PSRA, the Minister may designate a payment system based on national interest by having regard to potential **factors** as:

- National security;
- Consumer protection;
- Data-related issues;
- Innovation;
- Cyber security;
- Anti-money laundering and counter-terrorism financing;
- Crisis management; and
- Accessibility.

The above factors weave across opportunities and improvements to the Australian Payments System. However, there are more outweighing factors above that also can be subject to significant threats if inadequate development and deployment of such

Ministerial powers prove themselves less than effective in combatting against such threats.

It is for this reason, we ask the Government to further consider in **clearly defining thresholds** for each of the above factors on which the Minister may exercise their power to nominate a special designated payment system.

For example, if we focus on the factor, **cyber security** alone, would the Government nominate a special designated payment system based on the geographical reach of perceived cyber security **threats?** Or **actual attacks?** Across which specific industries? Or subject only to critical infrastructures?

In the absence of consistent and proportional clarity, Ministerial powers under the circumstances can be used very broadly. In doing so, the Government must at least consider the possible implications of any unintended consequences on such a payment system or systems, participants, and end users.

Azupay also acknowledges these Ministerial powers will require much needed careful consideration in the way they are applied against anyone, or in combination of the abovementioned factors. We also note that the consultation mentions *the Minister must consider whether there are alternatives to the designation under the PSRA **or another Act.*** Even more reason, we believe why **clear thresholds** are necessary.

The Government would benefit from being aware these broader Ministerial powers to be made available, that, where practicable, the special designated payment system, and its participants are afforded sufficient **industry transitional relief** to ensure any and all new regulatory and/or legislative changes are properly developed, tested, and implemented. This approach, we believe will preserve the fundamental underpinnings of a payment system to promote, competition, efficiency, and stability, and resiliency.

Bringing payments to a higher level of political powers, vests a significant national infrastructure under the control of the Minister which may result in heightened lobbying directed to the Minister and lead to less directed lobbying to regulatory authorities and government agencies.

The consultation mentions that a payment system can be designated under the RBA, in a matter of public interest, **and** be a special designated payment system, under Ministerial powers on the matter of national interest.

This could potentially result in a payment system being caught under multiple layers of regulatory and legislative oversight given its dual designation.

Where we see a real benefit to the Minister nominating a special designated payment system, is where it can contribute, with industry collaboration, in combatting the growing threat of payment fraud and scams. Better still, if such a special designation to a payment system can extend to specific **industry sectors** that have been well documented as carrying higher levels of money laundering and terrorism financing.

8. Conclusion

Azupay recognises the importance and benefits of a well-functioning, trusted, and resilient payment system, that underpins the Australian economy. We further recognise the importance of establishing regulatory and legislative frameworks that are able to adapt to the changing needs while applying a strong level of pragmatism for participants to be able to navigate through, avert unnecessary compliance burdens.

While we generally agree with some of the elements included in the consultation, we do wish to reverberate our feedback on the Government taking due consideration on key matters including, but not limited to, a Special Nominated Regulator, and a Special Designated Payment System.

We appreciate the significant complexity in developing regulatory and legislative frameworks underpinning the payments system that ensures **future proofing** against foreseeable and unforeseen developments. It is for these reasons we ask that the Government further considers its approach around special nominated regulators and special designated payment systems for the benefit of participants and end users.

We take this opportunity to thank the Treasury and the Government once again to provide our feedback on this matter, and we genuinely express our interest in participating in any future bilateral discussions or industry roundtables the Treasury may wish to schedule to obtain further feedback.

Yours sincerely,

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Creating the future of payments, today.

The following, and last page provides a table of abbreviations.

Table of Abbreviations

Abbreviation	Explanation
ACCC	Australian Competition and Consumer Commission.
APRA	Australian Prudential Regulation Authority.
ASIC	Australian Securities and Investments Commission.
AUSTRAC	Australian Transaction Reports and Analysis Centre.
Azupay	Azupay Trading Pty Ltd (A.C.N 635 093 248 & AFSL 537645)
CFR	Council of Financial Regulators.
NPP	New Payments Platform.
PSR	Payment Systems Regulator (UK).
PSRA	Payment Systems (Regulation) Act 1998.
RBA	Reserve Bank of Australia.
SVF	Stored Value Facilities.

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